



THE AFRICAN CAPACITY
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MULTILATERAL TRADE NEGOTIATIONS: HOW SENSIBLY MUST AFRICAN COUNTRIES AND TRADE NEGOTIATORS STAND?

- SOME LESSONS FROM WTO EXPERIENCE

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SOME LESSONS FROM WTO EXPERIENCE

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I. INTRODUCTION

1.1 It is generally acknowledged that Africa's participation in Multilateral Trade Negotiations (MTNs) improved both quantitatively and qualitatively since the launch of the Uruguay Round (UR). This is not to say that African negotiators have reached the same levels of preparedness and sophistication as their counterparts in the developed countries. A number of challenges still remain and some of them relate to capacity constraints in understanding the negotiations subjects / agenda due to lack of relevant training, lack of adequate economic and trade data and poor knowledge of the negotiations structure, all of which impact negatively on overall negotiation strategy. It is important to note that prior to the Uruguay Round, MTNs were seen as a preserve of the developed countries, whilst developing countries were marginal to the negotiations process and were largely recipients of preferential market access and other special differential treatment. No wonder GATT was regarded as a "*rich men's club*".

1.2 The enthusiasm that characterized the involvement of the developing countries in UR was based on the assumption that the negotiations would proceed on an Agreement by Agreement basis and that due to their limited interest and capacity, they could choose which Agreement they wished to negotiate and sign. Rege (1998) has observed that many developing countries which had not acceded to the Tokyo Round Agreements were not fully aware that "*all the associated agreements that were negotiated in the Tokyo Round, as well as those that would result from the UR would be presented as a full package in a single undertaking.*"¹

1.3 The birth of the WTO at the conclusion of the UR presented a challenge to developing countries as the WTO was to become a permanent negotiations forum, not only for the regulation of tariffs and trade but also for rule-making and with an elaborate dispute settlement system.

1.4 The aim of this paper is to review Africa's engagement with the WTO with special focus on the capacity challenges faced by the African trade negotiators. It is mainly a reflection of the author, based on personal experiences as a trade negotiator in Geneva during the period 1996 - 2001 coupled with some literature review. It is observed that during the early years of WTO's existence, no area of international jurisprudence was developing faster than international trade law. It is also observed that although the UR had been dubbed "*the round to end all trade negotiations rounds,*" the WTO Work Programme has continued to grow at an alarming pace as new subjects are added to the WTO agenda. These developments

have posed serious challenges to negotiations from developing countries as they strive to catch up, keep pace and even influence the scope, pace and outcome of the negotiations. It is therefore argued that notwithstanding the quantitative and qualitative improvements in Africa's participation in MTN's, a lot more still needs to be done to improve the capacity of African negotiators and stakeholders to participate actively and meaningfully in negotiations.

II. THE CHALLENGES

2.1 It can be argued that although developing countries were active during the UR, their participation was limited by the architecture and lack of transparency of the negotiations structure. A lot of work was happening behind their backs and it is not surprising that the resultant Agreements were very much tilted against them. A detailed analysis of the imbalances in the URAs has been done by Das (1992).²

2.2 Further, there was a mismatch in the level of preparedness to deal with the substance of the negotiations. Whilst developed countries had taken years to study, discuss and understand issues that were coming up for negotiations, including an appreciation of the impact on their economies, the same was not true for most developing countries. As a result, trade negotiators from developing countries ended up making concessions that did not serve the best interests of their countries.

2.3 It is precisely for these reasons, particularly the imbalances in the negotiation preparedness, structure and outcomes that most WTO Agreements have a provision for the granting of technical assistance to developing countries by developed countries. Amazingly, such technical assistance was and continues to be offered in exchange for concessions during the negotiating process. It must be noted that, the provision of technical assistance is presented in non-contractual, best endeavour language stating that technical assistance will be provided *"upon request and on mutually agreed terms."*³

2.4 In addition to the above, another capacity constraint is associated with having diplomatic presence in Geneva largely because of the cost of opening, adequately staffing and maintaining diplomatic Missions in Geneva. Of the 41 African members of the WTO, 34 OF them have Missions in Geneva. On the average, most African countries have only two to three officers covering the WTO since Geneva also hosts a large number of International Organisations and UN Agencies.

2.5 It is important to note that on average, the WTO runs more than four parallel committee meetings per day and therefore it is difficult, if not impossible, for all African countries to be represented in all these meetings or to be adequately prepared for these meetings.

2.6 Since WTO negotiations lead to country-specific and legally binding commitments, it is difficult for individual countries to either cede or delegate negotiating rights to others. At the end of the day, you are either in the negotiations or you are out, but still bound by the negotiations outcome. Depending on the stage of the negotiations, delegations can at best exchange information in order to assist each other keep track of developments in the Negotiation Committee that they cannot cover.

III. AFRICA'S RESPONSE

3.1 Despite these challenges, African countries have continually striven to improve their participation in MTNs through the adoption of various measures at the national, regional and continental levels. These improvements have demonstrated themselves both quantitatively and qualitatively.

3.2 There has been a noticeable increase in the number of African countries taking an active interest in MTNs and this has translated into membership of the WTO. Currently, 41 African countries are members of the WTO and six are negotiating to accede.

3.3 There is also increased awareness and interest in MTNs shown by other stakeholders such as the business community and civil society who have partnered with governments in developing national positions. In some countries, parliamentarians are showing increased interest in MTNs and it is hoped that their involvement will have the effect of mobilizing the generality of the people in following closely both the negotiating process and outcome. This in turn will lead to more accountability by the trade negotiators to their national populations.

3.4 There has been a noticeable improvement in the level of consultations within the governments through the convening of inter-ministerial meetings of Ministers and officials. There has been a similar improvement in the level of consultations with other stakeholders such as the business sector and civil society;

3.5 African countries have developed regional approaches through the institutionalization of the African Group of Trade Negotiators at the Geneva level and increased interest of MTN issues in the Africa Union Commission and African Research Networks. African countries are also forging alliances with other developing countries such as the Like-Minded Group, the Group of 90 (ACP Group), Group of 20, among others.

3.6 Yet it is important to note that Group solidarity does not necessarily translate into strong negotiating positions advancing the trade interests of African/ developing countries. Given the different levels of development and trade interest, group positions have always tended to be weak because they are based on generalized common positions. Africa is made up of countries matching the following development categories: Least Developed Countries (LDCs); Land Locked Developing Countries (LLDCs); Net Food Importing Countries (NFIC); Small Island Developing Countries (SIDs); High Income Developing Countries (HIDCs) and Low Income Developing Countries (LIDCs). In this regard, group positions are most effective where they represent a common response to the position of the developed partners, especially in relation to the expansion of the negotiations subjects/ agenda or WTO work programme.

3.7 It remains a contentious debating point whether some WTO Ministerial conferences such as Seattle or Cancun failed because of developing countries' solidarity or whether it was because of lack of agreement amongst the major trading nations. Civil society groups that have demonstrated on the margins of the Ministerial conferences have also claimed responsibility for the deadlock in negotiations.

3.8 It is also important to note that Group solidarity has been threatened where the developed partners have used financial resource diplomacy or threatened to suspend bilateral assistance programmes. In such instances some members of the group are forced into silence or absenting themselves from the negotiating committees altogether.

3.9 Some African countries have also developed issues-based alliances with countries outside Africa and in some instances gone into partnership with some developed WTO members. Such alliances range from general country classifications such as LDCs, s SIDs or LLDs, to alliances based on common trade interests, for instance, the major agricultural producers establishing the Cairns group, which cuts across the North-South divide.

IV. TECHNICAL ASSISTANCE

4.1 From the discussions above it is clear that African countries have traveled a long way in the area of MTNs. Whilst there have been a lot of positive developments, a number of glaring challenges still remain. Whilst most, if not all, WTO Agreements make reference to the need for the provision of technical assistance in order to facilitate developing countries' participation in, and benefiting from trade negotiations, this item is not part of the WTO built-in agenda because of its non-contractual nature. The various agreements indicate that technical assistance is provided "upon request and on mutually agreed terms."

4.2 Available technical assistance for trade negotiators has some major limitations largely because: -

- Such assistance is offered as a trade-off during the negotiations. In this regard, the assistance does not come before the negotiations have started and is offered in exchange for concessions whose impact on national economies is not known.
- The technical assistance is responsive to the trade interests of the donors and mostly delivered by personnel and institutions from the donor countries.
- Where funding is given to African researchers and NGOs for the conduct of studies, the research proposals and findings are first submitted to and owned by the donors who can also influence both the focus and content of the report.
- There has developed a Workshop Syndrome whereby capacity building is seen in terms of facilitating the organization of workshops whose content and resource persons bear little or no relevance to issues at stake at the negotiations.
- Trade policy courses offered by the WTO Secretariat although useful, largely teach participants to comply with existing rules and do not prepare them to challenge those rules or advocate for new ones that advance Africa's trade interests.

4.3 Given the foregoing and other limitations, there is therefore a strong need for capacity building support to focus on issues relating to WTO awareness and preparedness, as well as the capacity to implement WTO agreements, to formulate policies that address the supply side constraints and take full advantage of the opportunities created by

regional economic integration. These issues are discussed in detail below.

4.3.1 WTO Awareness

- (a) The lack of functional knowledge of WTO agreements, processes and procedures is largely due to limitations associated with academic background. Not all trade negotiators have a sound economic, commercial or Legal background and African Universities have not developed modules for the training of Trade Negotiators and Trade Lawyers.
- (b) The lack of specialized training has however not totally inhibited effective participation in MTNs. Whilst such a deficit has manifested itself in the adoption of generalized approaches, some African delegates have shown amazing flexibility and adaptability by developing expert knowledge through their own efforts and self-motivation. In some instances valuable assistance has been received from various stakeholders such as civil society organizations and some independent think tanks. However the development of such expertise takes time and may take up to 3 to 4 years by which time an officer will be due for recall to their Head Office.
- (c) Where basic training has been lacking in the Head of Mission (Ambassador) this has been manifested in the low prioritization of the WTO and low, if not none participation in WTO activities by that Ambassador. This is largely because WTO negotiations are very technical and demanding and some Ambassadors are reluctant to display their ignorance in the negotiation committees. They would rather focus on the other organizations to which they are accredited such as the United Nations Organisation and its agencies, ITU, WIPO, ICRC, among others. In fact, a number of Ambassadors from developing countries have given more attention to those organizations dealing with political, environmental, human rights and humanitarian issues. These tend to be easier to manage than the highly technical and contractual nature of WTO work. Perhaps, this is a reflection of the weaknesses of the posting policies of most African Governments. In some instances there is no evidence of any attempt to match basic skills and competence with the requirements of a particular post.
- (d) Beyond the Embassy personnel in Geneva, there is need to bring basic awareness of WTO issues to the citizen. This involves introducing the history, structure, functions and existing Agreements of WTO to various stakeholders. In most instances, the aim is to simplify the complex legal language of WTO Agreements in an attempt to educate

and arouse the interest of stakeholders in WTO processes and procedures, as well as fostering compliance with existing WTO Agreements.

- (e) However, Das (1999) has warned that *“a legal text cannot be put in a totally accurate form in any language other than that of the text itself”*⁴. There is therefore a danger of oversimplification, which also compromises legal precision, thus reducing the value and relevance of some WTO awareness initiatives. As already pointed out, some WTO workshops that are convened to raise awareness are guilty of this tendency.
- (f) WTO awareness initiatives should target government officials in relevant ministries, business community, labour, farmers’ organizations, civil society, parliamentarians and academia, among others.
- (g) It is important to note that trade liberalisation in the WTO has been erroneously linked to the structural adjustment programmes (SAPs) of the IMF/World Bank. As a result, there is hostility that is directed at the WTO and at MTNs, which amounts to a condition of denial and therefore willful neglect of the realities on the ground, particularly the binding nature of WTO Agreements, whether or not a WTO member has participated in the negotiations. Whereas the SAPs were not legally binding, WTO Agreements are binding on all members.
- (h) In this regard, WTO awareness initiatives should highlight the importance, seriousness and implications for WTO membership. WTO members should not behave as if they are not members or as if they are not bound by WTO Agreements.
- (i) WTO awareness initiatives should also alert African countries on the erosion of preferential market access that has been evident since the conclusion of the Uruguay Round. It is on the basis of such awareness that stakeholders should confront reality and design new strategies to improve production efficiency and competitiveness in order to maintain and increase market share. Viewed against this background, the current Economic Partnership Agreements (EPAs) negotiations with the EU should help Africa address some of the supply side constraints.
- (j) WTO awareness does not and should not amount to an unconditional surrender to the doctrine of unfettered trade liberalization. WTO awareness means alertness to the pros and cons of trade liberalization and the implications of WTO dispute settlement system. After the

experience with the Structural Adjustment Programmes, African countries should be aware of the difference between free trade and fair trade.

- (k) In this regard, WTO awareness for Africa should translate into a demand for trade justice and the negotiating proposals for Africa should address issues relating to WTO governance and how the WTO can address Africa's development aspirations.

4.3.2 WTO Preparedness

- (a) Beyond the awareness, stakeholders should participate in the negotiations from an informed position. This involves the need to undertake detailed technical studies and analyses in order for stakeholders to understand the impact of liberalization commitments on their economies and trade prospects. At this stage in the history of the WTO, it is important for developing countries to undertake liberalization impact assessments before they can make further liberalization commitments. In fact, a lot of technical work is needed in the capitals, buttressed by sufficient and relevant statistics and the involvement of all stakeholders in the development of national positions, which effectively articulate all aspects of trade interests. An equal amount of work is needed in Geneva to internalize the positions developed at the capitals and to transform them into negotiating proposals. A number of organisations such as UNCTAD, South Centre and Third World Network have assisted delegations in Geneva with technical expertise to develop concrete proposals for the purpose of WTO negotiations.
- (b) It is acknowledged that most developing countries in general, and African countries in particular have very weak data management systems. As a result, statistics on economic and trade performance is very scarce and mostly outdated, thus failing to give a true reflection of current trends. The biggest nightmare for an African trade negotiator is when your negotiating partner (from the developed countries) has more up to date statistical information about your country than you have. Such information asymmetry has often diminished the confidence of well-meaning negotiators at the negotiating committees.
- (c) Against this background, it is therefore critical for African delegations to be fully prepared for WTO negotiations in a way that forces the major trading partners to fully respect and appreciate Africa's trade interests and prospects. Such preparations should also ensure that

Africa is able to draw up a positive agenda for the negotiations rather than merely reacting to proposals from the other groups.

- (d) However, it is important to note that agenda setting requires a lot of research, analysis and consultation before the group can agree that an issue is now ripe for tabling at the WTO. In the case of developed countries, they rely on well-staffed and effective think tanks and Secretariats such as the OECD Secretariat, numerous foundations and even universities. The private sector and other interested stakeholders also play an active role in the consultations and analyses. Africa should develop this capacity.
- (e) As already pointed out, most African governments have now set up inter-ministerial and multi-stakeholder committees on trade policy. However, these committees are more ad-hoc rather than permanent arrangements. In most instances, the committees are poorly serviced in the sense that they do not have a dedicated Secretariat such that information and documentation flows are weak. The research as well as the statistical base is also weak.
- (f) Beyond the preparations at the national level, adequate focus should also be given to the Geneva negotiators. There is need to ensure that the selection, deployment and the resourcing of the negotiators is done in a way that responds to the challenges of MTNs. Ideally, the negotiators should have sufficient knowledge of the national and regional economy and trade policy objectives. They must be versatile, adaptable and should have good negotiating skills.
- (g) WTO preparedness also means knowledge of the negotiations architecture, especially the intricacies and intrigues associated with the Green Room process as well as the so-called Mini-Ministerial Conferences. These are processes that are not provided for in the Agreement establishing the WTO but which *de facto*, determine the governance of the WTO.
- (h) The Green Room approach to WTO negotiations is an exclusive arrangement of the major trading countries where participants are called upon to articulate their trade interest in very graphical and precise terms. This is also the forum where trade deals are cut. From the outset, African countries feel marginalized by virtue of the fact that as a continent, Africa only accounts for about 2% of global trade. Thus Africa's trade interest is assumed to be very small if not inconsequential to the MTN process. This explains why participation in the Green Room process is seen by some African countries as an act of boosting their prestige, often personalized in the character of the

Ambassador, rather than the genuine pursuit of national trade interests. In some instances, the choice of country to represent Africa in the Green Room process is carefully made to divide rather than to unite, to weaken rather than to strengthen the African position. In this regard, the drivers of the Green Room process have tended to ignore and not invite the WTO Africa Group coordinating country to either the Green Room process or the Mini-Ministerial Conferences, which are central in shaping the agenda and work programme of the WTO. Countries are thus hand picked by the majors in such a way that the participants do not feel obliged to report back to the Africa Group on the proceedings in those forums.

- (i) For most countries, a lot of focus is given to the Ministerial Conferences and not the Geneva Process. It must be emphasized that after negotiations have been launched at a Ministerial Conference, the actual negotiations are conducted in the various Committees and Special Negotiating bodies in Geneva, supervised by the WTO General Council, which sits as an inter-sessional body. The Ministerial Conference is mostly ceremonial.
- (j) Thus the fielding of huge delegations at the Ministerial Conference has very little impact, if any, on the negotiations process and outcome. For most delegations, very little support is given to the trade negotiators during the Geneva process, which leads to rather weak national positions. Sending large delegations to the Ministerial Conference is more of an act of prestige and visibility rather than a genuine and well-coordinated effort to influence the content and outcome of the negotiations. In fact, given the structure of the negotiations and the strict limits in the number of delegates allowed to participate in the Ministerial Conference Negotiating Committees, those large delegations have no value to the actual negotiating process other than boosting the numbers of conference tourists, spectators and cheerleaders.
- (k) Civil Society Groups and other non-state actors have also fallen victim to the unjustified focus given to the Ministerial Conferences. A lot of research work and publications are made available to the negotiators just before or during the Ministerial Conferences and therefore have very little significance or relevance to the negotiations since most of the agreed texts / outcomes would have been finalized by the General Council in Geneva. It is important to emphasize that such research work would be critical input for negotiators during the Geneva process and participation by non-state actors should therefore give more focus to the Geneva process.

- (l) As already pointed out, Africa's participation in the Green Room negotiations as well as the Mini- ministerial Conferences is uncoordinated. However, these forums, which are dominated by the majors, are the prime movers and shakers of the negotiations process. In this regard, it is critical that Africa's participation be based on the proper articulation and pursuit of Africa's trade interest rather than the quest for national or personal prestige by some misguided players. There is no doubt that once again the finance resource diplomacy or the promise of employment in the WTO Secretariat or some dubious NGO is at the center of such misrepresentations.

4.3.3 Capacity To Implement WTO Agreements.

- (a) This involves the development of capacity to domesticate WTO rules and Agreements through appropriate legislative and policy reforms. One of the biggest challenges encountered to date is that developing countries are finding it very difficult to implement Agreements that are titled against them. As already pointed out, there are serious imbalances in the Uruguay Round Agreements, which need to be addressed through the rebalancing of these Agreements.
- (b) In this regard, there is need to dispel the myth that the URAs cannot be reopened or amended. In fact, the Doha Decision on TRIPs and Public Health that led to the subsequent amendment of the TRIPs Agreement sets the desired precedent. However, it is regrettable that very few African countries have been able to use the TRIPs amendment to facilitate the local manufacture of ARVs and other essential medicines.
- (c) Thus, there is also need to develop capacity to take advantage of the flexibilities offered in some WTO Agreements. It maybe recalled that a number of Uruguay Round Agreements did provide for time derogations to allow developing countries to phase-in the implementation of those agreements. The phase-in period was expected to facilitate developing countries to effect the necessary adjustments in order to reduce the cost and/or pain of domesticating WTO rules. It is regrettable that most developing countries were not able to effect these adjustments within the phase-in period, and as a result, most of the supply side constraints have not been addressed.

4.3.4 Capacity To Formulate Appropriate Policies

- (a) There is need to develop capacity to formulate policies that stimulate production for exports, particularly the encouragement of value added

products and addressing supply side constraints. The structure of African exports has predominantly been dominated by primary products. There is need to encourage and facilitate the beneficiation of Africa's rich and diverse natural resources in order for the continent to derive full benefit from global trade. This would result in increased export earnings, employment creation and global market share which would have a positive impact on poverty reduction and other development prospects.

- (b) In this regard, there is need for capacity to develop macroeconomic and trade-related policies as well as appropriate legal and regulatory frameworks to ensure that the economic environment is conducive to promoting both domestic and foreign investment.

4.3.5 Capacity To Synchronize / Harmonize Negotiating Positions At The Bilateral, Regional And Multilateral Levels.

- (a) The importance of regional economic integration in facilitating Africa's economic development cannot be overemphasized. Genuine regional market integration will lead to the realization of economies of scale, higher productivity and increased competitiveness, that will in turn lead to the more equitable integration of Africa into the globalizing world economy. Ideally, regional trade negotiations should proceed at a faster pace than multilateral negotiations in order to allow Africa to take full advantage of the opportunities and flexibilities offered by Article XXIV and Part IV of GATT.
- (b) Regrettably, Africa's sub-regional trade negotiations are trailing the multilateral trade negotiations. Most of Africa's economic integration schemes have not yet been notified to the WTO. The EPA negotiations with the EU have in some instances caused confusion in the African integration schemes by forcing a re-configuration of existing regional economic communities. If not handled properly, the African integration agenda will be dictated by and serve the interests of the advanced industrialized countries and not Africa's. It is also important to note that positions taken by Africa in the context of the Cotonou Agreement conflict with positions taken at the WTO, especially in relation to the treatment of Labour Standards, Investment, Government Procurement among others.

V. CONCLUSIONS

5.1 Capacity building should address both the short-term and long-term challenges. Short-term challenges relate to those associated with the trade negotiators in Geneva and officials in the key Ministries and institutions. Such capacity building interventions should go beyond the introductory trade policy course on WTO awareness in order to prepare officials to participate meaningfully and effectively in WTO negotiations.

5.2 African Governments should priorities WTO negotiations and ensure that the deployment of staff to the Missions in Geneva as well as in the responsible Ministries and departments is done in a way that matches the task at hand. Where staff has received appropriate training and experience, efforts must be made to deploy them strategically and to retain them so that they continue to be involved in WTO work.

5.3 In the meantime, UNCTAD and African Research Institutes and other Networks could be mandated to work with regional organizations to design a Trade Policy course emphasizing the trade and development nexus. Such a course could help Africa to develop a positive agenda for the purposes of multilateral trade negotiations. Such an agenda would articulate Africa's trade interests and help develop negotiating strategies for achieving same. It is important to note that the ACBF is working on a training module that could be used as a template for the desired trade policy course. Such a course could be targeted at the trade negotiators as well as the training of trainers.

5.4 The ACBF project should also target tertiary institutions in order to capacitate them to offer comprehensive degree programmes in the relevant areas. Attention should also be given to international trade law in order to build capacity for dealing with WTO dispute settlement system. Most developing countries are currently resorting to the use of trade layers from developed countries whenever they have cases coming up for dispute settlement.

5.5 A lot could also be achieved by harnessing the invaluable expertise that has been developed by some specialized NGOs. As already pointed out, a lot of research work has been done by civil society groups but is not reaching the negotiators in Geneva. At times these studies are only made available to country delegations during, or on the eve of the Ministerial Conference.

5.6 There is need for the pooling of resources by governments, business sector, labour, academia and other stakeholders in order to develop joint training programmes and knowledge sharing. Information Technology tools must be used to facilitate on-line information sharing.

5.7 A critical area that needs to be urgently addressed is that of data management. There is need to ensure that statistics are accurate, up-to-date and available to the trade negotiator.

5.8 From the above, it is clear that capacity building should be targeted at individual practitioners, institutions and facilities. Given the phenomenal growth of international trade law, it is critical that the investment put into the development of the capacity of individual negotiators and practitioners is put to good use. In this regard, the issue of retention of skills comes to the fore in order to ensure continuity and institutional memory. It is important to note that some negotiators from developed countries boast of years of experience. In fact, it is not unusual to hear some of them referring to meetings they attended in the 1950s, 1960s, 1970s and other past decades who are still dealing with GATT/WTO issues today. In contrast, not many Africans who were involved at the launch, of or during, the Uruguay Round are still involved in the MTNs today.

5.9 It may be noted that developed countries appoint technocrats to lead their delegations to the Ministerial Conferences. Whilst it is the sovereign decision of every country to appoint the Minister to lead delegations to the Ministerial Conferences, our recommendation is that African countries need to ensure that they include technocrats and practitioners in order to give solid technical advice to their Ministers. It is also critical that appointments at Ambassadorial levels respond to the challenges of MTNs as well. It has been noted that some, if not most, delegations to the Ministerial Conferences are top heavy. Because of the publicity, fanfare and prestige associated with these meetings and their venues, senior officials who are not very knowledgeable on the issues on the agenda tend to insist on attending at the expense of technical experts.

5.10 Technical assistance could also come in the form of the construction of new and/or upgrading of existing facilities in order for recipient countries to meet a particular standard so as to improve market access of their products. Using the example of the SPS Agreement, it is generally accepted that not all countries can build reference laboratories and therefore there is need for sharing of facilities and pooling of resources. This approach could also be replicated when dealing with tertiary institutions so that certain designated universities can be developed into Centres of Excellence to allow for specialized training.

5.11 Technical assistance has also been offered in the form of technology transfer, such as in Article 66.2 of the TRIPS Agreement which reads *“Developed country members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging*

technology transfer to least developed country members in order to enable them to create a sound and viable technological base.”⁵ However, a careful reading of this Article shows that the obligation implied in the use of the word “shall” is in terms of giving incentives to their enterprises and institutions rather than providing technology transfer to the LDCs. As such, the formulation used is non-contractual and is merely best endeavour.

5.12 Finally, African countries must not be dependant on donors to provide for all their needs for capacity building. It is critical that African governments, institutions and stakeholders should pool resources to address the obvious capacity constraints. It is too much to expect that Africa’s competitors will provide comprehensive technical assistance to make Africa a global trade giant. Given Africa’s rich natural resource base and comparative advantage, there is a perceived danger that the growth of Africa’s market share could upset the current international economic and trade relations. Africa must therefore develop primarily from its own efforts and ingenuity.

5.13 The Uruguay Round was completed after the demise of the Cold War. The fall of the Soviet Union was seen as an ideological victory for the free market economy, which would accelerate the globalization of the world economy. Capitalist ideologues celebrated these developments by forecasting the demise of the nation state and the emergence of a new world order where the free market led by multinational corporations would rule the world. Against this background, the WTO was to play a critical role in creating a binding legal framework for free trade to occur.

5.14 It is therefore argued that at a time when the world is at a cross-roads, especially with the demise of the Soviet Union and the emergence of the Asian giants, Africa cannot afford to be left behind or to be marginalized in the process of reshaping international relations in the 21st century. Africa therefore needs to develop and strategically deploy its best brains in order to ensure that the rules that govern global trade and financial flows are developed in a way that does not condemn the continent to a permanent state of underdevelopment. Global trade rules should not constrict Africa’s development potential by limiting the policy space for governments to address their development challenges. Such policy space can only be defined and defended by the Africans themselves.

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