THE WORLD TRADE ORGANISATION [WTO]
NEGOTIATIONS: DOHA DEVELOPMENT AGENDA [DDA]
NEGOTIATIONS: THE ROAD TO HONG-KONG

PRESENTED BY

NATHAN NDOBOLI

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1.0 INTRODUCTION:

The World Trade Organization [WTO] is a rules-based Organization tasked with evolving, formulating, developing and enforcing rules that govern the multilateral trading system. WTO Agreements include the General Agreement on Tariffs and Trade, GATT 1994 [i.e., the Original GATT of 1947 along with all its amendments, Ministerial decisions up to December 1994 and Understandings in some the areas, that resulted from the Uruguay Round of negotiations]. In total the architecture comprises 12 Agreements relating to goods, the General Agreement on Trade in Services (GATS), the Agreement on the Trade-related Aspects of Intellectual Property Rights [TRIPS], and the Dispute Settlements Understanding [DSU].

On the face of it, and as presented by the strong proponents of international free trade (mostly from the developed world), the General Agreement on Tariffs and Trade (GATT) 1947 and its successor, the WTO, are based on the practice of ‘free trade’. However, this is debatable and one may not wholly agree. The GATT/WTO system is governed by rules, which are meant to reflect balance of economic and political power and indirectly military power since it hangs in the back yard in support of the other two even in times of peace. First, in the process of negotiation of trade rules, WTO members broadly share out markets. Then follows the process of actual trade flows regulated and generally directed by the agreed rules and periodic interventions by governments acting individually or collectively at sub-regional, regional and international levels. This state of affairs favours countries with the economic might to out compete others in the market arena in which case the principle of ‘free trade’ is not logically true.

Article XVI, paragraph 4 of the Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations obliges each WTO member to ensure conformity of its laws, regulations and administrative procedures with its obligations as provided for in the WTO Agreements. Furthermore in each of the Agreements themselves, domestication of the provisions of

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1 Nathan Ndoboli is a counsellor at the Ministry of Foreign Affairs and Head of the Economic Division of the Department of Multilateral Organizations and Treaties. The opinions expressed in this paper are those of the author and do not in any way reflect the views of the Ministry of Foreign Affairs or official positions of the Government of Uganda. Any errors should be attributed to the author.
the Agreements is provided for and in some cases specified. In light of this, law reform agencies must play a central role as ones tasked with recommending reforms to improve, simplify and update the laws of their respective territories. As to what should be the entry point for the reform agencies and issues of procedure with regard to domestication of international agreements such as the WTO agreements remains a matter of the sovereign states and/or customs territories. That said it is essential that there exist close involvement of the law reform agencies in the formulation of not only laws but also negotiating positions of their respective territories. Law reform agencies should also be involved in the actual negotiation of international instruments including the WTO agreements so as to ensure coherence and ease of the process of reform and revision of the laws.

The unique feature of international instruments is that once member countries belonging to a sub-region or region agree to sign on them then logically regional cooperation in drafting laws for adaptation in the enactment of domestic laws as well as overall reform and development of the law becomes imperative. This cooperation ensures legal policy coherence in the given region or sub-region. This therefore espouses some of the stated objectives of the Association of Law Reform Agencies of Eastern and Southern Africa (ALRAESA). As to what extent this kind of cooperation has been effective in ALRAESA Countries is a matter that this conference needs to address itself to.

2.0  HISTORY AND EVOLUTION OF THE MULTILATERAL TRADING SYSTEM
By the end of World War II [1939-1945], the World was in total political and social-economic disorder. It quickly occurred to the major powers that there was urgent need to establish and build institutions to assume global governance. The United Nations [UN] was founded on the belief that there was need for collective action at the global level to cause and guarantee political stability. In the same belief the International Monetary Fund [IMF] was conceived to ensure fiscical and monetary stability while the International Bank for Reconstruction and Development [IBRD] (commonly referred to as the World Bank) had to finance reconstruction and development worldwide [emphasis added]. The latter two were established by the Brettonwoods Agreement and came to be commonly known as the Brettonwoods Institutions.

Having established the World Bank in 1944 and the IMF in 1945, the idea of constructing an International trading system based on ‘free-trade’ was brought to the forefront. The third pillar of the post-war international economic system was therefore proposed to be the International Trade
Organization [ITO]. The ITO was to be embodied in the Havana Charter, which included many other provisions with a comprehensive mandate and programme. The US Senate rejected the Havana Charter and it did not come into effect and therefore the ITO was not established. However, the provisions relating to tariffs and other matters on import and export had been finalized earlier in the preparatory process for the Havana Conference. These provisions were contained in the General Agreement on Tariffs and Trade [GATT], which was given effect through a Protocol of Provisional Application, and the GATT came into operation provisionally from 1 January 1948. Since then, the GATT continued until December 1994, after which it was annexed to the Marrakech Agreement establishing the WTO and it became part of GATT 1994. The main objectives of the GATT, which to a large extent were achieved, were to conclude reciprocal and mutually advantageous arrangements with a view to significantly reducing customs tariffs on goods and other barriers to trade as well as eliminating discrimination in international trade.

One major Round in the history of Trade Negotiations was the Uruguay Round [UR] of negotiations, launched in Punta del Este, a sea resort in Uruguay, towards the end of 1986 and concluded in 1995 with the formation of the World Trade Organization and the signing of the Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations at Marrakech, Morocco. The GATT/WTO system was expanded to incorporate new areas, viz: Services regulated by the General Agreement on Trade in Services [GATS], Intellectual Property by the Agreement on Trade Related Aspects of Intellectual Property Rights [TRIPS], and investment by the Agreement on Trade Related Investment Measures [TRIMS]. New disciplines were also instituted in agriculture and textiles trade.

Other new features of the GATT/WTO are that decisions are taken on consensus and all agreements are part of a ‘single understanding’. Thus in a Round of negotiations, nothing is agreed until all has been agreed by all members. The Dispute Settlement Mechanism [DSM] was also set up to enforce rules, although negotiations of it are not part of the single understanding. Furthermore, whereas the GATT system made multilateral rules that only affected members’ tariffs and non-tariff measures [or trade policies ‘at the border’], many of the WTO agreements now involve the domestic policies of members as well, thus limiting members’ policy space to make home-grown domestic policies to respond to their development needs and realities.
3.0 THE DECISION MAKING MECHANISM AND THE CARDINAL PRINCIPLES OF THE WTO

The supreme decision making body of the WTO is the Ministerial Conference which is held once in two years. Between these conferences, the highest body is the General Council [GC], which meets on a regular basis in Geneva and consists of all members of the WTO represented by their Ambassadors and representatives. The General Council has powers to take binding decisions on behalf of the Ministerial Conference. Below the General Council are Councils for different areas of subjects, viz: the Council for Trade in Goods, the Council for Trade in Services and the Council for Trade Related Aspects of Intellectual Property Rights. In addition, there are committees for specific purposes and working parties on specific subjects and finally the Dispute Settlement Body [DSB] for settlement of disputes when members have grievances against each other. The general rule is that decisions are adopted by consensus although there are exceptions where there are provisions to call for a vote.

Two basic non-discrimination principles of the WTO deserve special mention; Most Favoured Nation [MFN] and National Treatment [NT]. MFN principle requires members to grant to all members any favourable treatment accorded to a third country, while National Treatment instructs that all goods destined for a member country should be accorded equal treatment with those on the local market in matters of taxation and internal administrative regulations. Thus there should not be discrimination between an imported product and a like product produced on the domestic market.

4.0 THE DOHA DEVELOPMENT AGENDA [DDA] NEGOTIATIONS

The on-going Doha Development Agenda [DDA] negotiations were launched at Doha, Quatar, in November 2001. Member States agreed that this Round of negotiations would place the needs of developing countries especially the Least Developed among them at the heart of the work programme. To the developing member countries this means the dire need to redress the imbalance in rights and obligations between the developed and developing members. However, in the course of the negotiations there still remain major differences of interpretation as to how to transform the Doha declaration into reality. On 1st August 2004 the General Council adopted what is now popularly known as the ‘July Package’. The July Package is a Framework Agreement spelling out how members intend to proceed in various areas of the negotiations under the Doha Development Agenda. To date, therefore the negotiations have aimed at specifying, to the extent possible, the
treatment of various areas of the negotiations so that Ministers could consider them at the Ministerial Conference to take place in Hong-Hong, China, in December 2005.

4.1 Status of Negotiations in various areas

4.1.1 Agriculture

Both the developed and developing countries attach great importance to the negotiations on agriculture. For the majority of developing countries agriculture employs more than 60% of their populations, contributes a significant portion of the GDP and exports, it is a source of livelihood, food security and rural development. These countries therefore have offensive and defensive interests in agriculture and are seeking elimination of agricultural subsidies. The developed countries on the other hand especially major users of subsidies in various forms (i.e. USA, EU, and Japan) still remain hesitant to dismantle farm sector support while seeking to open up markets for their own products in developing countries. The negotiations in agriculture are therefore the key to unlocking progress in other areas.

The objective for Hong Kong in the negotiations in agriculture is to establish modalities for further commitments in market access, domestic support and export competition. Members have neither decided on the specifics of the tiered formula for reduction of tariffs, nor elaborated on the flexibilities, in particular the selection and treatment of sensitive products and of special products [SP]. A wide range of technical issues having a bearing to the formula cuts also remain not resolved including the new Special Safeguard Mechanism [SSM] in favour of developing countries, tariff escalation, tariff simplification, tariff quota administration, preference erosion and tropical products.

Members are yet to decide on the levels of cuts of domestic support particularly the formula for reductions of the Final Bound Total Aggregate Measurement of Support (AMS) as well as the review of the permitted Green Box Measures in order to make them development friendly.

As far as export subsidies are concerned members are yet to make concrete the concept of parallelism, which calls for disciplining all forms of export subsidies including food aid and state trading enterprises. Most central and also not yet resolved is the determination of the credible end date for use of export subsidies as was agreed in the “July Package”.

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At a technical level a break through was only reached on the methodology to be used in converting the non ad valorem tariffs (specific and compound tariffs) to ad valorem tariffs for purposes of applying the tariff reduction formula. There is reluctance among the big players (Quad countries: USA, EU, Canada, Japan) to put forth concrete proposals even among themselves let alone to the entire membership. Among the developing countries, the G20, India, the African Group and the LDCs have from time to time presented proposals on the way to resolve the issues from a development perspective. The reality remains that in order to achieve progress across the broader range of the negotiations there has to be progress in the negotiations on agriculture given the linkage often emphasized by the majority of the membership.

4.1.2 Sectoral Initiative on Cotton
Due to the heavy subsidies the USA, EU and others provide to their cotton farmers and other factors like production of synthetic substitutes, the world prices of cotton continue to be depressed. This has had a devastating effect on the cotton sector and indeed the economies of countries heavily dependent on cotton. This trend compelled four West African countries namely Benin, Burkina-Faso, Mali and Chad to table the matter at the WTO. These countries sought an early end to cotton subsidies and setting up of a cotton support fund as well as technical assistance to diversify away from dependence on cotton.

At present the negotiations on cotton are undertaken within the Special Session on Agriculture, albeit, cotton has a special status therein. Work on cotton is intended to encompass all trade-distorting processes affecting the sector in all three pillars viz: market access (tariffs), domestic subsidies and export subsidies.

An important development has been that the Dispute Settlement Body ruled, and the Appellate Body upheld, in the case of USA vs. Brazil on Upland Cotton subsidies, that the USA subsidies contravene the Agreement on Agriculture. This should prompt the USA and other subsidizers to consider phasing out certain subsidies. The Sectoral initiative on cotton is a highly charged political issue at the WTO. It is likely to remain so at Hong Kong and until the end of the Round.
4.1.3 Non-Agricultural Market Access (NAMA) or Market Access for Industrial Goods:
Owing to their high levels of industrialization, developed countries have since the Uruguay Round negotiations been more willing to open up their markets for industrial goods, certain that the majority of developing countries cannot competitively supply their markets. In those cases where developing countries are capable, other methods like high sanitary and phytosanitary standards or non-tariff barriers and rules of origin are used to impede imports. On the other hand pressure is being applied on developing countries to open up their markets to industrial goods from the developed countries. There has been a marked split here with developed countries on the offensive and developing members on the defensive. The objective for Hong Kong is to establish modalities for the reduction or as appropriate, the elimination of tariffs, including the reduction or elimination of tariff peaks, high tariffs and tariff escalation. This has to be done in a way that fully takes into account the special needs and interests of developing and least developed country participants including through less than full reciprocity in the reduction commitments.

The other areas of interest to some developing countries are exemption of Least Developed countries from reduction commitments, compensation for preference erosion, simplification of rules of origin and sanitary and phytosanitary measures (SPS) as well as disciplines on Technical Barriers to Trade (TBT).

The state of the negotiations are such that there exists already modalities which only require the filling in of numbers unlike in the case of agriculture still burdened with a lot of outstanding technical work and as stated earlier progress in agriculture is likely to signal progress in other areas particularly NAMA.

4.1.4 Services
Trade in services under the WTO is governed by the General Agreement for Trade Services (GATS), which sets out general principles, obligations, commitments and exemptions in international trade in services. The GATS architecture has flexibility (positive list approach), which allows members to grant access or national treatment to other members only in areas a given country voluntarily wishes to liberalize. This feature is particularly important for developing countries and LDCs as they can select areas in which they wish to permit foreign participation.
This flexibility is under threat by a proposal calling on all members to make offers in a minimum of sectors to be agreed as benchmark.

Developed countries have strong supply capacity in services and therefore dominate in this trade. Of course, the developing countries may benefit by importing services, as it may improve their own production process in the goods sectors and services sectors for example the case of telecommunications sector in Uganda. However extreme caution is required to ensure that a country opens up in areas that will bring it benefits. Caution can take the form of first undertaking studies before liberalization and even in areas liberalization is to take place a country may reap benefits without necessarily making a bidding commitment in the multilateral framework of WTO (locking-in).

At the present stage, negotiations are also going on in the rule making area under GATS Articles VI (on safeguard and countervailing measures and Art XV on trade distorting subsidies). No specific outcomes have been agreed yet. Developing countries are united in urging developed countries to provide access to all categories of natural persons, particularly lower and semi-skilled persons. This still meets stiff resistance from developed countries who have so far limited their offers to professional categories.

4.1.5 TRIPS and Public Health

Before Doha, the TRIPS Agreement only permitted compulsory licensing predominantly for the supply of the domestic market of the member authorizing such use as per Art. 31(f) of TRIPS and the right holder of a patented drug had to be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization as per Art. 31(h) of TRIPS. These limitations in the TRIPS Agreement deeply affected poor developing countries, particularly African countries that do not have the capacity to manufacture pharmaceutical drugs.

Given the gravity of the public health problems affecting many developing and least-developed countries, especially resulting from HIV/AIDS, tuberculosis, malaria and other epidemics, African countries put the case at Doha for a review of the TRIPS Agreement, particularly Articles 31(f) and 31(h) to permit countries with no or insufficient manufacturing capacity to import generic drugs produced under compulsory licensing. This was one of the greatest achievements Africa made at
Doha. At the run-up to Cancun, the General Council adopted a decision on 30\textsuperscript{th} August 2003 that provides elements for amendments to the TRIPS Agreement. The adoption of this decision is one of the major reasons prices of HIV/AIDS drugs have reduced significantly.

Negotiations at present concern the content and form the amendments to the TRIPS Agreement should take. It is only through amending the Agreement that we are sure of a permanent solution. Developing countries should ensure that the amendment is effected by Hong Kong.

4.1.6 Other Trade Related Intellectual Property Rights (TRIPS) Issues

a) Geographical indications are also covered under the TRIPS. They are defined as place names and other indications which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristics of goods is essentially attributable to its geographical origin. A classic example is Champagne (French region). The TRIPS Agreement requires members to protect geographical indications to prevent use of an indication in a manner that misleads the public or creates unfair competition. Art.23 confers additional protection to geographical indications for wines and spirits.

Two major issues are a subject of negotiations on geographical indications: First, establishment of a multilateral system of notification and registration of Geographical Indications for wines and spirits (who should participate, will it be on voluntary basis, what form is the register to take?) and secondly whether the extra protection accorded to wines and spirits should be extended to other products that would be registered as GIs.

b) The issue of the relationship between the UN Convention on Biological Diversity (CBD) and the TRIPS Agreement and protection of traditional knowledge and folklore are also a subject of negotiations. Some of the questions to be answered are: how should members apply the existing TRIPS provisions on patenting biological inventions and to what extent could life forms be patented? Should traditional knowledge, folklore and genetic material be patentable and what would be the rights of the communities where these originate. Like in the case of other implementation issues there has not been any significant progress registered.
4.1.7 Trade Facilitation:
During the Singapore WTO Ministerial Conference in 1996, the EU and other developed countries tabled four new areas to be included in the negotiating agenda, namely; Trade and Investment, Trade and Competition Policy, Transparency in Government Procurement. These came to be known as “Singapore or New Issues”. At Doha Ministers decided that negotiations on these issues would be launched after the Fifth Session of the Ministerial Conference (Cancun) on the basis of a decision to be taken, by explicit consensus, at that session, on modalities of negotiations. Consensus was not reached at Cancun to launch negotiations on the Singapore Issues.

In the Framework Agreement (July package) members agreed to launch negotiations on Trade Facilitation only and drop the other three issues off the DDA. It was further agreed that the negotiations on Trade facilitation would aim to clarify and improve relevant aspects of Articles, V, VIII and X of GATT 1994 with a view to further expediting movement, release and clearance of goods including goods in transit. The Articles referred to relate to Freedom of Transit (Art. V), Fees and Formalities connected with Importation and Exportation (Art. VIII) as well as Publication and Administration of Trade Regulations (Art. X)

At present members are considering proposals on how to clarify and improve the relevant articles on trade facilitation. One of the main constraints to increasing trade in developing countries is the high cost of exporting, including transport and administrative costs. This area of the negotiations is fairly advanced in that modalities on what should be done already exist. There is potential for members to work out some concrete outcomes to take to Hong Kong.

4.1.8 Negotiations on rules
In the rules area, negotiations aim to clarify and improve disciplines on Anti-dumping, subsidies and countervailing measures including fisheries subsidies and provisions on Regional Trade Agreements (RTAs). While clarification may involve removing doubts and confusion in the rules and taking choices if several alternatives exist, improvement of the rules could involve either making the rule more stringent or less stringent including through effecting an amendment.

Under general subsidies the major concern of the developing countries is that subsidies mostly used by developed countries, such as those for research and development, for the development of
underdeveloped regions and for environmental adaptation, are non-actionable therefore immune from counter-action through imposition of countervailing duty or through the use of the WTO dispute settlement process. On the other hand, subsidies mostly used by developing countries, or which are desirable for their development process, such as those for industrial upgrading, diversification, technological development, import substitution and others have not been given such favoured treatment. Improvements are also required in calculations of subsidy margins and apportionment of responsibilities.

Another area of negotiations on rules concerns anti-dumping provisions. Dumping occurs when the export price of a product is lower than the price at which a like product is sold in the territory of origin of the product or where the sale price of a given product is lower than the cost of producing that product. This is considered an unfair trade practice, as it adversely affects the normal competition. The relief against dumping is imposition of an anti-dumping duty on the dumped import to offset the effect of dumping in the market. The Anti-dumping Agreement is very complex, rendering it impossible for most developing countries to make use of it. Developing countries often find it difficult to collect relevant factual information relating to the normal values and the export price. The negotiations therefore centre around definitions for several concepts of the Anti-dumping Agreement, \textit{inter alia} product under investigation and like products, domestic injury and its determination, dumped imports, standing rules, determination of normal value, constructed export price, cumulative assessment of imports, price undertaking/lesser-price rule, public notice, period of data collection for anti-dumping investigations and treatment in case of a large number of exporters, producers, importers or types of products.

The approaches to the negotiations are motivated by different reasons. For example the US administration is under pressure to ensure that the examination of trade remedy rules results in a regime under which the US loses fewer anti-dumping, countervailing and subsidy disputes at the WTO. The US has therefore proposed to focus the talks firmly on procedural fairness, i.e. transparency of trade remedy investigations. Developing countries are more concerned about the complexity of the procedures and provision of flexibilities to enable them take advantage of trade remedies. These include the \textit{de minimis} margin under which dumping is not considered to have occurred from 2 percent of export price to 5 per cent for imports originating from developing countries, as well as raising the threshold volume of dumped imports which shall normally be
regarded as negligible (Article 5.8) from the existing 3 percent to 5 percent for imports from developing countries and the need to make the lesser-duty rule mandatory.

The exclusion of the anti-dumping process from the normal dispute settlement process is also under examination. At present the role of panels is curtailed. They are not required to determine whether any measure of a country relating to this area violates the provisions of the Agreement; their role is limited to examining whether the facts have been determined properly and whether the evaluation of the facts have been done in an unbiased and objective manner.

The other track of negotiations under rules and of great importance to developing countries is Regional Trade Agreements (RTAs) provided for under Articles XXIV of the GATT 1994 which recognizes that “the purpose of a customs union or a free trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.” Further, “the duties and other regulations of commerce imposed at the institution of any such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or adoption of such interim agreement….” In the case of formation of a customs union or free trade area among developed countries, the burden of proof is on the constituent developed countries to demonstrate that the developing countries will not face higher barriers or restrictions. The main debate has been on ‘transparency’ of RTAs, the application of any new process to RTAs notified under the ‘Enabling Clause’ and on systematic RTA issues.

Article XXIV.8 of GATT 1994 requires members of a customs union or FTA eliminate duties and other restrictive regulations of commerce in “substantially all the trade between the constituent territories.” This provision needs to be relaxed in respect of developing countries to encourage formation of RTAs among developing countries. Amazingly some proposals have called for defining “substantially all trade” in a more restrictive manner to mean elimination of 95 percent of tariff lines at the six-digit level of the year period and the elimination of at least 70 percent of tariff lines upon entry into force of an RTA.
4.1.9 Review of the Dispute Settlement Understanding:
The Dispute Settlement Understanding (DSU) is a WTO agreement introduced in 1994. It sets rules and procedures governing the resolution of trade disputes between member states. Under the dispute settlement process, a panel of experts may be established, with the concurrence of parties involved in the dispute, to examine a complaint and give its findings and recommendations on the complaint. Any party to the dispute has recourse to the WTO Appellate Body (AB) if not satisfied with the findings and recommendations of the panel. The experience of the operation of the DSU has shown that it is a complex system, costly and imbalanced in favour of major trading powers. It is against this backdrop that developing countries approach negotiations to improve the DSU. The major problem of the dispute settlement mechanism is that the enforcement of its decisions is through the sanctioning of retaliatory trade restrictions. This imposes a serious asymmetry. Trade restrictions by major powers such as the USA or the EU against any other country would have a real impact on its economy; but the effect of trade restrictions by any other country save for the very large developing countries would have negligible and in many cases no effect at all. Few developing countries therefore have the incentive to and have actually used the mechanism.

In addition, the dispute settlement mechanism is a very lengthy and expensive system to engage in. Developing countries especially the least developed have made a strong case for monetary compensation. Least Developed Countries (LDCs) have suggested that compensation by members who fail to rectify measures found to be inconsistent with WTO regulations should be made mandatory by the elimination of the phrase “if so requested” from Article 22.2 of the DSU agreement.

Members have also proposed the adoption of a ‘principle of collective responsibility’ akin to its equivalent under the United Nations Charter. This would operate by conferring upon all WTO members the right and responsibility to enforce the recommendations of the DSB. Further, where a developing or Least Developed Country is the successful complainant, “collective retaliation should be available automatically.”

Other issues raised include improving the sequencing between DSU rulings and provisions regarding retaliation to specify that compliance panels and appellate proceedings must be complete before the DSB can authorize the ‘withdrawal of concessions,’ a proposal by the EU and USA for
explicit recognition of the right of panels and the Appellate Body to accept unsolicited friend-of-the-court (amicus curie) briefs, changes in the procedures and composition of panels, changes to the functioning of the Appellate Body (AB) such that parties have more control over the AB reports including censuring before their issuance (USA & Chile), and making it mandatory to give special attention to developing country members’ particular problems and interests during consultations and providing sufficient time to developing country members to prepare and present their argumentation before panels (India). Clearly there is a case for improvement of the Dispute Settlement Mechanism.

4.1.10 Special and Differential Treatment (S&DT):
The WTO agreements contain special provisions which give developing and particularly LDCs special rights not enjoyed by developed countries. These special provisions are in the form of exemptions from implementing some parts of the agreement, longer time periods of implementing agreements and commitments, and measures to increase trading opportunities for developing countries.

At Doha members agreed that “all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational”. The African Group, the LDCs and other developing countries submitted a total of 88 S&DT proposals. So far there has been agreement in principle on 28 agreement specific proposals. For sometime negotiations in this area have concentrated on five proposals specific to Least Developed Countries. These have also met difficulties due to the reluctance of developed countries to offer effective and operational flexibilities to LDCs to enable them meaningfully benefit from the provisions under negotiation.

4.1.11 Implementations-related issues and concerns
Implementation issues from the perspective of developing countries and as now contained in the Doha Declaration refer to imbalances in the existing agreements which hinder them from the realization of meaningful gains from the rules and the difficulties encountered by developing countries in implementing their obligations. Many of these countries signed on the Uruguay Round agreements without fully understanding their implications. Now as transition periods for implementation incrementally expire and the obligations have to be implemented or else face
sanctions and proceedings contained in the agreements, the possible and real negative effects are becoming more evident.

Evidently while the previous GATT rules dealt with policies “at the border” (tariffs and other non tariff barriers), the mandate of the trading regime under GATT/WTO expanded enormously to go beyond simply trade or ‘border’ issues and now includes obligations on members that impact on domestic issues including economic, social and cultural policies and structures which form the fabric of their identity and existence. One example of the many implementations issues raised by developing countries [they are more than 100] is that the TRIPS Agreements obliges developing countries to establish and enforce domestic IPR laws with high standards equivalent to those of developed countries. This may hinder technology transfer, as local firms can no longer practice reverse engineering and other measures for imitative innovation. TRIPS also raises the cost for developing countries of buying or paying for technology, and increases the prices of protected products. The case of TRIPS and Public Health and the prices of HIV/AIDS retroviral and other pandemic diseases illustrate some of the inflexibility and brutleness of the rules.

5.0 THE ROLE OF LAW REFORM AGENCIES AND RECOMMENDATIONS FOR ALRAESA

The common denominator of the stated objectives/functions of law reform agencies is to review and reform the laws of their respective territories. The mission statement of the Uganda Law Reform Commission as contained in its publications is “to contribute to the sustainable development and an equitable and just legal system through revision, harmonization, development and reform of the law.” The concept of “sustainable development and an equitable and just system” draws particular attention and empowers one to demand that the Law Reform Agencies effectively contribute to human development. In a study-“Making Global Trade Work for People” commissioned by the Rockefeller Brothers Fund and the Rockefeller Foundation, the authors define Human Development as “a process of expanding people’s choices, allowing them to live secure lives with full freedoms and rights and that by expediting economic growth, creating jobs and raising incomes, globalization has the potential to advance human development around the world”. Law reform agencies should therefore be keen on what takes place at the global level, implement them through law reform so as to ensure that the people of their territories enjoy the positive outcomes of the stated objectives of the international laws.
Law reform agencies need to be proactive in providing advise to their governments when they are negotiating international instruments, to ensure that outcomes actually contribute to human development and the outcomes are first of all implementable and when implemented they do not fundamentally conflict with the social-economic and cultural values of their people. One wonders why structures for implementing obligations should not be identified and designated before assuming responsibilities. Given the tempo of some of the negotiations like ones going on in the WTO physical presence of the law reform agencies at critical negotiations is necessary. The magnitude of the problems developing countries are facing in implementing outcomes of international instruments especially WTO obligations is a clear call for pulling together all their capacities wherever they exist to ensure fair play in the global trading system. With the upcoming Hong Kong ministerial Conference, the role of Law reform Agencies is evidently vital.

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Literature consulted

1. Bhagirath Lal Das (2005): The Current Negotiations in the WTO; options, opportunities and Risks for Developing Countries
4. Fatoumata Jawara and Aileen Kwa (2003): Behind the Scenes at the WTO; the real world of international trade negotiations.
12. WTO documents, Records of meetings including the Report of the Chairman of the Trade Negotiations Committee of July 2005

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