



**Economic Commission for Africa
African Trade Policy Centre**

**Workshop for the African Group Countries on:
WTO NAMA Negotiations on Non-Tariff Barriers
(NTBs)**

**12-14 April 2010,
Nairobi, Kenya**

REPORT OF THE WORKSHOP

Monday, 12th April 2010

Session 1

Welcome Statement and Opening Address

1. The workshop initiated with opening remarks from Ambassador Peter Robleh, Regional Advisor of the African Trade Policy Centre (ATPC) of the United Nations Economic Commission for Africa (UNECA), and Stephen Karingi, Chief of the Trade and International Negotiations Section of the Regional Integration, Infrastructure and Trade Division of UNECA. These were followed by a statement of the Coordinator of WTO African Group in Geneva, H.E. Ambassador Guy Nambo-Wezet, thanking the Kenyan government for hosting this meeting in Nairobi and UNECA for the financial and technical support. Ambassador Lenard Ngaithe, Deputy Permanent Secretary of the Ministry of Trade, also offered an opening address, recognizing the timeliness of the workshop given the recent stocktaking exercise of the World Trade Organization (WTO) in April, and commending workshop participants to translate the Doha Round milestones for LDCs and developing countries into positive action by agreeing on a common African strategy on NTBs in the WTO Non-Agricultural Market Access (NAMA) negotiations.

2. The workshop was organized upon explicit request of the African Group to UNECA during an African Group Retreat in October 2009 in Geneva, with the purpose of conducting a first joint examination of the current NAMA proposals on NTBs. In this regard, the African group has been concentrating on the horizontal mechanism contained in one proposal. However, other proposals also need to be reviewed. For example, export taxes and restrictions are being used by some African members to promote certain sectors, which call for further study, in the light of African development objectives.

3. The workshop also represents a unique opportunity for exchange between Geneva-based negotiators, RECs and capital officials dealing with NTBs. It brings together a wealth of expertise on NBTs to identify those NTBs which are of importance and/or represent a challenge to African countries. Many countries are resorting to NTBs to sort their industrial flaws and protect consumers, thereby nullifying hard-won tariff concessions as a result of trade negotiations. Given that NTBs are often part of industrial policies, it is important to be specific on what a future NTBs agreement resulting from NAMA negotiations should contain. Hence, African countries may deem fit to develop NTBs proposals if existing proposals do not fully capture their needs and concerns.

Session 2

Introduction and Organization of the Workshop

4. Mr. Daniel Owoko, First Secretary of Trade of the Kenyan Mission and NAMA Focal Point in Geneva, gave an introduction to the content and organization of the workshop, as follows:

5. The purpose of the workshop is to have business-like discussion on NTBs. The sessions of the Day 1 will set the conceptual basis for deliberations on NTBs proposals which will follow on Day 2 and 3. All sessions are closed door discussions of the African Group. However, Session 3 will count with the participation of Non-African delegates to present their respective NTBs proposals which have been tabled at the WTO. Correspondingly, African Group members will have an opportunity to raise questions and seek clarification on substantive and procedural aspects contained in NTBs proposals from the United States and European Commission.

6. On Day 2, the RECs will also have the opportunity to discuss NTBs from a regional perspective and comment on the current NTBs being applied among African Group countries. This will be followed by an analysis session on the existing NTBs proposals with the aid of a worksheet (matrix). The outcome of this exercise will be taken back to Geneva, with the purpose of helping the African Group negotiators develop a common position, strategy and, if deemed necessary, an African proposal on NTBs.

7. During the analysis session, there will be a Chair and Rapporteur from the African Group delegates from Geneva. Creck Buyonge, Alicia Greenidge and Patrick Low will be facilitators of the workshop, providing the necessary technical back-up for discussions. Further technical inputs from UNIDO, UNCTAD and the World Bank will compliment and enrich the discussions of the workshop.

State of Play of NTBs in the WTO NAMA Negotiations

8. A presentation on the current state of play of NTBs in NAMA negotiations was offered by Patrick Low from the World Trade Organization (WTO), as follows:

9. There are several issues pertaining to the current NAMA negotiations on NTBs. Considering UNCTAD's work on the classifications of NTBs, first there is the issue of definition. There is a broad approach of NTBs as being "any measure with a trade effect that is not a tariff", which can include any type of measures. On design and content, there may be measures which are either legitimate in terms of public policy; legitimate in terms of public policy but bearing some protection, or non-legitimate measures which bare intentional protection. One of the interesting proposals supported by the African Group which addresses the latter is the horizontal mechanism.

10. Some NTMs - non-tariff measures – are being administered in a way which adds costs to trade. However, not all NTMs are erected with the objective of protectionism. However, if an NTM has a protectionist intent, it is very tough to identify and correspondingly deal with.

11. NTBs negotiations have been tagged on to NAMA negotiations, so progress on NTBs is happening in parallel. There is a sequence of events from 2002-2003. Notification exercises were sought to clarify how NTBs serve their purpose, but they have been very patchy, which does provide a solid, global picture of their state of play.

12. There has been a whole series of discussions in the other Committees such as the TBT. Since the Hong Kong Ministerial there has been a series of bilateral, vertical and horizontal approaches. As a result, 15 proposals have been tabled at the WTO, either on an individual or joint basis by: EU, US, Argentina, China, Cuba, EU and Switzerland, European Communities with the support of Mauritius, Japan, New Zealand, Japan with Switzerland and the US, US, European Communities, EU and India.

13. Though export taxes are not part of the Doha Round mandate, they are already in the dispute settlement mechanism. There are several reasons why countries may use these measures. The motivation particularly from the EU and Japan arises from the reality of their markets, since they want to ensure access to resources.

Assessment of the NTBs proposals

14. Mr.Taisuke Ito, of the United Nations Conference on Trade and Development (UNCTAD), presented an assessment of the NTBs proposals from an UNCTAD perspective, as follows.

15. In terms of relevance and sectoral importance for African countries, the proposals on electronics seems to be the most important sector for Africa because it accounts for 30% of African imports from the worlds followed by automotive sector and forestry. Therefore, NTBs negotiations are very important for the region as African countries are net importers in sectors such as electronics, automobiles and chemical products. Equally, sectors such as fisheries and forestry are of relevance, since Africa is a net exporter.

16. African exports are subject to about 16% of NTBs in the world. Being a net importer, the continent will have defensive interests in NAMA negotiations on NTBs rather than offensive ones, especially since exports are not growing as dynamically as imports. The major exporter to Africa is the EU in all the industrial sectors pertaining to NTBs, except fireworks. This is partly due to traditional ties, proximity, etc. Thus, Africa should focus on studying NTBs and measures which may affect its market with the EU.

17. For Japan, the total number of NTMs according to HS tariff lines portrays a very high concentration for organic chemicals, fish, forestry, electronics and autos, whereas for other areas (e.g. textiles), there are no registries. This situation affects African interests even though exports to Japan are small, as there is a strong concentration of NTMs on certain exports goods, meaning the actual incidence to NTMs is quite high.

18. When reviewing the 15 tabled NTBs proposals, the following stands out:

- i) Electronics: There is one proposal from the EC and one from the US. The first focuses on the harmonization of standards which are different at national level. It promotes the supplier's conformity. The US approach is avoiding the mention of an international standard, giving leeway to any national standard and emphasis transparency (more notification requirements beyond TBT), it underscores national autonomy to regulate individual products.

- ii) Automotives: EU Promotes a single standard-setting body, to push for their standards as international standards. US in turn is not in favour of *a priori* standard-setting bodies, as is the case of electronics.
- iii) Chemical and substances: Proposal from Argentina and Brazil is in response to the EU's enhancement of health and environmental measures, which are very onerous to them. The proposal underscores the prohibition of onerous measures which may impede trade. There is also a EU counter-proposal.
- iv) Textiles and clothing: EU, Mauritius, SLK, UKR, US, proposal to eliminate unnecessary obstacles to textile products.

19. Issues for consideration on the proposals which may affect African trade patterns: Identifying import side interests are key to develop an African position in terms of sectors, auto, electronics and chemicals. Some proposals may also affect the regulatory environment, especially with regards to industrial development regulation. There are offensive interests for African countries in some sectors, such as textiles, fish and forestry. In terms of areas, SPS is also of concern, as well as other NTBs which have been addressed by developing countries.

Session 3

Dedicated Session with the Sponsors of Tabled Proposals on NTBs

20. Mr. Edward Brzytwa, Director for Industrial Non-Tariff Barriers, Office of the United States Trade Representative (USTR) presented US NTBs proposals, as follows:

21. The US proposal on remanufacturing is concerned with barriers to trade of manufactured goods. NTBs targeting these goods are of concern to the US because these often treat them as used goods. Remanufactures products are not used; they are refurbished following high-quality standards and are warranted. Products which are subject to remanufacturing include machinery, autoparts, medical equipments and cartridges. The proposal seeks to distinguish between used products, through a labelling regime applicable to products which are remanufactured.

22. The proposal entails a work programme to continue studying remanufactured goods after the Doha Round concludes. This would give members the possibility to review policies on NTBs, see which are more or less trade-restrictive and also discuss best practices. The 5 topics to be addressed in the workshops to be led by WTO members are: industry, environment, regulation, development and infrastructure. An academic panel on remanufacturing is also foreseen, to provide academic underpinnings on NTBs.

23. The remanufactured goods market is large and growing. There are solid environmental benefits to remanufacturing in terms of reductions in energy, water and material use, when compared to producing new goods or materials. Remanufacturing also reduces CO2 emissions from smelting, landfill waste, creates jobs and reports higher safety rates. Examples of remanufacturing in Africa are printer consumables, automotive and engineering parts in South Africa, Botswana, Kenya, Nigeria and Uganda.

24. Another relevant proposal is on labelling requirements for textiles, jointly co-sponsored with the EU and other WTO members. The proposal establishes that labelling requirements should not be presumed to be more restrictive than necessary and encourages members to move away from permanent labelling towards non-permanent labelling. There are also provisions on transparency contained in the proposal.

25. Dr. Carsten Schitteck, EC Negotiator for NTBs, Industrial Tariff and Non-Tariff Negotiations of the European Commission presented one of the proposals on NTBs tabled by the EC, as follows:

26. The “Horizontal Mechanism” proposal is a response to many of the developing countries’ concerns which have been voiced to the EC. There is need for a horizontal discipline to address cross-cutting issues on NTBs scattered across the sectoral proposals.

27. The EC does not have the intention to open up the TBT agreement. Rather, there is interest in discussing aspects mentioned previously in other proposals. The scope of the proposal covers all products, including agricultural products. The consequence of this coverage is the need for standard-setting bodies. These are important for the SPS and TBT agreement, as well as for labelling. International standardization is a central interest for all countries, including developing countries, because it eliminates many NTBs. However, since regulatory experience on standards is heterogeneous, there is need for a framework and further work on the topic.

28. The concept of good regulatory practice initially came from the US proposal on cars. The objective is to have a better impact assessment of technical regulation on trading partners. The proposal allows members to choose which form of practice they want to adopt. There is also need to assess the available regulatory and non-regulatory alternatives that may fulfil legitimate objectives which may be less trade-restrictive.

29. The proposal also contemplates special and differential treatment (SDT) and technical assistance provisions to take account of the regulatory impact on developing countries. The EC is interested in meeting specific needs of (African) developing countries by providing technical assistance, upon request. Equally, it calls for increasing transparency, notification and publishing. An example of good transparency practices is the Export Helpdesk of the European Union (www.exporthelp.europa.eu), which provides access to the real information on export requirements.

30. Industry specific discussions in the context of WTO NAMA negotiations on NTBs can be accommodated in the horizontal framework with the aid of annexes/appendices. For example, whatever negotiators may agree at the WTO on chemicals or cars could be contained in the annexes to the proposal.

31. Following the presentations, the session continued with a floor discussion on the US and EU proposals. The issues and comments raised were the following:

- a. Remanufactured electronic products reconditioned in Africa (e.g. Uganda) may contain toxic elements. There is interest about the measures in the US proposal to protect the workers from these risks. The recycling of components of remanufactured goods may bare health risks, especially when NTBs are removed. The current proposal needs provisions to protect the health of African workers.
- b. The US proposal seeks to give remanufactured goods the status of new goods, as performance, standards and safety specifications used also apply to new goods. The US proposal on remanufacturing is about a work programme. It does not request members to eliminate current measures. Rather, it seeks to institutionalize a systemic discussion. Nonetheless, there is concern that this may be an entry point to the adoption of more stringent principles and conditions in the future.
- c. A second concern with relation to the disposal and life-span of remanufactured products is the issue of dumping in African markets. The US acknowledged countries in the past have received faulty products which were dumped. This is a major reason for a joint proposal on remanufactures, which will have more systemic value if addressed at the Committee for Trade in Goods (CTG).
- d. Further clarification on the definitions used in the remanufactures proposal on refurbishment, remanufacturing and overhauling is needed. These terms are used alternately to refer similar or equivalent processes. In relation to “end-of-life components”, there is difficulty of determining the life span of goods because parts have different life-spans. End of life means a given good does not function, but there may be some value in its parts, which can be re-utilized.
- e. A third concern on the difficulties of African countries in keeping up with the technical regulations and standards, as in the remanufacturing proposal there is mention of applying the standards of new goods.
- f. African countries may forward specific demands for technical cooperation and SDT in the EC proposals for cars and electronics, as these are not far advanced. African countries have a unique opportunity to formulate and incorporate aspects of their interest in their term, while negotiations are still ongoing.
- g. The EC has a proposal on export taxes which has already been presented to the African capitals. Though not a priority, the proposal is still on the table. Participation on this topic on behalf of African countries is rather weak and there should be more engagement. The success of African integration greatly depends on how RECs may improve the design of these taxes to favour integration.
- h. African countries still consider export taxes an issue since the EC proposal is still on the table, and especially as the EPAs negotiations are ongoing and many countries use these taxes to accommodate development concerns. There is need for further discussion in EPAs negotiations, as this is a domestic concern issue.

- i. The US export licensing proposal, though tabled, is not a priority of the US. The proposal focuses on transparency in the use of export licensing, including provisions on notification of enacted measures. These export licence requirements are important for African exporters as they are subject to the provisions.
- j. The horizontal mechanism seeks to reflect the interests of developing countries. In the overall mandate there is no prior exclusion on any products, which is why agriculture products are also included. However, the proposal is difficult to analyze in absence of an annex text. The content of such a text will depend on the engagement of the countries in negotiations. Small group discussion may be more effective and the EC has an interest in engaging those who have so far not been involved. The view of the EC is that if during discussions a common denominator on aspects such as “transparency” is found, then the sector proposal on labelling may disappear. The idea is to compress complex and lengthy proposals.
- k. In relation to the participation of the African countries in standard-setting bodies, the question of how to deal with international standards at a continental level remains. For instance, in the case of ISO, participation is limited only to the capital officials. The intention of the EC Framework proposal is to shortlist a few organizations (e.g. IC, ISO), so that developing countries may be able to participate and ensure the implementation of the proposal. This will require follow-up and monitoring of standards on the part of these bodies.
- l. There is deep engagement of developing countries on textiles, but there is still need to adapt the text to include their concerns on value added. African countries need to conduct an impact assessment of the labelling proposal on a regional basis, in particular the annex section, as the language in the text may need to be changed to accommodate regional concerns. For instance, the issue of consumer information is legitimate, but at the same time it is an easy door for protectionism.

Session 4

Presentations from the RECs

32. This session resumed the closed door approach prior session 3, with the objective of sharing the experience and research of 4 Regional Economic Communities (RECs) on the status and challenges of NTBs in the context of intra-African integration. What follows are the presentations of representatives of the Common Market for Eastern and Southern Africa (COMESA), Economic Community of West African States (ECOWAS), Economic Community of Central African States (ECCAS) and Community of Sahel-Saharan States (CEN-SAD).

Mr. Jeffrey Osoro, COMESA

33. NTBs have become an important aspect of trade policy. Free Trade Agreements (FTA) and Custom Unions (CU) call for a removal of NTBs because they diminish the

gains from trade liberalization. However, considerations on consumer protection, revenue loss and public safety are justified reasons for such measures. Further, the infant industry argument is justified as long as there is transparency in a timely and orderly manner.

34. Presently, the composition of NTBs in COMESA shows that 56% of such measures arise from customs and administrative procedures, followed by TBTs and SPSs. Based on a survey, an additional challenge is that NTBs become less identifiable as the region liberalizes. The survey also points to a reduction of controls, which results in more arbitrary, qualitative and non-transparent NTBs. The 4 key areas of NTBs impact are: restrictive trade practices, rules of origin, clearance of documentation and transit traffic/trucking issues. A fairly big percentage of respondents considered these issues as moderately significant. Intra-COMESA trading conditions have improved but there are still considerable costs, as on average 20% of annual shipments face some form of NTBs and it takes an average of 6 days to clear goods through customs.

35. In terms of NTB policy, the provisions of the treaty and protocol of COMESA can be used to resolve NTBs, as well as Council Decisions, though these are considered soft law. There are also NTBs focal points where these measures are to be reported, in addition to the national committees which group the stakeholders who may be involved in the elimination of NTBs. COMESA has also developed a roadmap (matrix) to help members eliminate NTBs. In addition, there is an online NTBs reporting mechanism to help report and monitor the elimination on NTBs. There are also efforts to eliminate NTBs at inter-regional level between COMESA, EAC and SADC are also being made.

36. In terms of challenges, a timely response to complaints on NTBs is a major concern. Relevant actions to eliminate NTBs take time, though COMESA members recognize that illegitimately applied measures is sufficient reason for automatic elimination, especially as Members may recur to other more viable measures (e.g. safeguards). COMESA is working on reducing impunity due to the inactivity of the REC and Members, with the aid of a penalty system to be used on those who violate treaty provisions.

Mr. Felix Kwakye, ECOWAS

37. There is special concern on the current ECOWAS EPAs negotiations and how these may affect NTBs in the region, especially given the lack of capacities to deal with SPS and other NTMS. Though envisaged, West Africa has not yet achieved integration at the customs union (CU) level. With insufficient information on the products exported from the region, ECOWAS countries will not be able to meet some of the basic requirements. As West Africa marches towards a CU and tries to eliminate regional NTBs, developing needs of the Member States need consideration. Negotiations with the EU also need monitoring, in terms of consistency with NTBs discussion at ECOWAS Level.

Mr. Guillaume Vessah, ECCAS

38. Since the creation of ECCAS in 1983, internal trade has remained at approximately 10%. The region has had particular difficulties in improving its trade conditions due to

the war situation some Members States have faced. Though proximity may positively influence trade facilitation, this is still a major issue of concern and a source of NTBs in the region. Eight of the ten ECOWAS members have engaged with the EU in EPAs negotiations, which include negotiations on trade and rules of origin. Further, there is a clear mandate on NTBs to try to facilitate regional integration. Currently, regional working groups are tackling regulatory issues to better address NTBs.

Mr. Ali Omar Almoktar Rahoma, CEN-SAD

39. CEN-SAD is not different from the other RECs; it shares the same problems and regional integration challenges. The current approach within CEN-SAD is to harmonize trade measures. It is acceptable to protect the economy with NTMs baring legitimate considerations such as health, environment, food security and infant industries. However, measures should not be in place to foster corruption or other unjustified objectives. Among CEN-SAD countries, mostly oil, but also chemical products exporters represent an important group in world trade. There are interesting proposals on NTBs that need further study to assess the benefits and downsides reflecting these exporters' interests, but also to engage more actively in shaping the regime on NTBs at a multilateral level.

40. Following the presentations of the RECs, the session continued with a floor discussion on the proposals. The most salient issues raised and commented were:

- a. The regions need to resolve pending NTBs issues within the RECs. Further definition of the engagement in the present NAMA negotiations on NTBs is also necessary. To shape an African strategy on NTBs, UNECA should have a dedicated session on NTBs for the regions prior talks with non-African partners.
- b. Greater complementarity and coordination is needed at a multilateral level in Geneva, at a national level (capitals and also inter-regionally (RECs). Negotiation outcomes should reflect regional objectives and advancements. A mechanism for sharing information should be sought. Concessions should not destroy what has obtained in the WTO through difficult and lengthy negotiations. When making concessions, the trade-offs in other contexts should be evaluated and defensive and offensive interests should also be identified ex ante, in order to react accordingly as a group.
- c. A no tolerance policy towards NTBs needs high intra-regional coordination. Trade between the subregions is sometimes higher than between neighbours, calling for a revision of the situation within the RECs. Research on NTBs being conducted in COMESA may be taken as an example for the rest of Africa. In this regard, UNECA may contribute with research and awareness building to improve the RECs' situation. COMESA could provide guidance on how to proceed.
- d. A clear definition of technical requirements should precede harmonization of NTBs measures. COMESA's study focuses on rules of origin, customs issues and import licences, but public health has not been addressed. Eliminating NTBs may

- take away the policy space for public health. This must be considered when designing common rules.
- e. The status of the COMESA-EAC-SADC FTA needs clarification. The CU of COMESA was launched in June 2009 and has a 3-year grace period before it becomes fully operative in 2012. The first is submission of sensitive products lists for all the 19 as a sign of commitment to the CU. There is also a tariff alignment scheme to adapt current tariff regimes to the structure of the COMESA CET, whereby 11 countries have already committed their list. In June 2010 members of EAC-SADC-COMESA will start negotiating the 14 annexes of the Tripartite Agreement. This will demand from Member States to be very familiar with the agreement, as this FTA is a unique opportunity to address some of the issues which constrain regional integration in Africa, including NTBs.
 - f. There is also some concern on the choice of definition of NTBs, since this may exclude the views of African countries. African integration is confronted by many challenges which are common; therefore NTBs should be addressed regionally before multilateral negotiations. UNECA should organize a workshop for regional discussions and the RECs may help the countries identify NTBs of concern.
 - g. The lack of a common regulatory framework in ECOWAS is being addressed through various protocols and soft law emanating from the Council of Ministers. Implementation and enforcement are still an issue, as political will is required. There is need for an enforcement mechanism to correct weak compliance. A penalty system is being developed through a consultative process to discuss alternatives, on the basis of other RECs and international experiences. Timely response is a major problem in the region, as there is general resistance on behalf of the Member States. Pre-shipment inspections may be put in place for logical reasons but they may turn out to be an NTB. The issue here is transparency due notification of the specific requirements. Currently, though all the necessary institutions are in place, enforcement is still an issue in ECOWAS.

Private Sector Perspectives

41. Mr. Creck Buyonge, consultant and facilitator to the workshop presented some of the private sector considerations pertaining to NTBs, as follows:

42. There are 4 issues addressing the private sector's role in NAMA negotiations on NTBs. These are: who the private sector is in the context of negotiations; private-public interaction; specific issues of benefit for technical assistance and capacity building.

43. Defining the private sector may be achieved by identifying the actors. In customs these may be freight forwarders and custom brokers. The next concern is who to engage as individuals or representatives of the private sector and which categories and sectors to include. These issues raise some of the difficulties when engaging the private sector.

44. In the context of WTO negotiations, importers and exporters expect different things from the private sector, such as accurate information on compliance requirements, clearance periods, charges, etc. There is need for certainty in advanced, given the costs and time these elements represent for these stakeholders. Equally, insurance and banks require information which is specific to their role in the supply chain, as insurance companies provide security bonds for clearing agents and banks offer export credit.

45. Transporters also play a big role in the process of trade. Drivers, customs, clearing agent, etc., and these may have an important impact on the timing of clearance of goods. In turn, inspection companies are also crucial, especially when dealing with a major concern: corruption. This calls for clarification of rules applicable to them and their integrity, given that sometimes the private sector that may benefit the most, rather than the government official. Further, both the private and public sector should take action to ensure the fight against corruption is successful. It is important to have continuous engagement and recognize areas of partnership.

46. Traditionally, there has been a low level of trust in developing countries between the government and the private sector. Some private sector representatives may finance the political campaign in some countries in return for some favour. Thus, there is danger of State capture, especially where there is a low level of automation and poor transparency, especially in a country that has come recently out of conflict. In countries where there is low ICT penetration, the private sector may have low levels of automation, especially SMEs, leading the government to be far ahead of the private sector.

47. Greater support to SMEs is necessary for these to increase their level of expertise. Governments tend to focus on larger companies, neglecting SMEs. However, there have been some positive developments in support of SMEs in African regions. For example, the EAC now demands the same CV for trading and forwarding agents, leading to increased professionalism in the sector. Also, the private sector is growing in COMESA, thanks to improved trust and collaboration, which supports regional integration.

48. What can the private sector do to contribute to the negotiations process? Unless there is recognized leadership and an organized private sector who can consult, it will be very difficult to bring forth its contribution to negotiations. It is important to create links with international private organizations to share international negotiations experiences. For example, the International Chamber of Commerce (ICC) groups experienced professionals to discuss issues at stake and the private sector greatly benefits from this exchange, which generates a “big picture” of international negotiations may affect them.

49. Following the presentation of Mr. Creck Buyonge, the session continued with a floor discussion. The most salient issues raised and commented were:

- a. To engage the private sector in WTO negotiations, coalition-building with private sector associations in Africa dealing with trade may be a viable option. Prior experiences within the RECs (EAC and COMESA), where private sector organizations have dealt with specific trade issues are examples.

- b. In the presence of corruption, not all private companies may thrive with NTBs. Some thrive because they have the right connection and are able to bribe their way through. These survive where corruption is high and accountability is low.
- c. The private sector is not a homogeneous group. Some of the segments within the private sector sometimes pursue their vested interest, in detriment of the smaller companies or sectors with less government clout. Segmentation of the private sector in terms of size, sector and role determines the level of corruption. Some small companies are involved in petty corruption, whilst the larger ones may be involved in bigger corruption schemes. Both may be prevented if the right mechanisms and accountability is in place. Continental and umbrella institutions can also be sensitized to tackle a coordinated approach towards corruption.

Tuesday, 13th April 2010

Session 5

Floor Discussions on NTBs

50. Session 5 initiated the analysis and discussion of the 15 tabled proposals on NTBs in the WTO NAMA negotiations, on a one-by-one basis. The session was chaired by the WTO African Group Coordinator, Ambassador Nambo-Wezet and the Representative of the Mauritius Mission in Geneva, Ms. Deneswaree Mohun served as the Rapporteur. Discussions during this session were facilitated by Alicia Greenidge, Patrick Low, Taisuke Ito and Creck Buyonge.

60. During the session, participants made their comments and suggestions as to how to engage in negotiations, amend existing proposals or submit new proposals. Particular attention was given to the content, wording and character of certain provisions in the proposals on: Chemical Products (Argentina and Brazil); Chemical Products (EC); Horizontal Mechanism (EC, African Group, NAMA 11, New Zealand, Norway, Pakistan, Developing Countries Group); Fireworks (China); Lighter Products (China); Textiles, Clothing, Footwear and Travel Goods (EC, US, Sri Lanka, Mauritius); Unilateral Trade Measures (Cuba); Forestry Products (New Zealand); Electronic Goods (US); Electronic Goods (EC); (Chemicals (EC); Automotive Products (EC); Autos (US), Export Taxes (EC); and Export Licensing (US, Taiwan, Japan, Ukraine).

Wednesday, 14th April 2010

Session 6

Floor Discussions on NTBs

61. As on the previous day, Session 6 continued with floor discussions on the proposals on NTBs.

Session 7

Strategy Setting

62. The session focused on developing a strategy for actual engagement of African Group countries in WTO NAMA negotiations on NTBs. Inputs were developed by Mr. Felix Kweka, Ms. Alicia Greenidge and Mr. Andrew Edewa, as is described below:

Mr. Josephat Kweka, World Bank

63. The World Bank (WB) has been undertaking research on NTMs on goods in the EAC. The research has focused on the identification of NTBs. A caveat of the categorization of NTBs is that there is no working definition which may grasp the diversities and complexities of such measure. Eliminating NTBs requires more than a decision, it also needs political will. Those which may have been identified as easier to eliminate are still there, which raises questions on the practicality of elimination.

64. There are several lessons on NTBs from other RECs and WTO. These point to the need of: i) establishing a monitoring system to measure the progress; ii) ensuring effective dialogue, as in ASEAN countries; iii) linking non-tariff measures (NTMs) with regulatory reform, and iv) enforcing compliance as in the experience of the EU.

65. The WB study identifies 35 types of NTBs in EAC, categorizing them in terms of economic/political complexity and trade importance. Specific challenges in the EAC are: slow response to member complaints; lack of evidence or scientific basis for some NTBs; lack of national perspectives when examining NTBs, and weak enforcement.

66. In terms of recommendations, EAC countries should: i) use a monitoring scoreboard to survey national and regional progress; ii) establish a dispute settlement system for NTMs; iii) implement core WTO principles at national level to ensure efficacy of implementation at regional level, and iv) link NTMs to the technical assistance and Aid for Trade agenda, so lack of capacity may be addressed with these resources.

Ms. Alicia Greenidge, Consultant

67. For strategy setup on NAMA NTBs, first an African perspective on the issues at stake needs definition. Countries should review both their offensive and defensive industries to find a balanced proposal on both the import and export side. Further clarity on the extent of product coverage should also be sought. For example, fishery and fishery products might be a product sector of interest, in addition to forestry products which are currently not adequately covered by WTO law.

68. There is need to look strategically ahead, in the light of future consumer and producer demands, as Africa also portrays budding diversification in certain sectors

(organic products, biofuels, flowers, etc.). This exercise may result in new proposals covering these new needs and concerns.

69. Issues raised during the discussions were:

- a. Transparency, costs and benefits are important at WTO level
- b. Trade facilitation in the context of these proposals
- c. Reflection of import/export interests of African Group
- d. African Group participation in WTO NAMA negotiations
- e. SDT coverage in the proposals and linkage with WTO STD discussions and negotiations.
- f. Reference African Group proposals on the table at the WTO
- g. Gathering more information at country level.

70. On the basis of these issues raised, considerations which may help African countries build a sound strategy for NTBs negotiations include:

- a. There is need for verification of NTBs faced by African exporters. In this regard, the role of the RECs and also of UNCTAD is important in undertaking pilot-projects on the ground to identify the NTBs Africa may be dealing with.
- b. NAMA negotiations may give Africa leverage for EPAs negotiations. Countries should assess how commitments in one forum may define outcomes in the other.
- c. When negotiating a text on horizontal mechanism, African countries should cross-reference to affected areas (e.g. labelling, TBTs, trade facilitation, environmental goods, etc.)
- d. African countries should also ensure that they do not bind themselves to obligations at multilateral level which are absent at domestic level.
- e. Transition periods in all WTO agreements are not below 1 year. In some proposals it is only 1 year. Current negotiations offer the opportunity to get proper transition periods which African countries may believe are adequate.
- f. With regards to nuanced or vague language in the texts of current proposals, African countries should get as much specificity as possible.
- g. In some sectors of interest, African countries may need to table their own proposal (e.g. forestry), especially since other co-sponsors may withdraw their proposals and the opportunity may be lost.
- h. African Group has to be vigilant on the trade-offs in the different areas of negotiations. It should pursue bilateral request-offer exercises where more commitments from partners may be obtained.

- i. The worksheet (matrix) which has been filled by the Rapporteur in Sessions 5 and 6 should be shared with capitals and non-present African-Group members. The African Group should meet with Brazil, Argentina and India to understand underlying motivations of their proposals with EC.
- j. Questions the African Group sets forth in the NAMA negotiations on NTBs are very important because partners will need to respond in a timely manner in writing, in order to facilitate coordination with the capitals. This will clarify issues of interpretation of any draft agreement which may be adopted after negotiations.
- k. Some proposals will stay on the table for leverage purposes. They will not be dropped until the proponents obtain what they seek from negotiations, either in relation to NTBs or even in other sectors as WTO negotiations are cross-sectoral.

Mr. Andrew Edewa, UNIDO

71. Africa faces important challenges in terms of “Competitiveness”, “Conformity”, and “Connection”. This 3 “Cs” approach comprises dealing with supply-side, conformity and main access issues in the market. To overcome these challenges, it is important that the continent uses what is already in place in the region. In this sense, UNIDO has partnerships with organizations on international standards, measurement, accreditation and research organizations, which may be tapped by African Group countries needing further information and advice on issues which are being discussed in the different NTBs proposals.

72. The session continued with a floor discussion on the proposals. The most salient issues raised and commented were:

- a. The interface between Geneva negotiators and capital officials needs clarification. Geneva negotiators should focus on state of play of negotiations on the basis of inputs from capital officials; and these in turn should precisely define what they require. The latter should support the former with concrete information.
- b. Africa should take advantage of the information provided by the RECs and international organizations and use it in negotiations.
- c. This Workshop has been the first comprehensive discussion between the stakeholders of the African Group at all levels (national, regional, international) on NTBs proposals. More engagement and joint work will avoid adopting positions which do not reflect African interests.
- d. TBT proposals should be developed in conjunction with national/ regional standard-setting bodies.
- e. The African Group should define areas where capacity building and technical assistance is required, with the assistance of existing framework and partners.

- f. Regular sharing of information on NTBs (from the RECs, WTO, etc.) needs to be pursued. This should be linked to technical assistance in African Group countries.
- g. Now that strategy challenges and options have been raised, another exercise is drafting/amending proposals. The African Group should request technical assistance for drafting proposals, as it can be strategic for reflecting underlying interests and safeguarding the region from upfront commitments. Another concern related to drafting is the overlap in the language of given proposals with cross-cutting issues (eg. trade facilitation), which the African Group may benefit from.
- h. Forms of joint collaboration and support between African countries on NTBs may be mutual recognition of standards and online registry on NTBs.

Closing Session

73. In the closing session, the Coordinator of the African Group thanked both UNECA ATPC and the Trade Ministry for organizing and hosting the meeting, underscoring that the objectives of the workshop to debate all proposals were achieved.

74. In turn, the Deputy PS of Kenyan Trade Ministry, Mr. Simon Chacha Nyangi thanked UNECA for the workshop, confirming the objectives of the workshop were achieved. In addition, the workshop also served as a forum to discuss critical issues such as proponent perspectives, experiences of the RECs, and private sector involvement.

75. The recommendations which emanated during the Workshop from the African Group and which were reinstated in the closing session were the following:

- a. There should be a meeting in Geneva to brief the African Group countries which were absent in the Workshop and to identify those proposals which need rapid action in order to reflect African concerns (eg. Horizontal Mechanism). Also, NTBs which affect Africa should be identified and reviewed in this meeting.
- b. UNECA should organize a follow-up meeting on current NAMA negotiations on NTBs, as well as review other areas of WTO negotiations needing a workshop for the African Group. UNECA should also organize a workshop on NTBs in the context of the RECs, with a view to assess how NTBs affect intra-African trade, reduce barriers and to build the capacities of trade officials in trade negotiations.
- c. NTBs are a crucial issue in the Doha Round to improve market access. The RECs are undertaking work to address the problems of NTBs, which needs to be feed into the WTO negotiations. Greater collaboration between the RECs and Geneva may help negotiators make informed decisions benefiting African countries.

The proceedings from the Workshop have been made available on the ATPC website (www.uneca.org/atpc).