



**Economic Commission for
Africa**



African Union



**United Nations Development
Programme**

Ad-Hoc Expert Group Meeting on «Sensitive and Special Products in trade Negotiations »

Aide Mémoire

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Cotonou- Benin

I. Contexte

With increasing membership of the WTO, and the realisation that globalisation has led to unbalanced distribution of gains among the different categories of WTO member countries, the issue of development has taken an important position within trade negotiations. Developing countries, including African countries have raised the stakes in the negotiations by pointing out that they continue to reap limited benefits from globalisation and they face the danger of being permanently marginalised from the global economy. It is with this in mind that in 2001, WTO Doha Conference put the idea of promoting development through trade as a crucial pillar of the new Round of trade negotiations.

In doing so, developing countries hopes were raised since for the first time, by putting development as the central feature of the trade talks; they felt that their interests in the international commercial negotiations were finally being addressed. The Doha Round of negotiations is still considered, despite the many hiccups, as a development round, whose imperative is to respond with concrete and operational proposals to the concerns of developing countries and particularly Africa. This development spirit of Doha can be observed in the general frame of orientation of the Round, called the Doha Development agenda, as well as in the principles and the orientations fixed for the negotiations mandate..

The development spirit of the Doha Round seeks to reinforce one of the WTO agreements, which is special and differential treatment for developing countries. This treatment has been recognised in the GATT since the middle of the sixties, but has not been operationalised in a manner that has benefited the developing countries, such as those from Africa. Special provisions in GATT gave developing countries special rights. These includes longer time periods for implementing agreements and commitments, greater exemption of products, or measures to increase trading opportunities for developing countries. In both multilateral and regional trade agreements, the partners, and particularly the developing ones are allowed to exempt an amount or products from the liberalisation.

At the multilateral level, developing countries have advanced several justifications for their exclusion lists. These include: the objective of some developing countries to protect against tariff revenue shortfalls; the protection of infant industries; use of trade policy for strategic development policies such as economic diversification; the protection of specific category of people (for example, rural, poor, women); insuring food security among others.

At the same time, bilateralism and regionalism have taken a centre stage as part of economic policy of both developed and developing countries. Thus, even as countries continue to seek an agreement at the multilateral level, there are many on-going negotiations at the bilateral and regional level. African countries are engaged in the Economic Partnership Agreements with the European Union. A key feature of the EPAs negotiations is the principle of reciprocity. Indeed, reciprocity is now part and parcel of bilateral and regional trade agreements, irrespective of whether the partners involved are at different levels of development. Thus, the EPAs anticipate that there will be reciprocity, in order to satisfy WTO rules. But like in

the case of on-going global trade negotiations, special and differential treatment as means to recognising unequal levels of development is a key issue in the EPAs negotiations. Thus, African countries also need to design an exclusion list of products (sensitive) in the liberalisation process. The WTO agreements contain provisions that allow departing from the MFN clause in the case of regional trade agreements such as EPAs.

Article XXIV of the 1947-GATT, completed by an understanding attached to the Marrakech Agreement of 1994-GATT defines the modalities under which WTO members may not respect the MFN clause in trade in goods, when engaging in a free trade agreement process. Article V (Para. 3.a) of the General Agreement on Trade in Services (GATS) provides with similar exemptions with regard to trade in services. Both article XXIV of GATT and article V of GATS stipulates that more preferential treatment may be granted among some members, without automatic extension to the entire WTO membership as is normally required under the MFN clause. The justification behind this derogation to the MFN principle is that, under certain conditions, free trade agreements benefit not only their members, but also the global economy as a whole, through trade creation which results in increased overall welfare. Free trade agreements such as the EPAs clearly could fall under that category; provided they are of a reciprocal nature (i.e. both parties offer each other symmetrical preferential treatment).

Just like the modalities being negotiated in the Doha Round foresee sensitive and special products designation, ACP countries negotiating with the EU might want to explore possibilities of maintaining a certain degree of asymmetry in their future agreement with the EU. Article XXIV leaves room for ambiguity with regard to this point. In particular, article 8(b) stipulates that “duties and other restrictive regulations [...] are [to] be eliminated on substantially all the trade” between the members of a preferential agreements. The exact meaning of “substantially all the trade” is strongly debated. How much trade may not be liberalised is a crucial question, and could be important for African countries willing to maintain some protection on some of their trade with the EU in the context of an EPA. It is generally thought that at least 90 percent of the trade has to be liberalised under a free trade agreement, but there is no legal confirmation for that figure. The EU-South Africa free trade agreement, for example did interpret the Article XXIV in a manner allowing for some protection within the 90 percent limit, in a non-reciprocal manner. Under this free trade agreement, the EU agreed to extend liberalization on 95 percent of its trade with South Africa, while South Africa agreed to liberalise “only” 86 percent of its imports from the EU.

The Doha Declaration launched an effort to clarify the understanding of Article XXIV and the role of Special and Differential treatment in regional trade agreements. These points of negotiations under the WTO will be of crucial importance in determining the future shape of EPAs, and the degree of flexibility African countries might enjoy under them.

It is against this context that the UN Economic Commission for Africa, in collaboration with other institutions, decided to organize this expert group meeting on sensitive products. Indeed, both within the EPA and the WTO context, African

countries will have to define lists of sensitive products so that these agreements do not translate in additional difficulties for African economies but rather into added trade and development opportunities.

II. Objective

The objective of the meeting will be to analyse the problematic of sensitive products in trade negotiations in which African countries are involved and to propose methodologies to define sensitive products in a way that supports the Continent Development strategies.

III. Participation

The meeting is organised jointly by the African Trade Policy Centre (ATPC) and the Trade, Finance and Economic Development Division (TFED) of the United Nations Economic Commission for Africa (UNECA), in collaboration with the United Nations Development Programme (UNDP), the African Union (AU), the Geneva African Group and the Government of Benin,

It is also expected that representatives of African countries, of the Canadian Fund for Africa, of the African Regional Economic Communities (RECs), of development partners including Canada and Denmark and that representatives of African civil-society participate to the meeting at different levels.

IV. Meeting format

The meeting will include the following seven sessions :

Session I: Special and Sensitive Products in Trade negotiations :

This session will be dedicated to the importance of special and sensitive products in the history of multilateral, regional and bilateral trade negotiations. This session will show that the problematic of sensitive and special products is not new in trade negotiations. By looking at previous negotiation Rounds, this session will analyse how trade policy has evolved over time, with entire sectors that are considered sensitive or special.

Session II: Special and Differential Treatment in the Doha Round : sensitive and special products in agriculture.

This session will focus on the Doha negotiations on agricultural products. Criteria to distinguish special products from sensitive products could be further clarified. The incorporation of notions such as food security will allow to stress the multi-dimensional aspects of these negotiations.

Session III: Special and differential products in the NAMA negotiations of the Doha Round : what lists for industries?

This session will be dedicated to the presentation of flexibilities that are available in the Doha Round for industrial products. The alternatives proposed in the July Framework invite concerned African countries to weight what flexibilities are more appropriated to them with regard to their industrial development. Even if they will not be requested to bring down tariffs, other countries will have to increase their binding coverage. In doing so, African countries will have to take into account the sensitivity of products and their importance in the diversification and industrial development strategies.

Session IV: What sensitive products in EPAs ?

This session will focus on the question of sensitive products and their justifications under EPAs. The compatibility with multilateral rules and selection criteria for this type of agreement will be discussed. The regional character of negative lists will require a methodology that take into account both national, regional and continental interests for Africa.

Session V: Different protection mechanisms for sensitive products

This session will present the different mechanisms available for the defense of sensitive products. Beyond tariff protection this session will debate of complementary mechanisms such as quotas, reference values, safeguards measures, review mechanisms and transition periods.

Session VI: What criteria for what objectives? Towards and African selection formula for sensitive products.

This session will look into the various selection criteria for sensitive products. It will analyse how an African formula for sensitive product selection could be used at the national level by using weights for each selection criteria. The important element of this methodology would be to show how different interest among African countries could be addressed without undermining the African solidarity in the WTO. Moreover, this methodology could be applied in the EPA negotiation context and show how sensitive products lists could take into account the Africa countries interests at the national, regional and Continental levels.

Session VII: Way forward : Recommendations for sensitive products lists that are mainstreamed in development strategies

During this session, a final report of the meeting will be presented and a synthesis of the recommendations will be adopted.

V. Expected Outcome of the Meeting

At the end of the meeting we intend to have a summary of recommendations that will inform Africa's negotiators and Policymakers in the all ACP EU joint review

These recommendations will be sent to Member states and will also be made available on our website for others to use. These recommendations will help African countries to define their sensitive and special products with respect to their own interests in different trade negotiations frameworks.

VI. Contact Details

This meeting is being organized under the direction of Mr. Hakim Ben Hammouda, Director of the Trade Finance and Economic Development Division. Requests for information regarding this meeting should be addressed to:

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