

South Africa's role in the Multilateral Trade System

I. Introduction

At the 50th Anniversary celebrations of the GATT¹ held in Geneva, in May 1998, Nelson Mandela stated that it was ironical that whilst South Africa was represented at the creation of the GATT in 1947, “the vast majority of South Africans had no vote” and hence expressed the need to “vastly improve on the management of the world trading system to the mutual benefit of all nations and people”. He also referred to the need for the rules of the multilateral system to be “just” and warned that if the rules “contain prescriptions that cannot be complied with by all, or if the results benefit too few, then injustice will emerge”. Mandela’s statement was to express the need for a strengthened multilateral trading system that was fair, balanced, inclusive, and addressed the needs of the developing countries. By this stage the new government of South Africa had already taken decisive steps towards contributing to the strengthening of the multilateral trading system. Even as the new South Africa was being born in April 1994, Kader Asmal, was to represent the ANC and the new democratic South Africa in Marrakesh,² at conclusion of the Uruguay Round negotiations, and the creation of the WTO that was to replace the GATT.

The new South Africa took its rightful place amongst the developing world and was to become a member of the NAM (non-aligned movement), and an active member of the UN and its institutions. Early on, in its democracy it took on its responsibilities to help in the strengthening those bodies that provided a voice and built the capacity of developing countries, such as UNCTAD. South Africa was to host UNCTAD IX in May of 1996, in Midrand, in an attempt to strengthening it at a time when the US and some of the major developed countries were intent on reducing the capacity of these institutions.

The GATT was perceived at its formation as an ad hoc mercantilist institution, that was to be a forum to negotiate trade agreements, and the International Trade Organization (ITO) that was to replace the GATT was rejected by the US Congress that feared any reduction of its sovereignty in the sphere of international trade. The GATT treated developing countries as equal partners (on the most favoured nation principle - MFN) and refused to take into account their special development situation (although most were colonies or just emerging from colonialism after the Second World War). The result was the marginalization of developing countries and their interests from the evolution of the GATT. In addition, the principal supplier approach that the US insisted on in the early years of the GATT, ensured that the developing country’s interests were not addressed. Developing countries however were to raise the need for their interests to the given special attention, both in the debate on the ITO and in the GATT in the early years, including the need for market access for tropical products and textiles and clothing, and

¹ WTO doc, “Statement of Nelson Mandela, President of South Africa” at the 50th Anniversary of the Multilateral Trading System, May 1998, Geneva.

² Hirsch, A.,

rules that took provided for the their special development situation (S&DT). However, these efforts were largely ignored.³

There was a large degree of consensus even amongst many academic writers that the multilateral trading system at the end of the Uruguay Round and at the formation of the WTO was imbalanced and its decision making methods untransparent and non-inclusive. There was growing recognition amongst civil society activists and developing countries, exemplified around the failed Seattle Ministerial Conference in 1999, that the next round of negotiations must address this imbalanced nature of the trading system. South Africa became a champion, together with many other developing countries, of the cause for a development round and was play a leading role in launching the Doha round on its development mandate.

Nelson Mandela at the 50th Anniversary of the GATT reminded the audience “that no amount of rules or their enforcement will defeat those who struggle with justice on their side”. These words were to test the new South Africa’s resolve to fight for fairer and more just rules in the multilateral trading system sooner than it envisaged when several major pharmaceutical companies were to take South Africa to court over its public health policies with the argument that South Africa was in breach of its multilateral commitments to the TRIPs agreement.⁴ The resistance of South Africa to the unjust provisions of the TRIPS agreement and its negative effects of Public Health was to lead to a major victory for developing country and civil society advocates for freer access to affordable pharmaceutical products for public health purposes both at Doha and subsequently in the WTO negotiations for Para 6 flexibilities. South Africa played a leading role in this effort with the support of all the major developing country groups in the WTO.

South Africa’s commitment to a development round that addressed the existing imbalances in the trading system particularly in Agriculture was to be tested again when the EU and US formed a joint pact to reduce the ambition of the round in August 2003. South Africa joined with Brazil, India, China, and Argentina and other developing countries to launch the G20 developing country alliance on agriculture and resist the efforts of developed countries to foist an imbalanced deal again on developing countries at the Cancun Ministerial Conference. The G20 was to become one of the most powerful developing country alliances in the WTO.⁵ At the next Ministerial Conference held in Hong Kong, South Africa again was called upon to lead the resistance in the WTO against attempts by the developed countries to open developing country markets in industrial tariffs in a disproportionate manner, especially when compared to the low level of commitments that they were prepared to make to reduce the distortions in global

³ Ismail, F. 2008. “Rediscovering the Role of Developing Countries in GATT before the Doha Round”, *The Law and Development Review*. Inaugural Issue: Volume 1, Issue 1, 2008.

⁴ Carolyn,

⁵ See Narlikar and Tussie,

agriculture markets. South Africa was to lead the NAMA 11 group of developing countries for the next few years in the WTO.⁶

Developing countries were to grow in number as members of GATT and by the time of the Doha Round they constituted more three quarters of the membership. A large number of these developing countries have been classified as least developed countries by the UN and these countries have retained this status in the WTO. However, the rest of the developing countries that are members of the WTO differ remarkably, in the size of their economies, their populations, and their development indicators, including members such as China and Barbados. Thus there arose an intense debate in the WTO on the rules and new market access commitments should apply to these different members. South Africa was to play a significant role in attempting to address this issue in the Committee on Trade and Development Special Session (CTDSS). The latter was one of the eight negotiating groups established by the WTO under the umbrella of the Trade Negotiating Council, in Doha, to facilitate the Doha Round negotiations. A major issue that it had to address was the 88 proposals that developing countries had put forward to address the need to make reforms to the Special and Differential provisions of the GATT that were perceived to have been ineffective by developing countries. South Africa was to chair the CTDSS for two years and contribute to the approaches taken to address these issues. As a member of the African Group, South Africa's unique experience as a more endowed developing country with stronger economic capacity but large development challenges was to enable it to understand the concerns of both the larger and smaller developing countries. This role was to be crucial in helping it foster creating compromises in several other development challenges that confronted developing country groups in the Doha Round.

This paper will thus discuss the role of South Africa in the multilateral trading system, since the dawn of the new democratic South Africa in 1994, and focus particularly on South Africa's role in the WTO Doha Round. South Africa participated in a historic process that was unfolding of the emergence of stronger and more assertive developing countries, reflected in their new alliances created before and during the Doha Round. South Africa was to contribute and participate in the process of shaping the debates and the demands for a fairer, more balanced, development friendly and inclusive multilateral trading system. The paper will be divided as follows:

Background to the Doha Round (from democracy to Doha),

TRIPS and Public Health,

the G20, the NAMA 11,

⁶ Ismail, F. 2009. "The G20 and the NAMA 11: Perspectives Revisited", *The Indian Journal of International Economic Law*, Inaugural Issue: Volume I, Issue 1, 2009 (forthcoming).

the development issues.

The discussion will argue that South Africa was to play an activist role in the multilateral system, advancing and defending developing country interests, beyond its own interests, and with a particular concerns for the needs of the weakest an smallest members. It argues that this role needs to be strengthened by the government of South Africa, without retreating to a more defensive protectionist role.