

INTERNATIONAL CIVIL SOCIETY FORUM
Advancing LDC Interests in the Fifth WTO Ministerial
Dhaka; May 29-30, 2003

Dhaka Declaration of the Global Civil Society
on the occasion of
the Second LDC Trade Ministers Meeting

LDC Priorities for Cancun

- 1) WTO agreements impact on the daily life of workers, women, children and shape future development options. Thus far WTO benefits for LDCs have been limited, and often negative. Progress on the Doha Agreement has been disappointing especially for LDC interests. For example, no significant progress has been made on implementation issues and on fast track LDC access. Therefore, it is essential that the LDC Trade Ministers, now assembled in Dhaka, come to agreement to jointly fight for a number of common interest issues that may turn the provisions in the Doha Agreement into a real positive force for promoting development in LDCs.

The following are the priorities for Cancun for LDCs as seen by the International Civil Society Forum, they are set out in greater detail in the following Declaration, in which the Forum also advocates LDC support for most of the general objectives of developing countries at Cancun.

- 2) The Civil Society Forum considers that the 5th Ministerial Conference represents an opportunity for LDCs to consolidate within the WTO framework, the commitments that have been made in their favour by the international community in the Doha Declaration and previous WTO decisions as well as in other international fora. The Conference also should serve to set out in more precise terms the elements of an outcome to the negotiations that would be commensurate with the trade interests of LDCs and their economic and human development.
- 3) The outstanding implementation issues in favour of LDCs should be resolved at the Cancun Conference. Special and Differential Treatment in favour of LDCs should be made effective and enforceable in the WTO. A Framework Agreement on SDT should be accepted. The burden of the single undertaking on LDCs can only be reduced by SDT. Thus, their commitment to any future single undertaking should be conditional upon the full incorporation of SDT into the WTO. The SDT framework agreement should establish that the implementation of obligations, would be modulated according to the level of development of each country and reviewed periodically, taking into account not only per capita GNP, and exports, but also human development indices and goals. LDCs should thus not be required to accept additional commitments nor enter into negotiations aimed at establishing obligations in new issues.
- 4) The objective is to give the people in LDCs the real opportunity to participate and benefit in the globalised world market. For this, the granting of duty free and quota free market access by developed countries to all products exported by LDCs is a must and an immediate priority. The consolidation of such duty free and quota free treatment within a contractual instrument in the WTO is the first priority at Cancun. This longstanding, frequently repeated commitment must be finally anchored in the WTO. It can no longer continue as an unfulfilled promise, often used to obtain concessions of various forms from LDCs.
- 5) Duty-free and quota free access is not enough. It must be complemented by improved and simplified rules of origin that take into account the industrial weakness and technological backwardness of LDCs and their difficulty in adding value so that LDCs exports will actually benefit from these preferences. In addition, there should be an immediate moratorium from Cancun onward, on anti-dumping, countervailing duties and safeguard measures against import from LDCs. There should also be binding obligations to provide LDCs with the necessary measures, including technical and financial assistance, to enable them to overcome difficulties in meeting SPS requirements.

- 6) Free access to markets will not be meaningful for LDCs, if they are required to compete with the treasuries of the richest countries. Export subsidies, including export credits, on agricultural products which compete with those produced by LDCs, should be eliminated as a matter of priority, at the latest by the Ministerial Conference. Domestic subsidies which result in such products entering world markets at dumped prices should also be eliminated.
- 7) Given the overwhelming importance of the agricultural sector in the economies of LDCs in particular its role in human development, food security and rural development, LDCs should retain full flexibility in this sector, and as such not be required to make commitments on subsidies or tariffs. LDCs should have access to a simplified special safeguard mechanism.
- 8) LDCs should also have the opportunity to participate in world trade in services. This requires more commitments in their favour with respect to movement of natural persons (MNP) and temporary migration. The current structure of GATS commitments penalizes people with lower skills and incomes which exacerbates inequalities between countries and within countries. Without expanded commitments in these categories, LDCs will stand to gain nothing from the GATS negotiations. Commitments on MNP should be complemented by the ratification by all governments of the UN Convention on the Protection and Promotion of the Rights of all Migrant Workers and the Members of their Families.
- 9) LDCs must also be enabled to compete. This would require the effective application of the access to technology provisions of Article IV of GATS, as well as operationalisation of the technology transfer provisions of Article 66 of the TRIPs Agreement, and paragraph 7 of the Doha Declaration on TRIPs and Public Health, through the providing monetary incentives to the suppliers of technology.
- 10) The Forum considers that LDCs have derived no benefit from TRIPs. The scheduled review of TRIPs (under Article 71.1) should consider the appropriateness of keeping TRIPs in the WTO or its substantive revision. The Forum urges that in the review of Article 27.3(b) (a) substantial revisions should be made to protect the rights of farmers, indigenous people and local communities, including by the formulation of a *sui generis* system of protection of plant varieties, and (b) prohibits patents on life forms. The effective implementation of the Doha Declaration on Public Health is a crucial test case for the WTO, and of vital importance for the survival of millions of people in LDCs. The Forum does not consider that the proposed solution to paragraph 6 of the Doha Declaration on TRIPs and Public Health outlined in the 16 December 2002 Chairman's text, provides a meaningful solution to the problems LDCs would face in getting access to affordable medicines after 2005. The Forum encourages LDCs to press for a solution that honours the Doha Declaration, is automatic, and economically viable and in line with the WHO proposal. It endorses the ACP-EU joint parliamentary resolution of 3 April 2003 in Brazzaville. There should be no restrictive list of diseases, which would in effect imply that the health of people in LDCs has a lower priority than of those in other countries. LDCs must resist pressure to adopt TRIPs-plus standards. They should make full use of their rights under the TRIPs Agreements.
- 11) Acceding LDCs should be allowed to accede to the WTO under conditions no less favourable than those available to the existing LDC members. The accession process should be made less onerous with LDCs being automatically eligible for all SDT provisions.
- 12) The *Forum* expresses its frustration with the technical assistance and capacity building experiences since Uruguay Round. The volume of fund available (CF 24 million) talks itself about the level of commitment by the developed countries regarding creation of a level playing field. The *Forum* urges capacity building assistance not only for training and workshop but also for physical capacity building to improve trading capacity of LDCs. The Cancun must draw an effective mechanism for this.
- 13) The *Forum* condemns the practice of mini-Ministerial and demands that no Green Room type of meeting to be held, which is beyond the scope of WTO working procedure. The *Forum* urges LDC Ministers demand democratic process of nomination of Chairpersons of the various Committees, Working Groups and the Trade Negotiations Committee.
- 14) The *Forum* recognizes that an equitable trading order is critical for the development of LDCs. However, the benefits of an equitable trading order cannot be realized without the institution in the international trading system and in LDCs of a democratic and participation system that is transparent and accountable. The Forum urges the Governments of LDCs to institute democratic systems that are inclusive, transparent and accountable. We urge the Governments to institute good governance and fight against corruption. ♦

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The members of the global civil society meeting in Dhaka on May 29-30, 2003 do hereby draw the attention of the Commerce Ministers of the LDCs, meeting in Dhaka on May 31-June 2, 2003 to discuss the agenda of the Fifth Ministerial of the WTO (Cancun, September, 2003), to the following issues and stakeholders' concerns from the LDCs' perspective. The Civil Society Forum urges that the LDC ministers follow-up the issues during the preparatory process of the Cancun Ministerial as well as in the Ministerial itself and ensure that these be reflected in their deliberations and outcomes of the Ministerial.

1. OVERVIEW OF POST DOHA DEVELOPMENTS

The *Doha-mandated* negotiations so far have been marked by a total absence of progress in areas of interest to the LDCs. The failure to meet *Doha-mandated* deadlines in areas such as *Implementation, TRIPS and Public Health, Special and Differential Treatment (SDT) and Agriculture* has raised serious concerns about the commitment of the major developed countries to deal seriously with these issues. On the other hand, issues of concern to the developed countries such as *Services, Market Access for Non-Agricultural Products* and the *Singapore Issues* have been actively pursued and promoted by them. The asymmetry in the coverage of issues in the negotiations, moreover, has been accentuated by absence of transparency in the conduct of the negotiations. The on-going practice of convening mini-Ministerial meetings outside the framework of the established negotiation machinery is a violation of the spirit of multilateralism. In view of exclusion of the vast majority of developing and least developed countries from the otherwise opaque and non-democratic consultation and negotiation processes, the *Forum* urges that such processes should cease forthwith. The *Forum* considers that the question of overall conduct of the negotiations should be addressed and decisions should be taken to ensure that the processes that have characterized the negotiations so far are not repeated during the remaining phase of the *Doha Work Programme*.

2. IMPLEMENTATION ISSUES

The *Civil Society Forum* of the LDCs expresses its frustration with the lack of progress in fulfilling the commitments of the developed countries to provide SDT to the developing and least developed countries. The satisfactory resolution of these issues could help redress imbalances in the multilateral trading system. The *Forum* recommends that

- 2.1. all the *Implementation Issues* are addressed and resolved at the TNC level immediately and to the satisfaction of LDCs;
- 2.2. provision-specific SDT proposals by developing countries and LDCs are made effective, operationalised and strengthened and are put into effect without any further delay;

- 2.3. without a satisfactory and balanced outcome in these areas, there should be no progress on other Doha mandated issues such as *Agriculture, Services, Market Access* and *Protection of Geographical Indications*.

3. SPECIAL AND DIFFERENTIAL TREATMENT: FIRMLY ANCHORED IN THE WTO

The *Doha Ministerial Declaration* mandated that the SDTs must become “more precise, effective and operational”. There are few efforts towards realization of the Doha mandate till date. In this backdrop, the *Forum* thus urges that following actions to be taken:

- 3.1. SDT has to be firmly anchored in the WTO agenda as a governing principle that is integral and inherent to the objective of free and fair trade and not as an exception to the general rules. Existing agreements have to be reviewed to make rights and obligations commensurate with the level of development of members. LDCs should only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities. Only if SDT is in their favour is given a binding status in the WTO, could LDCs subscribe to any “single undertaking”.
- 3.2. SDTs must be mandatory and legally binding, and subject to the dispute settlement system of the WTO (including notification requirements and inclusion of these commitments in the country schedules).
- 3.3. In order to operationalise SDTs, special consideration must be given to developing countries and LDCs to streamline procedural requirements under the various WTO Agreements.
- 3.4. This proposal placed by the African group¹ should form the basis for agreement on the nature of capacity building and technical assistance to LDCs from the WTO Secretariat and developed countries.
- 3.5. These provisions should be incorporated in a Framework Agreement on SDT which sets out the above-mentioned principles and provides specifically for procedures for the evaluation as to how far these agreements facilitate the attainment of the development targets of the countries concerned and the implementation costs of the WTO agreements.
- 3.6. Special and Differential Treatment, as set out in the Multilateral Trade Agreements, Ministerial Decisions, and other relevant WTO legal instruments, shall be applicable to all acceding LDCs, from the date of entry into force of their respective Protocols of Accession.
- 3.7. The central pillar of SDT to LDCs is the granting of bound, duty free, quota free access for all their exports to developed countries. As noted below, this treatment must be given contractual status in the WTO. The Cancun Conference must adopt a decision to establish an appropriate legal instrument which would serve to bind duty free quota free access and other measures affecting market access as Rules of Origin, anti-dumping measures. As an initial step, the proposals of the EU² should be put into immediate effect.

¹ The African Group submitted to the CTD detailed proposals on ‘Criteria for Technical and Financial Assistance’ and ‘Criteria in the Formulation of Seminar and Workshop Programmes’ which are intended to enhance the capacity of LDCs to engage in the negotiations and discussions and the implementation of the agreements.

² The EU, in response to the African group proposal in this regard, has suggested that “developed country Members should establish specific mechanisms (or improve existing ones) to provide more information to developing countries regarding their domestic requirements and procedures in areas such as SPS, TBT, import licensing, etc and that such mechanisms also include measures aimed at reducing any difficulties their exporters may have in complying with such requirements”. With regard to SDT specific to LDCs, the EU is on record as suggesting further consideration of the following proposals: “a) that Members consider the feasibility of a moratorium being applied by all Members on any Anti-Dumping or countervailing measures on products from the least developed countries, pending possible future revision of these two agreements in this area; b) that all industrialised country Members and larger developing countries follow the example of some Members and give duty and quota free access to all products from least developed countries, in accordance with the undertakings at the UN Conference on LDCs in 2001.”

4. POLICY COHERENCE AMONG THE WTO, WORLD BANK AND IMF

Policy coherence as practised by the International Financial Organisations and the WTO is an instrument for the promotion of neo-liberal policies in a more structured and concerted manner.

The conditionalities of the international financial institutions are often in direct conflict with the objectives of SDT, a core principle of the multilateral trading system. Coherence among these institutions should be directed solely towards the objectives of poverty elimination and social and economic development.

5. ACCESSION TO THE WTO BY LDCS

It is a fact that not a single LDC has been able to accede to the WTO during the past seven years. This is primarily due to lack of clear-cut criteria for the accession to the WTO as envisaged by Article XII of the Marrakesh Declaration. The existing member countries of the WTO particularly the developed ones, have interpreted this Article as providing them *Carte Blanche* to impose “WTO-plus” conditions on the acceding countries.

It is regrettable to note that the decisions taken in the *Doha Declaration* (Paragraphs 9 and 42) in the General Council in December 2002 in relation to streamlining LDCs’ accession to the WTO have not been operationalised. Therefore, the *Forum* proposes the following statements to be included in the Cancun Ministerial Conference decisions:

- 5.1. Article XII of the WTO shall be interpreted with clear-cut guidelines and detailing transparent criteria for accession of a country or a separate custom territory. The Cancun Ministerial should include specific provision of accession of LDCs into the WTO, where the LDCs, seeking accession, will not require bilateral negotiation. The LDCs are incapable to conduct numerous bilateral trade negotiations due to lack of resources and required skills.
- 5.2. Acceding LDCs shall make commitments commensurate with their level of economic development, capacity and their trade and financial needs, in line with Article XXXVI.8 of GATT 1994, Article 15 of the Agreement on Agriculture, and Articles IV and XIX of the General Agreement on Trade in Services and the Uruguay Round Decision on Measures in Favour of Least Developed Countries.
- 5.3. Acceding LDCs shall not be required to undertake higher level of commitments than those made by the existing LDC member countries of the WTO. Moreover, acceding LDCs shall not be asked to make commitment on any of the plurilateral agreements of the WTO or to participate in other optional sectoral market access initiatives.
- 5.4. Special and Differential Treatments including but not limited to transitional periods/transitional arrangements, as set out in the Multilateral Trade Agreements, Ministerial Decisions, and other relevant WTO legal instruments, shall be applicable to all acceding LDCs, from the date of entry into force of their respective Protocols of Accession.
- 5.5. Developed member countries of the WTO shall provide technical assistance to the acceding LDCs to implement the commitments they have been asked to make by the existing member countries at the time of the formers’ accession to the WTO.
- 5.6. The Forum urges the acceding LDC governments to initiate regular consultative process for finalization of acceding conditions.
- 5.7. The difficulties and concerns of land locked and small island LDCs should be addressed in the accession procedure.

6. MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

Least developed countries have a particular interest in labour intensive non agricultural product including, textiles and clothing, footwear, fish and fish products, leather goods, and certain other industrial products including cars and machinery *Tariff peaks*, and *Tariff escalation* and *High Tariffs* in the developed markets undermine market access of these products of interest to the LDCs

With reference to paragraph 16 and 42 of the Doha Declaration, the Forum strongly recommends that the Trade ministers of the LDCs insist on:

- 6.1. *Tariff and Quota-Free Access*: The *Forum* calls for duty and quota-free access for non-agricultural products from the LDCs to the markets of developed countries. Other developing countries are encouraged to extend this treatment, in order that LDCs are able to enjoy global zero-tariff and quota market access for their goods.
- 6.2. *Rules of Origin*: The *Forum* calls for an improved and simplified value addition criteria for goods from the LDCs. The value addition rate should be based on *sliding scale* so that the criteria can be met by the LDCs.
- 6.3. *Non-Tariff Barriers*: While the developed countries are eager to reduce the tariff for non-agricultural goods, there is little progress in reduction of non-tariff barriers. The *Forum* asks for clear-cut evaluation criteria for each non-tariff measure regarding WTO compliance. Appropriate technical assistance should be provided to build capacity for analysing the impact of the NTMs on market access for the LDCs.
- 6.4. *Credit for Autonomous Reductions*: The *Forum* appreciates moves by a number of countries which have called for ways to acknowledge autonomous tariff reductions. It calls for discussion on modalities to be developed in the WTO to give credit for autonomous liberalisation carried out by the LDCs.
- 6.5. *Tariff Reductions*: The LDCs shall not be required to undertake any tariff reduction commitments in this round of negotiations.
- 6.6. *Technical Assistance*: The *Forum* asks for appropriate technical assistance for the LDCs to comply with customs documentation and procedures, SPS measures and safety and quality standards and infrastructure.
- 6.7. *Anti-dumping*: The LDCs are concerned with the abuse of anti-dumping actions and restrictive business practices of the large firms of the developed countries. The *Forum* supports the demand of LDCs for reforms of the anti-dumping rules and moratorium on application of anti-dumping duties for LDCs for the next 10 years.
- 6.8. *Market Access and Environmental Concerns*: The LDCs rejects any broadening of the definition of environmental goods and any discourse that include PPM issues and could potentially serve as market access barriers for their goods. The *Forum* proposes that any initiative towards more stringent environmental regulations may only be operationalised if and when technical support is ensured to address LDC concerns in this respect.

7. AGREEMENT ON AGRICULTURE

- 7.1. *Zero Reduction Commitment by LDCs*: Agriculture is essential for LDCs both in terms of food security and employment. The *Forum* supports the proposal that LDCs shall not be required to undertake any commitments for reduction of tariffs and domestic support.

- 7.2. *Strong Disciplines on Domestic Support:* In order to effectively end the export of products below production costs, the *Forum* recommends strong disciplines on domestic subsidies that affect production and international trade without reciprocal action from LDCs.
- 7.3. *Elimination of export subsidies:* The *Forum* strongly calls for a rapid phase-out of all forms of export subsidies, including any subsidy component of export credits and any abuse of food aid.
- 7.4. *Special/Strategic products:* The *Forum* supports the introduction of the concept of special products in the Agreement on Agriculture. These products should be exempt from reduction commitments. Developing countries should have the right to renegotiate tariffs of special products that under the Uruguay Round were bound too low.
- 7.5. *Balancing Mechanism:* The *Forum* strongly recommends that the LDCs should have the right to use additional duties based on a simple countervailing measure on subsidised imports, until trade-distorting support is effectively eliminated.
- 7.6. *Peace Clause:* Peace clauses of the AoA provide a reverse S&D by allowing developed countries safeguards against CVD with respect to amber measures. LDCs propose that the peace clause be abolished.
- 7.7. *Technical Assistance and Capacity Building:* LDCs should be provided technical and financial assistance to improve agricultural productivity and infrastructure, and for development of facilities and systems for compliance with SPS requirements.

8. TRADE IN SERVICES

- 8.1. *Temporary Movement of Natural Persons:* The *Forum* wants to see development in the *Mode 4*, which will guarantee more market access than is ensured under corporate transfer of the *Mode 3*. LDCs demand re-launching negotiations under Annex on the Temporary Movement of Natural Persons at Multilateral level. This strategy will ensure achievement of the Article IV objectives. The *Forum* urges that the Cancun Ministerial provide guidelines on *Mode 4* market access with substantial addition to and distinction with the mode 3 related transfer of employees. Semi-skilled and un-skilled labour should be also included under *Mode 4*. The *Forum* urges that developed countries must ensure mutual recognition of professionals. The TMNP must get national treatment in host country. The restriction of entry by natural persons in the guise of ENT, and national security must be removed. The social security charges must be withdrawn for the temporary natural persons, as they do not receive social security support against those charges.
- 8.2. *Right of Migrant Workers:* All governments are called upon ratify UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.
- 8.3. *Special Modalities for LDCs:* The modalities for special treatment of the LDCs in the negotiations are not yet finalized. The LDC modalities must consider the issues of slow development in capacity building and the huge volume of the bilateral offer-request mechanism, which is becoming impossible to deal with for the LDCs. Cancun should set a clear rule for negotiations in favour of the LDCs. In the meantime all requests of LDCs should be withdrawn.
- 8.4. *Emergency Safeguard:* The *Forum* recognizes that The Emergency Safeguard Measures (ESM) has become more important in the light of lack of progress in assessment of trade in services and mismatch of negotiating schedules. The lack of progress in this regard would undermine the objective of more active involvement of the LDCs in the negotiation process. The *Forum* urges specific decision on the ESM before Cancun and the Cancun Ministerial should explicitly state the level of development and provide guideline in this regard.
- 8.5. *Autonomous Liberalization:* The *Forum* appreciates adoption of a draft of modalities for the treatment of autonomous liberalization. However, the move from a plurilateral exercise to

bilateral negotiations severely undermined the expectation of the LDCs, which often lacks negotiating strength. Although the negotiating guidelines para 13 stipulated that the credit would be given on the basis of mutually agreed criteria, the draft deviated from these guidelines as it stipulated that credit would be negotiated at bilateral level. The *Forum* urges automatic mechanism of credit for autonomous liberalization and the credit should be allowed without requirement to binding commitments.

- 8.6. *Overall Assessment of Trade in Services:* Although the CTS was responsible for overall assessment of trade in services according to the Article XIX:3 of the GATS for developing negotiating guidelines prior to each further round of negotiations, the negotiation guidelines and procedures adopted in 2001 were developed without such assessment. There is a serious misunderstanding about the initiation and ownership of the assessment process. Definitions of mechanism of review and benchmark for evaluation are not yet finalized. The assessment must include the impact of liberalization on SMEs in terms of access to credit, human rights and poverty alleviation. Furthermore, the subsequent developments in the negotiations shifted the responsibility of such assessment from CTS to the national government. Paragraph 14 of the Guidelines and Procedures for the Negotiations establishes that “negotiations shall be adjusted in the light of the assessment of trade in services” which is an ongoing activity of the Council. The *Forum* urges for a decision on assessment to be taken in the Cancun Ministerial and before the actual negotiations start.
- 8.7. *Unfinished Rule Making Negotiations:* The *Forum* is concerned with the slow progress of rule making negotiations. The progress will be even slower with the launching of request –offer negotiations. Lack of progress in this regard will hinder LDC ability to focus on the most important issues in their negotiating strategies with their limited resources. Completion of rule making is a must prior to any request-offer negotiation.
- 8.8. *Implementation of Article IV:* The *Forum* urges that Cancun will set clear-cut guidelines for the CTS to review the implementation of Article IV and undertake its evaluation before the conclusion of negotiations. While the provisions are made for improving the capacity of the LDCs to participate in the services trade on a more equitable basis it is very doubtful how the provisions are going to be implemented.
- 8.9. *Increasing Trend of Bilateralisation:* The *Forum* is concerned with the increasing trend of bilateralisation of “difficult” issues like domestic regulation and classification which is threatening the credibility of the negotiation process, as these negotiations ought to be conducted multilaterally. The *Forum* urges that all negotiations, which were agreed to be multilateral, must not be converted into bilateral.
- 8.10. *Negotiations Schedule:* The tight timetable for negotiations is too onerous for effective participation of LDCs especially given the inadequate capacity, lack of assessment of the unfinished rule making negotiations, the lack of agreement on special modalities for LDCs, the lack of safeguard measures, and the importance of these negotiations for LDCs and DCs. The *Forum* urges a realistic schedule to address the real needs of LDCs and DCs.

9. TRIPS

- 9.1. **Implementation of the Doha Declaration on TRIPS and Public Health:** The *Forum* urges least developed and developing countries to make maximum use of the existing flexibilities in TRIPS reconfirmed by the Doha Declaration (including Article 30 and 31 f & k) and the extended 2016 deadline for LDCs to comply with pharmaceutical patenting, to gain access to affordable and quality generic medicines; and to resist pressures from rich countries to implement TRIPS-plus measures (i.e. standards or accelerated timetables that go beyond TRIPS).

9.2. **Paragraph 6 of the Doha Declaration on TRIPS and Public Health:** The *Forum* does not consider that the proposed solution to paragraph 6 of the Doha Declaration on TRIPS and Public Health outlined in the December 16th Chairman's text provides a workable solution to the problems least developed countries will face in getting access to affordable medicines after 2005. The text is more restrictive than the Doha Declaration on TRIPs and Public Health on disease scope and country coverage, entails a complex and burdensome legal mechanism as well as new conditions and procedures that go beyond TRIPS. It fails to put least developed countries on an equal footing with rich countries in the use of the existing safeguards as intended.

The Forum thus encourages LDCs to press for a solution that honours the Doha Declaration and is automatic, automatic and economically viable in line with the WHO proposal presented to the TRIPS Council on 17th September 2002, and endorses the ACP-EU joint parliamentary resolution of April 3rd in Brazzaville.

9.3. **Coverage of Diseases:** The *Forum* strongly rejects any restrictions on the scope of diseases covered by any paragraph 6 solution whether by a list or other external approval mechanism, or restrictions on country eligibility. Such restrictions run counter to the Doha Declaration (paragraphs 4, 5(b) and 5(c)) which did not limit compulsory licensing to only certain diseases or countries. The Forum considers that these issues were settled in Doha and should not be revisited. Restrictions on disease coverage would also have very damaging health outcomes, and are profoundly unfair, as countries with production capacity do not face such restrictions on the use of compulsory licensing. .

9.4. **Article 30:** The *Forum* considers that the most effective legal mechanism is a limited exception under Article 30 of the TRIPS Agreement (in line with the WHO proposal, European Parliament proposed amendment 196 and the EU-ACP Parliamentarian resolution) whereby WTO members may permit third parties to make, sell and export patented medicines and other health technologies to address public health needs, and that this would allow production for export activities to be defined under national law as exceptions to the rights of patent holders.

9.5. **Further Extension of TRIPS Implementation Deadline:** While the Doha Declaration on TRIPS and Public Health (hereafter referred to as the Doha Declaration) extends the deadline for implementation of TRIPS in the field of pharmaceuticals from up to 2016, the deadline for other fields remains at 2005. Recognizing that the extension of implementation date only for the pharmaceuticals does little to reduce the administrative and development costs of implementing complex IPR laws, the *Forum* asks for further extension of the implementation date for LDCs and developing countries of the whole TRIPS Agreement in accordance with Article 66.1 based on their achievement of development milestones rather than the arbitrary and unjustifiably short periods stipulated at present.

9.6. **Technology Transfer under Article 66.2 and paragraph 7 of the Doha Declaration on TRIPs and Public Health:** LDCs demand that developed countries should provide monetary incentives to the suppliers of technology and ensure transparency in the reporting system in this regard.

9.7. **Addressing Market Failure in R & D for neglected diseases:** In the light of the failure of current global IP rules including TRIPS to generate R & D into many diseases important to LDCs, and the problems which they pose to access to other medicines, the WHO should investigate the need for a new international convention aimed at stimulating essential health research and development particularly into neglected diseases. This convention would, *inter alia*, help to define a needs-driven international R&D priority agenda, commit all countries to contribute to R&D for health, establish international mechanisms for exchanging and transferring research

results, knowledge, and technology, and ensure that developing country involvement in R&D is central.

- 9.8. **Review of TRIPS:** In the light of a growing body of evidence, including that from the CIPR and the UK based Royal Society, and growing public concern, about the detrimental impact of global intellectual property rules on innovation, development and access to knowledge-based goods, the *Forum* calls for a substantive review of the health and development impacts of TRIPS with a view to its future revision. The review should be conducted in conjunction with the WHO and other relevant international organisations in consultation with governments and public interest groups. It should consider, *inter alia*, how to: operationalise Articles 7 & 8 of TRIPS, strengthen the public interest safeguards and options for exemptions, reduce the length and scope of patent protection, extend transition periods, as well as consider the option of taking TRIPS out of the WTO.
- 9.9. **Competition Law Should Precede Implementation of TRIPS:** Recognizing the fact that developed countries implemented IPR related laws after they had gained sufficient experience with regard to implementing RBP Laws, technical assistance should be demanded in the area of implementing RBP Laws to counter the potentially excessive monopoly power of the MNCs against interests of people. Implementation of TRIPS should be scheduled after the implementation of effective competition law.
- 9.10. **CBD-TRIPS:** The *Forum* urges LDCs to extend discussion at the TRIPS Council to cover the CBD-TRIPS interface and to address issues of traditional knowledge conservation of biodiversity and Prior Informed Consent issues. There are inherent tensions and contradictions between TRIPS and the CBD in relation to the exercise of sovereign rights over resources, in relation to the treatment of IP privileges and benefit sharing, and in relation to the balance of rights between companies/patent holders and local communities. These contradictions should be resolved in a manner that adheres to the principle of sovereign rights, prior informed consent, and recognition of and provision for the rights of farmers, indigenous people and local communities, in relation to their knowledge and biological resources. The TRIPS Council should ensure coherence may lead to interpretation which puts patent rights over other rights
- 9.11. **Recognition of Farmers Rights and UPOV:** In the review of Article 27.3(b) the review process should proceed along the following lines:
 - a. It should be stressed that the distinction made in article 27.3(b) between life-forms and living processes that can be excluded from patentability and those that cannot be excluded is artificial and not based on science.
 - b. The review process should clarify that all life forms (including micro organisms, genes and gene sequences) cannot be patented as these are not inventions. Similarly, it should be clarified that all biological and microbiological processes are not inventions and cannot be patented.
 - c. Regarding the protection of plant varieties, it should be clarified that developing countries have the freedom and flexibility to formulate their own *sui-generis* systems that give maximum or adequate protection to their farmers, indigenous people and local communities in terms of their rights and interests, including the right to use, save and exchange seeds and other biological processes.

The *Forum* thus strongly rejects pressure, either applied bilaterally or through UPOV, WIPO or WTO, to accept the UPOV model legislation on plant variety protection. The LDCs opt for plant variety protection laws that are suited to their own development needs.

9.12. **Technical Assistance:** The *Forum* calls on WIPO and other technical assistance bodies to integrate the Doha Declaration on TRIPS and Public Health into their technical assistance programmes to ensure that LDCs make maximum use of the existing public health and other public interest safeguards, including the extended 2016 deadlines before LDCs have to implement pharmaceutical patenting.

10. ENVIRONMENTAL ISSUES

While recognizing the importance for LDCs of protecting the national and global environment LDCs are concerned that environmental issues may create opportunities to introduce new barriers to trade. Environmental measures such as standards, taxes, subsidies and eco-labelling often play discriminatory role in the LDCs and act as a barrier to market access of their products to the developed country. The LDCs urge upon the Dhaka LDC Ministerial to address the following issues.

- 10.1. Relationship between WTO and MEAs: Ensuring compliance and enforcement of the MEAs is a concern of the LDCs. Before moving to a negotiating phase on multilateral environmental agreements (MEAs), the specific trade obligations in the relevant MEAs and the appropriate WTO rules should be identified. Also it should be made clear by the WTO members when trade restrictive measures should be imposed to meet their obligations under the MEAs.
- 10.2. Liberalisation of Environmental Goods and Services: Currently the negotiation on environmental goods and services is too heavily focused on goods of interest to the developed countries. LDCs should participate actively in identifying a list of environmental goods and services that promote their trade and development interests.
- 10.3. Subsidies in Fisheries Sector: Subsidies affect access to resources and may potentially have negative environmental consequences. The Forum urges redistribution of global resource through withdrawal of huge subsidies given by the developed countries.
- 10.4. Market Access: LDCs need access to the global market for their own environment-friendly products. Concerns are also expressed with regard to the production process methods (PPM) requirement. They should be given technical and financial assistance at concessional and preferential terms for compliance when environmental measures affect their market access opportunities. The Forum is against the protectionist measures applied against their products by the developed countries.
- 10.5. Trade-related Intellectual Property Rights: LDCs should oppose the patentability of plants and animals under Article 27.3(b) as farmers' right and food security are threatened because of this clause.
- 10.6. Eco-labelling: LDCs should be involved in the standard setting bodies apart from evolving their own national and voluntary codes to access niche markets. They need technical assistance in this area, as their products are unlikely to qualify for eco-labelling schemes in the developed countries because of lack of "green technologies".
- 10.7. Technical Assistance and Capacity Building: The Forum urges TA and CB particularly for the development of national standardization body, conformity assessment services and accreditation agencies. LDCs' representation must be ensured in the deliberation of standard setting bodies with appropriate technical assistance.

11. SINGAPORE ISSUES

The *Forum* is against the negotiations on the *Singapore Issues*. It remains to be persuaded that investment and competition issues warrant WTO-type of rule making. The LDCs are not capable to

take on further obligations as they are overloaded by the outstanding agenda and they lack the financial and personnel resources and technical expertise in this area for meaningful negotiations. Before negotiations on all the priority issues in the current Doha Development Round are satisfactorily completed, addition of new issues, which involves complex investigations and preparations, would act against the interests of developing countries. Furthermore, there is no consensus among WTO members on the modalities of the issues.

The modalities: The *Forum* takes note of the EC paper on modalities of the Singapore issues (Feb 2003) and rejects its approach of taking all the issues together and its treatment of modalities to only mean a listing of “elements of modalities.” The *Forum* calls on LDC delegations and countries to reject this approach. Modalities should be treated not as “procedural modalities” (i.e. the procedures to be adopted for negotiations) but “substantive modalities” (i.e. modalities of the contents of the issues and obligations, comparable to the approach used in the agriculture negotiations.). Explicit consensus is required on such substantive modalities.

The *Forum* calls on our delegations to take urgent measures to make this position known to the General Council as early as possible, and to combine efforts with other developing countries along these lines.

12. INVESTMENT POLICY

The *Forum* calls on the LDC Ministers to insist for a decision to be taken in Cancun that negotiations on investment will not be launched. There is no evidence that an investment agreement would lead to more and better quality FDI, while it would effectively limit governments’ flexibility to regulate foreign investment. In the current context a WTO agreement on Investment would be biased towards the rights of investors. In this respect, the proposal put forward by a group of developing countries (including some African countries) on investors’ obligations and home governments’ obligations should be supported.

The *Forum* is seriously concerned about a number of outstanding issues that need to be resolved in the working group on investment:

Scope and Definition: There is no clarity about the scope and definition of FDI. This definition of investment should be limited to long-term FDI and exclude portfolio investment, speculation and short-term capital flows.

Transparency: The requirement of transparency as regards to home countries and trans-national corporations (TNCs) has so far not been adequately addressed.

Development provisions: Full policy autonomy to manage the entry and operation of FDI should be recognized for the LDCs. They should have the authority to screen and channel foreign investment in accordance with their domestic interest and priorities. They should also have the freedom to use performance requirements.

Non-discrimination: It should be recognized that the LDCs need to have differential treatment of foreign and local investments and thus the national-treatment principle is inappropriate in an investment framework.

Modalities for pre-establishment commitments: LDCs are not in a position to accept international policy discipline over the pre-establishment treatment of foreign investment. *Consultation and settlement of disputes between Members:* Investor-state disputes should on no account be included into the dispute settlement mechanism of the WTO.

13. TRADE AND COMPETITION POLICY

The forum recognizes that competition policy is an integral part of development policy in LDCs and that, insofar as it promotes fair competition, it is desirable.

However, the Forum urges LDC Ministers to reject the launch of negotiations on this subject for the reasons, *inter alia*:

- 13.1. Most LDCs do not have competition policy within their own countries and hence lack the exposure to and experience in competition policy regimes.
- 13.2. Most LDCs do not have adequate human, financial, institutional, technical and legal resources to put a national competition policy regime effectively in place.
- 13.3. There is a need, as a first step, to clearly understand the relationship between competition policy on the one hand and development policy, stages of economic development, socio-economic circumstances, legal framework and cultural norms on the other.

The forum also urges the LDC ministers to take the position that the process of work programme mandated under para 25 of Doha Declaration should continue beyond Cancun, and the question whether these issues should be tackled within the aegis of the WTO should be a part of the study.

The forum expresses a deep concern on cross-border RBPs of TNCs and its serious consequences on developing countries. The forum recognizes the need to control RBPs including abuse of anti-dumping mechanisms, to enhance voluntary cooperation between national authorities, and to provide technical assistance to LDCs in particular. Studies need to be conducted on possible international agreements on such issues and the way they might apply to developing countries.

14. TRANSPARENCY IN GOVERNMENT PROCUREMENT

Definition and Scope: The *Forum* urges to limit the scope of discussion on transparency in government procurement.

Procurement Method: Procurement under bilateral and multilateral agreements is open unless imposed by donor country.

Information on National Legislation and Procedures: The *Forum* opposes to WTO reviews and examination of domestic laws and regulations related to government procurement.

There are still many complex issues that have not been satisfactorily resolved in the working group. LDC Ministers are urged to take the following position:

- 14.1. The framework should strictly be confined to transparency issue and should not in any way cover market access. There must be a satisfactory guarantee that such a transparency framework will not lead on to market access issues in future. Transparency should be confined to the provision of

information and notification in relation to tenders and the conditions for tenders. It should not include administrative or judicial processes, or decision-making processes.

- 14.2. "Government" should be taken to be only the central government, and other agencies (e.g. Government agencies, entities and enterprises, state and local governments) should be excluded.
- 14.3. "Procurement" should be confined to government supplies, and only purchases above a high level should be covered.
- 14.4. The WTO DSU process should not apply.
- 14.5. The framework should be in the nature of a voluntary cooperation non binding framework, and not a legally binding framework

15. TRADE FACILITATION

The *Forum* is against any negotiations on trade facilitation issues. According to the Doha Mandate (Para 27 of Doha, in connection to the relevant aspects of Article v, viii & x of the GATT 1994) improvement in trade facilitation should be made through technical assistance, rather than through imposing additional obligation. These should, at least be adopted only as guiding principles or as flexible best endeavour provision, not enforceable through dispute settlement process.

The Forum has serious concerns that negotiations could lead to an agreement that would impose new obligations on LDC countries that are costly and difficult to implement. It may require our countries to purchase and maintain expensive equipment for customs clearance and safety testing.

Moreover, a set of customs harmonisation rules would be inappropriate and unfair on LDCs, as we should not be obliged to take on high standards that will be expensive. Moreover the structure and functions of customs are different in developing countries, as governments there are much more reliant on customs duties for revenue. Simplified systems can result in loss of revenue, which LDCs cannot afford.

It is more appropriate that a cooperation arrangement of a non -binding nature be made at the World Customs Organisation, than a legally binding agreement with minimum standards at the WTO.

16. OTHER ISSUES

16.1. Small Economies

The on-going work programme mandated under Paragraph 35 of the WTO Doha Ministerial Declaration to examine issues relating to the trade of small, vulnerable economies in connection with their fuller integration into the multilateral trading system, in accordance with their development objectives, is a part of the Doha work programme that could redound to the benefit of such small, vulnerable economies. In this light, the Forum recommends LDC ministers to strongly urge the WTO General Council to recommend a continuation of such work programme up to the Sixth Session of the WTO Ministerial Conference, with the objective of coming up with clear and operational recommendations to such Sixth Session regarding these issues to promote the development goals of small and vulnerable economies.

16.2. Trade, Debt and Finance

The causes and effects of unsustainable external indebtedness, financial and monetary instability and low trade capacity among developing and least-developed countries are interlinked and may often be traced to the untimely, inappropriate or improperly sequenced implementation of economic reform and liberalization policies adopted in compliance with structural adjustment programmes or loan conditionalities imposed by IFIs or with existing WTO obligations. The Forum therefore urges LDC ministers to strongly push for the continuation of the study process under Paragraph 36 of the DMD up to the Sixth Session of the WTO Ministerial Conference. Such continuation of the study process should focus on steps that might be taken to provide developing and least-developed country WTO Members with the flexibility to cooperate on, use, benefit from, or innovate on various debt relief, financial and monetary stabilization, and trade financing mechanisms in support of their development goals.

16.3. Trade and Transfer of Technology

The development of industrial, technological, and trade capacity within LDCs in support of their development objectives would, in large part, be facilitated by the transfer of relevant and appropriate technology to them. In this regard, LDC ministers should recall and strongly urge the continuation of the mandate under Paragraph 37 of the DMD for the Working Group on Trade and Transfer of Technology to continue its work up to the Sixth Session of the WTO Ministerial Conference. The future work of this working group should focus on steps that might be taken to increase flows of such technology to LDCs in support of their development needs and priorities.

17. WTO MODALITIES

17.1. The *Forum* condemns the practice of mini-Ministerial and demand that no Green Room type of meeting be held, which is beyond the scope of WTO working procedure.

17.2. In view of the growing concerns about the decision making processes in the WTO, the Forum proposed the following:

- a) The Chairpersons of the various Committees, Working Groups and of the Trade Negotiations Committee should be democratically elected.
- b) Important meetings should not overlap to ensure that each member is able to attend and contribute to the work of the organisation.
- c) Mini-ministerial meetings should be abolished as they encourage the exclusion and co-optation of some WTO members.
- d) Draft Agreements should reflect the different views (bracketed) and should be drafted by the member States of the WTO rather than the Chairpersons or the secretariat.
- e) The LDC group should meet before the Ministerial meeting to strategise and come up with a common position.
- f) Developing countries should be ready to reject any negotiating outcome that are a result of undemocratic processes and do not address their concerns.
- g) To the benefit of small delegations, which are not able to participate in all Working Groups, all draft decisions should be consulted with them before being presented as consensus.

BEYOND CANCUN

The Forum noted that the Doha negotiations are to be concluded not later than January 1, 2005. In this connection the Forum stresses that if the negotiations are not concluded by end-2004 as mandated, the entire negotiating process should revert to the normal WTO machinery under the General Council.

The Forum recommends that any draft package purporting to reflect the outcome of the negotiations must be the subject of critical analysis, scrutiny, and debate, at the level of each LDC's government ministries and public institutions, national parliaments, and civil society **before** its adoption and entry into force. Such an examination must determine the overall balance of the outcome and its consistency with national development objectives. Each LDC WTO member must accordingly assert its sovereign right to reject the package, if required.

