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# The Burden of Sub-Saharan African Own Commitments in the Uruguay Round - Myth or Reality? 1/

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## Abstract

The paper reviews Sub-Saharan Africa's (SSA) (i) own market access commitments in the Uruguay Round, and (ii) the nature of the constraints on SSA policies set by the Uruguay Round. It concludes that SSA failed to use the Uruguay Round to lock domestic reforms to an international anchor. Apart from South Africa, most SSA countries made few substantial liberalization commitments on border protection. The new rules set few immediate constraints on SSA policies as developing countries benefit from long and extendable transition periods. The main impact of the new rules will be increased transparency of policies from increased notification requirements. Further trade liberalization will have to rely on unilateral initiatives.


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1/ The views expressed are solely those of the author and do not necessarily reflect those of the International Monetary Fund. The author is grateful for comments from colleagues both in the African and Policy Development and Review Departments in the Fund, and from Ms. Y. Davel (WTO), Mr. W. Martin (IBRD), Ms. S. Rishikesh (WTO), Mr. H. Singh (WTO), Mr. A. Tait (IMF) and Mr. G.B. Taplin (IMF).

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## Summary

In contrast to the various statements made on the "cost" or burden for developing countries from their Uruguay Round commitments, the Round is unlikely to burden SSA with many new "obligations". First, apart from South Africa, most SSA countries made few substantial liberalization commitments on border protection in agriculture, industry or services. This was partly a reflection of the nature of the agreements concluded. As many of the reductions in non-tariff barriers were designed to the types of policies applied in industrial countries, the often different policies in developing countries will be less affected. For example, many developing countries do not subsidize agriculture, but tax it, which is not covered by the agreement. Partly, it reflected the unwillingness of SSA to make meaningful commitments to bind protection to reasonable levels (applied rates will not change).

Second, the agreements offer much flexibility in the adoption of the new rules. Their adoption is subject to long transition periods, which in most cases can be further extended. Also, many of the general exemptions or those for balance of payments support remain available for unwilling liberalizers wishing to seek legal cover for trade restrictions. Apart from the increase in transparency from the notification requirements, few changes to policies are required by SSA in the short run. Some review may be required in export subsidies and local content requirements. While the benefits of the TRIPs agreement can be questionable for most of SSA in the short run, the application of the rules in subsidies in most cases should promote sound economic policies.

SSA has not used the Round to support domestic efforts at trade policy reform. The Round provided an opportunity for countries to go beyond their unilateral liberalization efforts in exchange for multilateral concessions, or to bind their domestic reforms to an international framework. As most models showed that most gains from the Round would come from countries' own liberalization efforts, SSA by not making liberalization commitments in the Round may have thereby lost one opportunity for gains. The exception was the Southern African Union, that used the Round to consolidate ongoing domestic reform programs. In the end, this means that structural change and trade liberalization in most of SSA will depend on unilateral initiatives taken independently or in the context of Bank/Fund adjustment operations. Unless these are pursued, the ability of SSA to take advantage of the emerging opportunities in their export markets may also be lost.


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## I. Introduction

The impact of the Uruguay Round (UR) on poorer and especially African countries has been a subject of much controversy since the conclusion of the Round in April 1994. A number of recent papers have raised concerns about the high costs for developing countries of complying with the new obligations from the Round and the limits these may put on development strategies (UNCTAD (1994b), Weston (1994), Agosin-Tussie-Crespie (1994), Konate (1994), Greenaway (1994)). Other concerns relate to potential market losses for Africa from the erosion in the value of its preferences in its export markets as overall cuts in tariffs will reduce the value of the preferences (Davenport et al. 1994), and from terms-of-trade losses from potentially higher food prices to net importers of food (GATT 1994) as export subsidies are reduced.

This paper will look at one aspect of the claimed losses--the "burden" of own policy commitments made by or required of Sub-Saharan Africa (SSA) in the Uruguay Round. It concludes that (i) the Round is unlikely to "burden" SSA with many new obligations in the near future, and that (ii) most of SSA did not make meaningful liberalization commitments in the Round. Thus, by resisting liberalization and the opportunity to anchor domestic reform in an international framework, SSA has foregone an opportunity to reap substantial gains from the Round.

At the start it is important to state that the balance of commitments made and concessions received should not be judged on "mercantilistic" grounds. In GATT negotiations a liberalization commitment is often seen as a "cost" to be weighed against a "benefit" of improved market access. Instead, liberalization of one's market and compliance with many of the international trade rules 1/ in the context of the multilateral negotiations should be seen as a way to improve economic efficiency with a positive impact on growth. It is ironic that most models on the impact of the Round show that two-thirds of the potential gains for developing countries from participation are derived from their own liberalization commitments (World Bank 1994b), and that many developing countries complain about the "costs" of the higher (liberalization) commitments imposed on them by the Round.

## II. GATT and Africa--A Brief History

Sub-Saharan African countries have not been the most active members of the GATT and many do not have delegations in Geneva to participate in the

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1/ In some cases the economic benefits, especially for the poorest of the participants, from adopting some of the rules agreed in the Round, such as those in intellectual property (TRIPs), can be controversial. Also some of the WTO permissible policies, such as many safeguard measures, may not be the most efficiency enhancing options.

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regular business of the organization. This reflects both cost and the relatively smaller importance of world trade rules or market access constraints to Africa's commodity-dominated exports. In most of SSA commodity exports account for 65 percent - 99 percent of total exports. Apart from temperate agriculture, barriers on many primary goods tend to be lower than those on manufactures. 1/

In May 1995, 38 out of the 48 Sub-Saharan African countries were members of the GATT. Of these, one has been considered as an industrial country 2/ (South Africa), 23 are least developed (LLDC) as defined by the United Nations, and the remainder developing countries (Annex). SSA interest in the GATT in recent years was activated by the Uruguay Round and more specifically by a dispute on the European Union (EU) banana import regime affecting many African exporters with preferential market access.

In the past, the GATT was often seen as a club of the rich countries. In the 60s and 70s, when inward-oriented import substitution still dominated the trade policies of many developing countries, their relationship to the GATT was mostly non-reciprocal. Developing country efforts were concentrated on getting preferential treatment in access to industrial country markets and exemptions from many GATT rules on trade or

Box 1. UR Impact on Africa

The Uruguay Round Agreements will affect African economies in a number of ways. First, by restoring the credibility of the multilateral trading system the Round brought more stability to the world economy. This is hoped to reduce both unilateralism and the risks of a growing emphasis on regionalism. Stability should enhance growth prospects and have a direct impact on developing countries' export demand. Economic upturn also tends to increase commodity prices. Second, tariff cuts and removal of non-tariff measures such as subsidies will improve developing countries' prospects of market access in agricultural and industrial products. At the same time preferences in some markets will be eroded. Market access gains depend on the structure of present and future exports, conditions of market access, and how countries use them. Third, own liberalization commitments in agriculture, industry and services can offer substantial efficiency gains. Locking in domestic policy reforms to an international anchor can improve sustainability of reform. Fourth, countries may need to adjust domestic policies to comply with the international rules in a number of areas such as subsidies, and intellectual property. The economic impact on participating developing countries will depend on how the above forces interact and how developing countries are able to take advantage of the opportunities created.

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1/ For example, the share of duty free imports of natural resource-based or tropical products to the EU and United States in 1988 was around 50 percent to 70 percent, while in textiles and clothing it was 0-1 percent (UNCTAD 1994b). Non-tariff barriers have in general affected very few exports from SSA (Erzan-Svedberg 1991).

2/ Development status in GATT is self-proclaimed and has an impact on the level of obligations within the international trading rules. In the past South Africa has been considered as an industrial country. Recently, the maintenance of industrial country status in the WTO has been subject to much discussion, as in other areas South Africa is getting developing country benefits such as Generalized System of Preferences (GSP) benefits and has started to negotiate joining the Lomé Convention with the European Union.

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other policies. Special and differential (S&D) treatment became the yardstick for judging their links to the multilateral trade rules. This resulted in an institutionalization of the Generalized System of Preferences (GSP). Legal cover to exemptions from the rules was provided by the exceptions on balance of payment restrictions or development policies in Article XVIII or (in other general GATT exemptions). 1/ Until recently GATT compliance of many developing country trade or other policies was overlooked by their trading partners and few policies have been challenged in the GATT.

The change in interest of developing countries in the GATT is related to their increased role in the world economy and the increased role of trade and openness in their development strategies--although these factors in Sub-Saharan Africa may have been much less pronounced than in Asia or Latin America. Unilateral liberalization, often in the context of Fund- and Bank-supported structural adjustment programs, increased the stakes of developing countries in the orderly functioning of the world trading system and in access to industrial country markets. The increased willingness to comply with the multilateral disciplines may also reflect disappointments with the past "exemptions approach" and reliance on regional or other preferences for trade development. For small players, such as many developing countries, the multilateral rules are often the only way to make their voice heard in the world trade scene dominated by the rich and powerful traders.

A number of African countries, such as Nigeria, Senegal, and Tanzania, participated actively in the Round. Although their motivation in the Round was often dominated by attempts at safeguarding old preferences or getting compensation for potential adverse effects from higher world food prices on their import bills, they were also concerned about new market openings or improved rules in areas of interest to them. By May 1995, 38 Sub-Saharan African countries (including 24 least developed countries) had submitted schedules in agriculture, industry and services, and signed the WTO agreement.

## III. Market Access Commitments by African Countries in the Uruguay Round

Market access is the traditional backbone of GATT negotiations. Market access commitments are made by binding tariffs to an agreed/negotiated

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1/ Recourse to Article XVIII exemptions has been more frequent under its balance of payments provisions (B) than under the development provision (C). The latter, which requires prior approval, has only been invoked by Cuba, Greece, Haiti, India, Indonesia, Malaysia and Sri Lanka during the early years of GATT. The last annual report on its use by Sri Lanka dates from 1968. Other GATT exemptions available (for all countries) to justify trade restrictive measures are general safeguards (Article XIX), general and public policy exemptions (Article XX) or exemptions with general shortages (Article XI), and state enterprises (Article XVII).

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level. 1/ In successive negotiations these bound tariffs are reduced. 2/ While bindings can be used as a bargaining chip in the GATT, their economic benefits go well beyond that. Apart from potential efficiency gains from lower import barriers, bindings in general improve the security given to tariff commitments and help reduce policy reversals. Before the Uruguay Round, developing countries had bound very few of their tariff lines 3/ (for examples in SSA see Table 1 on industry). During the Uruguay Round all countries were required to make some commitments in the

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1/ This means that countries can apply tariffs at or below the bound maximum, but not raise them above that unless it is renegotiated in GATT and compensation given to affected trading partners.

2/ GATT contracting parties (since the early 1980s) have been undertaking an exercise in transposing their schedules from the CCCN nomenclature to the Harmonized System (HS), which came into force on 1/1/1988. The next step in this process is to combine the UR Schedule and the pre-UR schedule into one consolidated schedule and introduce the HS changes, which will be implemented on 1/1/1996. This also requires participants to indicate in their schedules of commitments the so-called other duties and charges (ODC) applied at the border in addition to the bound customs duties (Understanding on the Interpretation of Article II:1(b) of GATT 1994). In the past listed bound duties, in theory, could have been undermined by the application of other duties and charges not listed in the schedules, although the ODC applied had to be that in force..."on the date of this (GATT) Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing country on that date"...(Article II:1b). To increase transparency, this practice was corrected in the UR schedules, but remains in older schedules that were not part of UR concessions until the transposition procedure is finalized.

3/ The share of tariff lines bound for a sample of 26 developing countries (including two from SSA) before the Round was 21 percent in industry and 17 percent in agriculture compared to 78 percent and 58 percent for industrial countries (GATT 1994). Twenty SSA countries had a schedule in GATT prior to the Uruguay Round (see Annex). Some of these have already updated their old schedule in GATT either separately or as part of their UR concessions. This includes Zimbabwe and three of the five countries of the South African Customs Union (Namibia, South Africa and Swaziland have the same schedule). Some are in the process of renegotiating the transposition (Senegal, Zaire). Two countries (Malawi, Zambia) have started the procedure, but have not submitted the necessary documents. Some countries have not done anything to update their old schedules: Benin, Burkina Faso, Cote d'Ivoire, Mali, Mauritania and Niger (with identical schedules inherited from their membership in French West Africa), and Madagascar. Gabon does not have a recognized schedule (see BISD/12th Supplement p.75). The remaining countries have now submitted their UR schedules, but have not started the transposition process.

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three main sectors: agriculture, industry and services. 1/ Market access also covers reductions in non-tariff measures (NTM). 2/

1. Agriculture

The basic thrust of reform in agriculture was to establish tariff-based protection. The obligations (Box 2) were differentiated according to level of development. 3/ In many developing countries, the nature of the agreement in agriculture is not very relevant for reducing protection of the sector. This is because it was mostly negotiated between the European Union (EU) and the United States (US), which tended to tailor it to the existing agricultural policies in

Box 2. UR Rules on Agriculture

The Uruguay Round agreement required participants i) to eliminate all quantitative restrictions, establish bound, tariff-based protection and reduce existing border protection (1986-88 level) by 36 percent on average over a six-year period and to open tariff quotas (in products previously subject to non-tariff barriers) to guarantee existing or minimum access for at least 3 percent to 5 percent of domestic consumption, ii) to reduce certain domestic subsidies by 20 percent, and iii) to reduce, from a 1986-90 base, the value of mainly direct export subsidies by 36 percent and the quantity of subsidized exports by 21 percent. This in practice has led to very little tariff liberalization, if any, due to the dirty tariffication process (tariffication at highest possible rates), divergences between applied and bound rates, and ambiguities with respect to the interpretation of what "average" tariff reductions imply. Special safeguards are allowed for items with past quantitative restrictions provided their potential use is notified initially. The agreement has defined both price and quantity safeguards. If the import price is below a defined minimum (average 1986-88 reference price) or if imported quantities exceed a certain trigger level, additional duties can be imposed.

1/ In agriculture, virtually all duties had to be bound according to pre-established rules and various NTMs removed, while market access commitments in industry and services were left to bilateral negotiations.

2/ Their negotiation is complex as many NTMs were outside the GATT rules such as grey area measures, or existed against the GATT, or are closely linked to the rules negotiations. During the UR negotiations they were covered in several negotiating groups.

3/ For developing countries, reductions of tariffs, selected domestic supports, and export subsidies have been set at two-thirds of the level of industrial countries. Developing countries were allowed to use ceiling bindings (a binding at an arbitrarily chosen maximum level), and were given a longer transition period (10 years) to make the commitments. Only least developed countries were exempt from the tariff cuts, but not from the bindings. A number of agricultural subsidies in developing countries (food security, investment, inputs, export transport and marketing) are exempt from the cuts. The maximum level of domestic subsidization (de minimis) for developing countries that need not be reduced was set at 10 percent of the value of the product per item.

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Table 1. Summary of Uruguay Round Commitments in Agriculture and Industry

| Country | GATT Status | Agriculture | | | | | | Industry | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Ave. Bound Duty % | Ave. Bound ODC % | Total Average ■ Tariff Binding (Duty + ODC) (%) | Average Appl. Rates (%) | Domestic Support | Export Subsidies | Previous Bindings (% of lines) | Share of Lines Bound in UR (%) | Ave. Bound Duty (%) | Ave. Bound ODC (%) | Total Average ■ Binding (Duty + ODC) (%) | Average Appl. Rates (%) |
| Angola | D | 80 | 0.1 | 80 | | - | - | 0 | 3.8 | 80 | 0.1 | 80 | |
| Benin | LD | 60 | 18 | 80 | | - | - | 29 x | 1.4 | 50 | 19 | 69 | |
| Botswana | D | 40 | - | 40 ☼ | | - | - | 31 ⌂ | 68 | 17 | - | 170 ○ | |
| Burkina Faso | LD | 100 | 50 | 150 | | - | - | 29 x | 1.2 | 100 | 50 | 150 | |
| Burundi | LD | 100 | 30 | 130 | | - | - | N/A | 2.3 | 100 | 30 | 130 | |
| Cameroon | D | 80 | 230 | 310 | 24.5 * | - | - | 0 | 0.1 | 50 | 127 | 177 | 18.5 * |
| Ctrl. African Rep. | LD | 30 | 16 | 46 | | - | - | 0 | 56 | 38 | 16 | 54 | |
| Chad | LD | 80 | - | 80 | | - | : | 0 | 0.0 | 75 | - | 75 | |
| Congo | D | 30 | 0 | 30 | | - | - | 0 | 3.2 | 15 | 0 | 15 | |
| Cote d'Ivoire | D | 15 | 200 | 215 | 20 Ω | ♦ | - | 29 x | 0.4 | 7 | 250 | 257 | 27 Ω |
| Djibouti | LD | 42 | 100 | 142 | | - | - | 29 * | 71 | 40 | 100 | 140 | |
| Gabon | D | 60 | 200 | 260 | | - | - | 0 | 1.3 | 59 | 147 | 206 | |
| Gambia | LD | 102 | 10 | 112 | | - | - | 0 | 0.5 | 56 | 10 | 66 | |
| Ghana | D | 98 | 0.2 | 98 | 22 * | - | - | 0 | 1.1 | 33 | 0 | 33 | 16 * |
| Guinea | LD | 38 | 24 | 62 | | - | - | 29 * | 1.3 | 26 | 23 | 49 | |
| Guinea Bissau | LD | 40 | 26 | 66 | | - | - | 0 | 97 | 50 | 50 | 100 | |
| Kenya | D | 100 | 0 | 100 | 44 * | - | - | 0 | 1.6 | 54 | 0 | 54 | 35 * |
| Lesotho | LD | 200 | - | 200 | | - | - | 0 | 100 | 60 | - | 60 | |
| Madagascar | LD | 30 | 250 | 280 | 39 Ω | - | - | N/A | 11.1 | 30 | 250 | 280 | 41 Ω |
| Malawi | LD | 124 | 20 | 144 | | - | - | N/A | 3.6 | 47 | 20 | 67 | |
| Mali | LD | 60 | 50 | 110 | | ♦ | - | 29 x | 2.8 | 60 | 50 | 110 | |
| Mauritania | LD | 37 | 15 | 54 | | - | - | 29 x | 1.3 | 30 | 15 | 45 | |
| Mauritius | D | 120 | 17 | 135 | 52 Ω | - | - | 0 | 1.6 | 65 | 17 | 82 | 63 Ω |



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## Table 1 (continued). Summary of Uruguay Round Commitments in Agriculture and Industry

| Country | GATT Status | Agriculture | | | | | | Industry | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Ave. Bound Duty % | Ave. Bound ODC % | Total Average ■ Tariff Binding (Duty + ODC) (%) | Average Appl. Rates (%) | Domestic Support | Export Subsidies | Previous Bindings (% of lines) | Share of Lines Bound in UR (%) | Ave. Bound Duty (%) | Ave. Bound ODC (%) | Total Average ■ Binding (Duty + ODC) (%) | Average Appl. Rates (%) |
| Mozambique | LD | 100 | 300 | 400 | | - | - | 0 | 1.9 | 80 | 300 | 380 | 63 Ω |
| Namibia | D | 40 | 0 | 40 ☼ | | - | - | 31 ⌂ | 68 | 17 | 0 | 17 ○ | 22 • |
| Niger | LD | 80 | 50 | 132 | | - | - | 29 x | 65 | 50 | 50 | 100 | |
| Nigeria | D | 150 | 80 | 230 | 47 * | - | - | 0.1 | 7.0 | 48 | 80 | 128 | 36 * |
| Rwanda | LD | 80 | - | 80 | | - | - | N/A | 100 | 100 | - | 100 | |
| Senegal | D | 30 | 150 | 180 | 44 * | ◆ | - | 29 x | 2.4 | 30 | 150 | 180 | 34 * |
| Sierra Leone | LD | 40 | 20 | 60 | | - | - | 0 | 100 | 49 | 20-50 | 69-99 | |
| South Africa | IND | 40 | - | 40 ☼ | 7 * | by 2000 | by 2000 | 31 ⌂ | 68 | 17 | - | 17 ○ | 22 • |
| Swaziland | D | 40 | - | 40 ☼ | 34 Ω | - | - | 31 ⌂ | 68 | 17 | - | 17 ○ | 22 • |
| Tanzania | LD | 120 | 120 | 240 | | - | - | 0 | 0.1 | 120 | 120 | 240 | 28 Ω |
| Togo | LD | 80 | 7 | 87 | | - | - | 0 | 1.0 | 80 | 7 | 87 | |
| Uganda | LD | 80 | 0 | 80 | | - | - | 0 | 2.7 | 50 | - | 50 | |
| Zaire | LD | 98 | - | 98 | | - | - | N/A | 100 | 96 | - | 96 | |
| Zambia | LD | 124 | 0 | 124 | | - | - | N/A | 4.0 | 42 | - | 42 | |
| Zimbabwe | D | 146 | 15 | 161 | 24 * | - | - | 8 | 0.8 | 38 | 29 | 66 | 31 * |

■ Simple averages of bound rates as reported in countries' UR schedules. Assumes that base for both duties is the same.
* From GATT Trade Policy Reviews, latest available.
◆ List of domestic programs permitted, no subsidy commitment.
○ Reduced from 24 percent to 17 percent.
☼ Reduced from 70 percent to 40 percent.
• Trade weighted average.
x Assumes countries with (x) applied same schedule as Senegal as former French colonies.
⌂ Assumed same as South-Africa.
Ω UNCTAD (1994) latest available.



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industrial countries. 1/ While the agreement clearly addresses the worst distortions in world agriculture, it leaves many agricultural distortions especially in low-income developing countries outside its scope. Many African countries do not subsidize, but tax agriculture either implicitly by giving higher protection to industry, or more explicitly by taxing exports of many commodities, or by maintaining government controlled domestic prices below world prices (Schiff-Valdes 1992). These distortions were not part of the UR agenda, and some of them are not even covered by the GATT (export taxes or domestic pricing policies that "tax" agriculture). Actual liberalization of industrial tariffs in Africa within the UR is also modest (see below) and unlikely to reduce the existing bias against agriculture. African trade policies have also suffered from frequent policy reversals and from the impact of exchange restrictions on trade flows. Some of these policies have been addressed in the countries' structural adjustment programs over the past decade (World Bank 1994a, Schadler-Rozwadowski-Tiwari-Robinson (1993)).

Tariffication. All African participants that have submitted schedules bound 100 percent of their tariff lines in agriculture. However, the level of the bindings by many countries is at prohibitive levels (100 percent - 300 percent) (Table 1). The only "reasonable" bindings (less than 50 percent) were by Congo (30 percent ceiling binding), Central African Republic (ceiling binding at 46 percent), and by four of the five countries of the Southern African Customs Union (Botswana, Namibia, South Africa, Swaziland). In the latter, bound duties on average will decline by 43 percent from about 70 percent to 40 percent over a six-year period. 2/ Few of the developing countries that are not in the group of least developed countries offered to make reductions from their ceiling bindings, although this was required by the agreement. 3/ Only Cote d'Ivoire, Ghana, and Zimbabwe offered minor reductions on a few items.

The bindings consist of a customs duty and other duties and charges (ODC). As mentioned previously, the ODC rates were not listed in a country's schedule in GATT. Not all countries added ODC rates to their

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1/ Many of the provisions were tailor-made to accommodate a number of agricultural policies of the three majors: exemptions for rice from tariffication in Japan, change of domestic subsidy rules to exempt certain EU and US policies (deficiency payments, production limits) from the reduction commitments. However, policies in these countries were already reformed in the last few years of the Round either in anticipation of the UR results or in response to domestic budgetary pressures.

2/ Simple average based on information in their Uruguay Round schedules. This excludes ODC rates, which are mostly specific duties. In some products such as textiles and clothing the duty reductions take place over a 8 or 10 year period.

3/ Only least developed countries were exempt from cuts in bound rates. The lack of reduction commitments was accepted by SSA trading partners tacitly during the verification process.

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schedules, although the practice seems particularly frequent in Africa. 1/ In some countries that had old bindings, such as Cote d'Ivoire, reduction commitments in the UR were made on the customs duty (old binding), to which the now "confirmed" ODC rate was added. For example, in Cote d'Ivoire a 7 percent bound duty on fresh milk (HS 040110) will be reduced to 6 percent over a ten-year period, but a 200 percent ODC will be added to this item. The end result will be a substantial increase in bound rates on these items. 2/

The high levels of bindings resulting from the UR may have a number of unexpected effects on protection of agriculture in Africa and amount to a lost opportunity to liberalize. First, the results indicate that the UR will not liberalize agriculture in Africa in the sense of reducing actual tariff rates. It is likely (and to be hoped) that most countries will not apply the high bound rates. Available data indicate that applied rates are in general lower (Table 1). The policy implications of this are that rationalization of protection in agriculture in SSA will have to rely on continued unilateral liberalization.

Second, the high bindings do not impose an effective constraint on policy reversals. 3/ The high level of the bindings can by itself undermine their stability objective and the transparency objective of tariffication in general. Despite the relatively uniform rates used in the bindings by many countries, applied rates within these bands can be highly dispersed. In principle, countries can continue to change tariffs within the margin provided by the binding. The likelihood of this depends on whether the recent trend of unilateral liberalization continues. Most of the maximum rates are too high to provide a meaningful cap on rates to improve the security of market access.

Third, the high level of bindings is not likely to serve the objective of removal of all non-tariff barriers in agriculture. Countries can charge

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1/ According to the Understandings on Article II:1 (b) the ODC rates that are listed as part of the binding should reflect actually applied rates on April 15, 1994. Contracting parties can challenge these levels during a three year period after the entry into force of the WTO or of the commitment. This naturally creates some additional uncertainty on the level of the bindings negotiated.

2/ Some of the high ODC rates have been questioned by Africa's trading partners during the verification process. Cameroon, Cote d'Ivoire, Gabon and Senegal have until mid April 1995 to clarify the high rates proposed (230, 200, 200 and 150 percent, respectively). Mozambique has also been requested to provide further information to justify its 300 percent ODC.

3/ It has been argued (Martin-François 1994) that even high levels of bindings by providing an upper bound would improve market access by reducing risk for substantial policy reversals. While this may be true for moderate levels of bindings it may not be the case for levels well beyond 100 percent. However, even a high binding will provide a basis for future reductions in rates.

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duties at varying levels within the margin of the binding, which could be linked to a domestic threshold price. The duty can be set as the difference of the given domestic price and the world price as long as the duty charged does not exceed the binding. 1/ In practice this can work like a variable levy or a minimum price. However, the levies might be challenged as such under the agreement. A footnote to the agriculture agreement states that variable levies etc. are forbidden and will be converted to tariffs. Furthermore, the Agreement in Customs Valuation forbids the use of minimum prices, except for developing countries that make a special reservation for it. Clarification of the issues may require recourse to the dispute settlement proceedings. The peace clause 2/ may prevent this for some years to come, and the fact that EU's partners did not challenge this during the verification and negotiation process suggests that the setting of variable levies within the bound ceilings might be accepted.

Subsidies. Except for South Africa, the commitments on domestic agricultural policies or on export subsidies required by SSA in the UR are likely to have little if no impact on their domestic agricultural policies. Only South Africa made any commitments to reduce either domestic or export subsidies (Table 1). 3/ The main reason is that the others do not subsidize agriculture or its exports, and that least developed countries were exempt from the commitments. As mentioned many traditional export commodities are taxed, not subsidized, in many SSA countries. In some countries, such as Cote d'Ivoire or Senegal, earlier export subsidy programs covered mostly manufactures and in any case have been terminated for lack of funds. Only Cote d'Ivoire, Mali and Senegal have submitted lists of domestic agricultural programs that they consider permissible, i.e., not subject to cuts, and that may have some subsidy elements. The rules require South Africa to reduce domestic agricultural subsidies by 20 percent over a six year period from a 1986-88 base, which South Africa has already done in its reform program.

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1/ The EU, for example, in the headnote to its schedule has indicated that for major grains the duty-paid import price shall not exceed a domestic intervention price (in ECU) plus 55 percent, and for husked rice it shall be no greater than the intervention price plus 80 percent - 88 percent. The actual import duty levied on cif prices would be the difference between the domestic mark-up and the cif price.

2/ The agreement in agriculture contains a peace clause, whereby the parties have agreed not to challenge certain measures under the dispute settlements system for six years.

3/ However, countries that have made no reduction commitments will have to notify annually (every two years for LLDCs) existing support programs by type or state that no support exists. Developing country net-food exporters of a product will have to notify the GATT of export prohibitions and restrictions on that product.

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Minimum access. Apart from South-Africa, SSA countries have made no minimum access commitments. 1/ The agreement requires this only from countries that did not make ceiling bindings. 2/ South Africa has listed amounts designated to minimum access in its schedule, but the agreement leaves much discretion on their implementation. No indication is given on how the quotas would be allocated. 3/

In summary, in agriculture the commitments made by and required of SSA developing countries in the UR do not provide much evidence that these would seriously limit their present options on domestic policies or that they have undertaken liberalization commitments. This is because (i) the UR rules will not in themselves affect most agricultural distortions in Africa, (ii) commitments made by most of SSA will not result in more liberal policies or a more stable policy framework, and (iii) the general exemptions in the GATT or those for the balance of payments in Article XVIII, albeit under slightly more restrictive conditions, are still available for developing countries to justify existing policies.

## 2. Industry

In the UR there was no uniform rule for making tariff commitments apart from having to achieve the stated goal of a 33 percent reduction in tariffs over a five- to ten-year period. This made actual cuts dependent on the results of bilateral negotiations, which tended to bias them in favor of cuts on products of interest to main industrial country partners. Developing countries were encouraged to make either ceiling bindings, as many had no previous bindings (Table 1), or reductions in previously bound items. As in agriculture, the ODC rates were to be included in new schedules (see above).

As most of the agreed liberalization commitments in non-tariff measures (NTMs) were designed to reduce the types of policies prevalent in industrial countries, their relevance for developing countries is reduced. The main obligations from the Round in industrial NTMs are that all countries are (i) to remove voluntary export restraints within four years, 4/ and (ii) to eliminate all GATT-inconsistent restrictions on textiles and clothing imports within a ten-year phase-in period. 5/ Should developing countries maintain quantitative restrictions in textiles and clothing, they have to be

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1/ This means that opportunity is provided to import 3 percent to 5 percent of domestic consumption of a product at lower than bound tariffs within a specified quota.

2/ Developing countries were allowed to bind duties at an arbitrary maximum rate.

3/ Members of the WTO are required to notify the way quotas are administered and actual imports under the quota annually.

4/ One measure per country can be maintained for five years.

5/ As industrial countries are the main users and developing countries the main targets of these measures there was no need to foresee different rules for developing countries.

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removed within the ten year transition period (unless justified by other GATT 1994 provisions such as Article XVIII). All restrictions have to be notified to the relevant WTO body at the start of the transition period, even if the measure has a GATT 1994 justification. 1/ Unless developing countries notify existing restrictions (and a timetable for their removal), in principle, they are assumed to maintain no GATT-inconsistent restrictions in the sector.

Existing tariff and non-tariff barriers in many African countries on industrial goods vary substantially and accurate information on existing policies is at times difficult to get. Policies in a sample of SSA countries 2/ reviewed in the GATT's Trade Policy Review mechanism indicate that, apart from tariffs and fiscal duties, applied border measures include an array of bans and prohibitions on imports and exports, licensing, exchange rate rationing, quantitative import restraints, and minimum prices. In many countries the structure of the tariff is highly dispersed as high duties coexist with numerous exemptions. A recent World Bank study on African trade policies underlined the importance of exchange controls in restricting imports and exports in many SSA countries (Nash 1993). With overvalued exchange rates foreign exchange was often allocated to imports with licenses amounting to an implicit import subsidy; exports were taxed with various surrender requirements at official rates below market rates. In this environment the impact of border measures such as tariffs on trade flows may be minimal. Over the past decade many of these issues have been addressed by adjustment programs supported by multilateral donor agencies resulting in some improvements (World Bank 1994a, IMF 1994). However, reforms have suffered from credibility problems due to frequent reversals 3/ and slow implementation.

Tariffs. As many SSA countries did not have previous bindings, they made mostly ceiling bindings, but only on a handful of tariff lines (Table 1). Twelve countries made bindings on a large number of items (50 to 100 percent of tariff lines), while the majority bound less than 2 percent of tariff lines during the UR. Only eleven countries will have bindings on over 90 percent of tariff lines after the Round (Djibouti, Guinea Bissau, Niger, Rwanda, Sierra Leone, Zaire, and the five countries of the Southern

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1/ The applicability of Article XVIII restrictions to products not yet incorporated into GATT 1994 is unclear. In principle, special safeguards apply to non-incorporated products during the transition period. Article XVIII can be applied to products incorporated into the GATT 1994.

2/ Trade policy review reports for Cameroon, Ghana, Kenya, Nigeria, Senegal, South Africa, and Zimbabwe. Uganda and Cote d'Ivoire are forthcoming.

3/ Of the ten countries studied recently by the World Bank only four were able to sustain trade reforms (Collier 1993).

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African Customs Union). Only four members of the Southern African Customs Union and Cote d'Ivoire offered to reduce previously bound rates. 1/

In many cases the resulting bound rates are prohibitive at rates over 100 percent. Only in ten countries were the few duties bound at levels below 50 percent. This includes the four of the five countries of the Southern African Customs Union, in which bound duties will decline to an average of 17 percent. 2/ As applied rates, at least in countries for which data are available, are in general lower, the bound rates may not be applied in practice and will only serve as upper bounds.

Apart from the countries of the Southern African Customs Union, tariff commitments on industrial goods by SSA do not represent meaningful liberalization and are unlikely to address any of the key distortions in SSA trade policies. First, as with agriculture, the high level of bindings can undermine their impact on security of market access, as duties can readily be changed within the maximum bounds. Security is further reduced by the small number of lines bound. But even high bindings can be better than no bindings. Second, credibility of policies is unlikely to improve. SSA countries have not taken advantage of the opportunity offered by the Round to bind domestic reforms to an international anchor to improve credibility of reform. Third, the UR in most cases will not change existing levels of protection as applied rates will not change in most SSA. Therefore, the UR will do little to promote, for example, regional trade.

Non-tariff measures. In general the UR results seem to put few new obligations on developing countries to reduce existing non-tariff measures. A review of submitted schedules indicates that so far in textiles the only commitment in SSA is by the three of the five countries of the Southern African Customs Union, which have agreed to reduce barriers (high specific duties in local currency) in textiles and clothing imports over a ten year period. The only other commitments in NTMs were made by Senegal and Cameroon. Senegal offered to remove prior authorization requirements on a number of tariff lines (paper products and some machinery). Cameroon agreed to eliminate import quotas on a number of products (paper products and miscellaneous items).

The agreements on Balance of Payments (BOP) and Customs Valuation may have some impact on existing non-tariff barriers in developing countries. However, the agreement on BOP mostly reinforces earlier recommendations for greater transparency by public announcements of plans to terminate the measures and for preference for the use of price-based measures over

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1/ Bound tariffs in the former will decline on average from 24 percent to 17 percent (Hoda 1994). Cote d'Ivoire offered to cut duties on about 20 tariff lines to an average of 7 percent, but added a 250 percent ODC to these rates (Schedule LII - Cote d'Ivoire).

2/ Many negotiators consider 20 percent to be a commercially meaningful maximum level for tariffs (naturally subject to potential exchange rate distortions).

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quantitative restrictions. Apart from some tightening, the agreement does not create new obligations to reduce existing measures or the use of BOP restrictions in the future.

The Agreement on Customs Valuation in the WTO (Table 3), in principle, requires countries to eliminate official minimum prices at the border as customs valuation is to be based on the price actually paid or payable for the imported good. 1/ The single undertaking means that all countries will have to adopt these rules. However, developing countries, that so notify the Director General of the WTO, have five years to comply with this agreement. 2/ The adoption of the rules can be further postponed by a further request to the WTO. In practice, this means that, although developing countries have undertaken the new obligations, the long transition periods and potential for their extension require little changes in policies in the near future. Implementation of the new obligations therefore depends on the will of trading partners to grant exemptions or on the countries themselves to implement the obligations.

If applied, the new rules on Customs Valuation may imply changes to existing laws in SSA. At present many of them use the so-called Brussels Definition of Value at the border. 3/ Compliance may imply more stringent administrative requirements, but the removal of minimum prices could increase efficiency, and the use of an international standard for valuation could imply lower trading costs for importers by reducing discretion in valuation at the border, and hence reducing rent-seeking opportunities.

A main impact of the UR agreements on NTMs in industry for developing countries in SSA is likely to be an increase in the transparency of policies. This will arise from the increase in notification requirements (textile restrictions, subsidies, TRIMS, see below). The conduct of trade policy reviews will also add to the transparency of policies. This is reinforced by the general trend in recent years, for example, to require developing countries to list and justify more carefully all measures maintained under the BOP exceptions. In the past, many developing countries have not notified their non-tariff measures to the GATT as required and their trading partners have not actively challenged the GATT consistency of applied policies. For example, only South Africa and Nigeria of the SSA countries have followed GATT procedures and notified their import restrictions and held consultations in the GATT BOP Committee. The increased pressure for transparency may be less for the very small and poor

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1/ The Code lays down five other valuation methods which are to be applied in a hierarchical order: the transaction value of identical goods, of similar goods, the deductive method, the computed value method the fall-back method.

2/ Developing countries can also make a reservation if they wish to retain the use of minimum prices during a transition period.

3/ Only four countries in SSA had signed the Tokyo Round Code on Customs Valuation, most with reservations (Botswana, Lesotho, Malawi, South Africa, Zimbabwe).

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countries with a minor role in international trade, but may effect the larger traders of SSA.

In summary, the UR results will not liberalize industrial (tariff) protection in most of SSA. Furthermore, in the near future, long transition periods and potential to extend (in many cases indefinitely) the adoption of the new obligations, coupled with continued application of old exemptions in the GATT such as Article XVIII:B, will mean that the UR will set few new constraints on existing border protection (NTMs) in SSA. The case of South Africa and other members of the Southern African Customs Union is different and stands out from the rest of the SSA: the Union has made substantive commitments in terms of increased bindings and cuts in existing bindings, which are close to applied rates. Within the Union, South Africa used the UR to bind domestic unilateral reform which can work as a powerful argument against domestic lobbies resisting change. South Africa also made its commitments according to the rules for industrial countries. For South Africa the UR coincides with a domestic process of unilateral liberalization.

3. Services

All developing countries were required to make market access commitments (liberalization) in services and accept the framework agreement (the rules). The General Agreement on Services (GATS) obliges countries to give most-favored-nation (MFN) treatment to foreign service providers in sectors and modes of supply, 1/ in which liberalization commitments have been made. A one-time exemption from MFN treatment could be made at the time of making the market access commitments. 2/ Services was one area, which developing countries initially were reluctant to include in the negotiations. Many felt that they had no comparative advantage in services or that liberalization of this sector would be of little relevance for their development strategies. But as the Round progressed developing countries started to see a new potential in the sector both directly for their exports, and indirectly as liberalization of services may have an important impact in improving the competitiveness of many export industries. Openness and competition are likely to improve efficiency in local provision of services, which often are important inputs to manufacturing or other economic activities (banking, transport).

Very little information is available on the structure of protection in the services sector in SSA. A large part of the sector is likely to be dominated by state enterprises with privileged market positions or government monopolies often raising prices of services. Government-provided services are not covered by GATS. Many international transport routes are

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1/ A service can be delivered via four different modes of supply: cross border supply, consumption abroad, commercial presence, presence of natural persons.

2/ For example, a country could state that a bilateral navigation treaty will remain outside the scope of the agreement.

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also subject to cargo sharing arrangements, which have a tendency to maintain the price of freight at high levels. Provision of professional services is often subject to tied aid to a specific country, which limits competition on potential suppliers. Liberalization in the sector could bring substantial efficiency gains, although in Africa competition in transport or other sectors is also restricted by many natural factors such as small size of the markets.

> Box 3. SSA Trade in Services
>
> The services sector in SSA is less well understood than manufacturing or agriculture. Existing statistics are limited or cover only part of potential transactions. BOP statistics shows that trade in services can be of considerable importance for many SSA countries. Following GATT (1989) commercial services are defined to include: shipment, other transportation, travel, other private services, and labor and property income of the BOP. However, workers remittances were added to this, as in a few SSA countries they are an important source of income. According to 1991 data (1990 for some countries) the share of services exports in all exports was over 20 percent, or over 5 percent of GDP in more than third of the 24 countries that have made commitments in the Round by December 1994. Most service export revenues come from transport, travel and tourism. Ten of the twenty-four countries show a revealed comparative advantage in services defined as the share of services in total exports of a country to that of services in world exports (Benin (1.9), Burkina Faso (1.9), Kenya (2.2), Madagascar (1.3), Mali (1.7), Mauritius (1.5), Mozambique (2.7), Senegal (1.7), Swaziland (1.2) and Tanzania (1.2)). Many SSA countries depend heavily on imports of services. In five countries imports of services accounted for about 20 percent of GDP and all countries spent between 16 to 55 percent of all imports on services. Most SSA countries are net importers of services, while five countries (Benin, Mauritius, Kenya, Senegal, Swaziland) were net exporters. Business services and transport were most important products.

The nature of the liberalization commitments in the UR vary substantially among the thirty-seven SSA countries that had submitted their schedules by May 1995. The extent of the liberalization in the submissions is difficult to estimate for the complex nature of the market openings in the different modes of delivery. One rough measure can be the number of sectors in which commitments were made. According to this measure the range of sectors opened varied from one in seven countries (Chad, Burkina Faso, Madagascar, Mauritania, Mozambique, Tanzania, Uganda) to 12 in one country (Gambia) of the 12 sectors and 37 countries covered (Table 2). The sectoral breakdown indicates that most commitments were in tourism (34 countries), business services (18 countries) and communication (13 countries). Twelve countries had also made reservations to the MFN obligation mostly in maritime transport. Commitments in financial, business, and communication services, which are important "input sectors" to exports, were made by less than half of the countries. This can reduce the potential for efficiency gains or transfer of technology in many of these countries in sectors that are inputs in export production. Most of the commitments are likely to reflect the status quo with little additional liberalization.

## IV. Other Obligations

The single undertaking of the Uruguay Round means that all countries had to adopt all the agreements. As only few SSA countries were signatories

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Table 2. Overview of Initial Commitments in Services by Sector (Status: April 15, 1995)

| COUNTRY | TOTAL | 1. BUSINESS | 2. COMMUN. | 3. CONSTR. | 4. DISTRIB. | 5. EDUCAT. | 6. ENVIRON. | 7. FINANC. | 8. HEALTH | 9. TOUR | 10. RECR. | 11. TRANS. | 12. OTHER | MFN EXEMP. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Angola | 2 | | | | | | | x | | x | | | | x |
| Benin | 3 | | | | | | | x | | x | | x | | x |
| Botswana | 3 | x | x | | | | | | | x | | | | |
| Burkina Faso | 1 | | | | | | | | | x | | | | |
| Burundi | | | | | | | | | | | | | | |
| Cameroon | 2 | x | | | | | | | | x | | | | x |
| Chad | 1 | | | | | | | | | x | | | | |
| Ctrl. African Rep. | 5 | x | x | | | | x | | | x | x | | | |
| Congo | 2 | | | | | | | | | x | x | | | x |
| Cote d'Ivoire | 4 | x | | x | | | | | | x | | x | | x |
| Djibouti | 3 | | x | | | | | | | x | x | | | |
| Gabon | 4 | x | | x | | | | x | | x | | | | |
| Gambia | 12 | x | x | x | x | x | x | x | x | x | x | x | x | |
| Ghana | 5 | | | x | | x | | x | | x | | x | | x |
| Guinea | 5 | x | | | | | x | | x | x | | x | | |
| Guinea Bissau | 2 | | | | | | | | | x | x | | | |
| Kenya | 5 | | x | | | | | x | | x | | x | x | |
| Lesotho | 10 | x | x | x | x | x | x | x | | x | | x | x | |
| Madagascar | 1 | x | | | | | | | | | | | | |
| Malawi | 5 | x | | x | | | | | x | x | x | | | |
| Mali | 2 | | | | | x | | | | x | | | | x |



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Table 2 (continued). Overview of Initial Commitments in Services by Sector (Status: April 15, 1995)

| COUNTRY | TOTAL | 1. BUSINESS | 2. COMMUN. | 3. CONSTR. | 4. DISTRIB. | 5. EDUCAT. | 6. ENVIRON. | 7. FINANC. | 8. HEALTH | 9. TOUR | 10. RECR. | 11. TRANS. | 12. OTHER | MFN EXEMP. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Mauritius | 2 | | x | | | | | | | x | | | | |
| Mauritania | 1 | | | | | | | | | x | | | | |
| Mozambique | 1 | | | | | | | x | | | | | | |
| Namibia | 2 | x | | | | | | | | x | | | | |
| Niger | 2 | | | | | | | | | x | | x | | x |
| Nigeria | 4 | | x | | | | | x | | x | | x | | |
| Rwanda | 5 | x | | | | x | x | | | x | x | | | |
| Senegal | 6 | x | x | | x | | | | | x | x | x | | x |
| Sierra Leone | 10 | x | x | x | | x | x | x | x | x | x | x | | x |
| South Africa | 9 | x | x | x | x | | x | x | | x | | x | x | x |
| Swaziland | 2 | x | | | | | | | x | | | | | |
| Tanzania | 1 | | | | | | | | | x | | | | |
| Togo | 3 | | | x | | | | | | x | x | | | |
| Uganda | 1 | | | | | | | | | x | | | | |
| Zaire | 6 | x | x | x | | x | | | | x | x | | | |
| Zambia | 4 | x | | x | | | | | x | x | | | | |
| Zimbabwe | 3 | | x | | | | | x | | x | | | | |
| Total by Sector | | 18 | 13 | 11 | 4 | 7 | 7 | 12 | 6 | 34 | 11 | 12 | 4 | 12 |



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to the Tokyo Round Codes 1/ on subjects such as anti-dumping, subsidies, customs valuation, they may have to review their present laws in light of these revised or new rules. However, apart from anti-dumping, most of the new or revised old obligations have relatively long transition periods, which in some cases can be further extended.

The most important obligations with a potential impact on domestic policies in SSA are likely to be the revised rules on subsidies, the agreement to eliminate GATT inconsistent trade related investment measures (TRIMs), and the new rules on intellectual property (TRIPs) (Table 3). 2/ Except for South Africa some of the new rules such as those on safeguards or anti-dumping are unlikely to be very important to many SSA countries, as few of them have domestic anti-dumping laws. If they decide to use these measures they should be in line with their GATT/WTO obligations. A number of SSA countries were also active in the negotiations of the Agreement on Preshipment Inspection.

Export and other subsidies. The new subsidy rules cover trade in industrial goods, 3/ as rules for agricultural subsidies have been specified in the Agreement on Agriculture and those for services were left for further negotiation. In the Uruguay Round, developing countries agreed

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1/ Customs Valuation: Botswana, Lesotho, Malawi, South Africa, Zimbabwe; Bovine Meat: Nigeria, South Africa; Import Licensing: Nigeria, South Africa; Geneva Protocol: South Africa; Dairy: South Africa; Supplementary Protocol: Cote d'Ivoire, Zaire.

2/ The agreements on Customs Valuation and Balance-of-payments were already discussed in the context of non-tariff barriers.

3/ The revised disciplines on subsidies in the UR can reduce their economic costs. Subsidies in many cases can have important fiscal and allocational costs. For example, many studies have shown that macroeconomic stability and good infrastructure can be much more important for attracting foreign investments than tax holidays, or that competitive exchange rates are more effective in promoting exports than subsidies. Lower subsidies can free resources to improving infrastructure etc. However, the criteria for disciplining subsidies in GATT are their trade effects, not the size of the potential economic distortions created by subsidies. Compliance with GATT disciplines on subsidies is likely to reduce more subsidies that affect trade than those that have highest economic costs. The potential economic cost of subsidies is not part of the ranking criteria. It is also paradoxical that poorest countries (that might least afford them either in economic or fiscal terms) are given the most flexibility to subsidize. From the point of view of the trading system, least developed countries are allowed to do this, because their subsidies are deemed to have no trade effects on their partners.

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Table 3.

SUMMARY OF MAIN OBLIGATIONS FOR SSA FROM WTO AGREEMENTS

| | | TRANSITION PERIOD (YEARS) FOR | | |
|---|---|---|---|---|
| **AGREEMENT** | **NOTIFICATION** | **DEVELOPING** | **LEAST-DEVELOPED** | **EXTENSIONS OR EXEMPTIONS** |
| <u>BoP Restrictions</u><br>Public announcement of removal, preference for price based measures. | Four months after measure introduced | N/A | N/A | Can be extended. |
| <u>Customs Valuation</u><br>Agreement | If delay | 5 | 5 | Additional three years to use computed value; |
| Removal of minimum prices | If reservation made | Can be maintained for limited unspecified time, if reservation made. | | Five year deadline can be extended upon request. |
| <u>Subsidies</u><br>*Prohibited export subsidies* | By April 1, 1995 | 8* | - | - Can be extended subject to annual review. |
| Prohibited local content subsidies | - | 5 | 8 | - No extension. |
| Other specific subsidies | By July every year | - | - | |
| <u>TRIMS</u><br>Remove measures such as local content and trade balancing req. | By April 1, 1995 | 5 | 7 | Can be extended, Art. XVIII exemption possible. |
| <u>TRIPS</u><br>Adopt protection and enforcement | - | 5 | 11 | Can be extended for LLDCs. *Developing countries* have additional five years to introduce protection for new product patents. |

* If GDP per capita > $1000



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In the higher income SSA developing countries (income per capita above US$1,000), special guarantees or credits to exports, or tax breaks for exporters will be forbidden <u>after</u> the eight year transition period, if these policies carry a subsidy element conditional upon export (e.g., are given at below market rates) and extension is not sought. Currency retention schemes or any similar practices which involve a bonus upon export will also be prohibited. 1/ Gabon, Mauritius, Namibia, Swaziland and potentially Botswana should review their existing export subsidy policies, if any, and make them WTO-compatible within the eight year transition period (unless they apply for an extension of the transition period).

In other SSA developing countries, the use of export incentives can continue. According to GATT trade policy reviews Ghana, Kenya, Nigeria, and Senegal have or have had some kind of export subsidy programs. 2/ But as they presently fall into the low income category in the WTO agreement, they are not obliged to remove these policies until their income per capita reaches US$1,000. In any case, many of these programs have been terminated for lack of funds. For these countries the main present obligation from the agreement is to notify these policies to the WTO.

Prohibited local content subsidies are used by some countries in SSA. According to GATT reviews, at least Ghana, Nigeria, Kenya, Senegal and South Africa have maintained local content rules as conditions for a number of investment incentives. 3/ These would have to be eliminated within five years (three for South Africa), if they are deemed against the subsidies agreement. This may require a review of relevant Investment Code provisions in all SSA countries.

The main actual obligation on actionable domestic subsidies for SSA is their notification to the WTO. Only if policy makers want to avoid any risk of being subject to countervailing duty investigations in their export markets, a review of domestic subsidy policies might be warranted. 4/ For most SSA countries this risk is likely to be minimal, because of their small

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1/ According to one interpretation multiple currency practices or currency retention schemes would be allowed, if approved by the Fund (Article XV).

2/ Ghana has had a export retention scheme and given export tax credits for exporters; Kenya has given subsidies for exports with over 30 percent domestic value-added and with an export retention scheme; Nigeria has provided an export retention scheme and given subsidies to exporters that export over 50 percent of sales with 40 percent local content and 35 percent of domestic value-added; Senegal has subsidized exports.

3/ Ghana has linked local content to income tax rebates; Nigeria has linked profit tax rebates to local sourcing; in Senegal certain investment incentives require 65 percent local material content; South Africa has linked local content to tax rebates, amount of excise duties or export incentives.

4/ The transition periods do not preempt countervailing duty action by trading partners.

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importance in total imports or the more lenient rules applicable for investigations involving developing countries. 1/ Policies that may be subject to countervailing duties can be, for example, tax credits or other tax benefits given to specific industries, if they can be shown to cause injury to an industry in the importing country. However, the possibility to cumulate injury among exporters may open SSA countries subject to a challenge by trading partners. The procedure can be costly for small exporters in terms of legal fees.

TRIMS. The agreement on trade related investment measures mainly enforces existing GATT disciplines. 2/ The Agreement itself with long transition periods and the possibility for their extension puts few immediate obligations on SSA countries. The main immediate obligation for them is notification of TRIMS to the WTO by April 1995. But as notification is also a requirement for benefitting from the transition periods, it remains up to the SSA countries to take advantage of this. By May 1995, only Mauritius, South Africa and Zambia, among the SSA countries, had submitted a notification to the WTO, and only South Africa stated that they have any TRIMS (to be eliminated by 1997). If other SSA countries maintain TRIMS, they can now be challenged in the WTO.

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1/ On actionable subsidies the agreement allows for some exceptions for developing countries from an eventual challenge. Serious prejudice challenge in the GATT for a developing country has to be based on positive evidence. This can arise, for example, if a subsidy displaces imports from a partner country of a product that is subject to a bound concession. In countervailing duty (CVD) cases a minimum subsidy of 2 percent of value of production (3 percent for low income countries) is allowed, or investigations are to be terminated, if the share of the subsidizing country is less than 4 percent of the complainant's imports, or the share of similar small developing countries is below 9 percent. Direct forgiveness of debt and subsidies to cover social costs when applied on a one-time basis in connection with privatization programs (and notified) are non-actionable in developing countries.

2/ Discriminatory measures such as local content rules, or trade or foreign exchange balancing that are against the national treatment provision (Article III) or prohibition of quantitative restrictions (Article XI) have to be eliminated in five years by developing countries and within seven years by the least developed countries after the establishment of the WTO. Local content or trade balancing requirements not involving subsidies (i.e. condition for investment) can act as a tax on imports without the revenue accruing to the government. Should these measures imply a subsidy they are forbidden under the subsidies agreement. In some cases the line between TRIMS and local content subsidies can be very fine. The transition period can be extended upon request for both developing and least-developed countries. Many of these measures (except Article III measures) can also be maintained under the BOP exemptions of the agreement.

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According to GATT Trade Policy Reviews trade balancing and especially local content rules are likely to be relatively frequent in SSA (see above). 1/ By not notifying its TRIMS, most of SSA has foregone a right to gradual adjustment and, in principle, should now eliminate them. If maintained, the possibility of WTO challenge can create uncertainty for investment incentives. Although the likelihood of a challenge for SSA is small, SSA should review their policies in this regard. As many of these measures are likely to allocate resources inefficiently and act as a quantity restraint or tax on imports, their elimination can bring efficiency gains.

Preshipment Inspection (PSI). The agreement creates a framework for dealing with activities of preshipment inspection companies, 2/ which are relatively frequently used in SSA. Those SSA countries that use the services of PSI companies will have to follow the procedures stipulated in the agreement, i.e., subject all exports of a sector or beyond some chosen value (to fulfill the transparency and non-discrimination criteria) to the inspection requirements, or use the stated guidelines for price verification. Their main purpose is to guarantee a smooth functioning of the process and avoid trade harassment from the use of PSI requirements.

TRIPS. The agreement on intellectual property requires countries to put into place the agreed minimum standards of protection, and administrative capacities to enforce them. Developing countries have five years and least developed countries eleven years to do this. 3/ Least developed countries may have the eleven-year transition period extended further.

The expected benefits of the TRIPs agreement are higher returns to innovation, increased investment and transfer of technology as patents would be protected. The potential for these gains in SSA, at least in the short run, is likely to be small. For many SSA countries with minimal national research capacities the agreement is likely to mean transfer of rents to richer countries. It may also imply additional administrative costs. Apart from the direct costs of administering the system, in countries with scarce administrative capacities, putting resources to administer the TRIPs agreement can have a high opportunity cost. However, in the longer run the

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1/ Zimbabwe may impose local content rules as conditions for investment approval.

2/ Obligations set for use governments include non-discrimination, transparency, confidentiality and an appeals procedure. The agreement establishes guidelines for price verification and the basis for price comparisons. It also introduces an independent review procedure for disputes.

3/ An additional grace period of five years is granted for developing countries to establish patent laws on products that are not presently protected, i.e. in which they do not have existing patent laws. However, all countries must have a system in place whereby all patentable inventions on pharmaceutical and agricultural chemical products made after the entry into force of the WTO must be protected.

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expected benefits of transfer of technology, investment and higher returns to local research are likely to benefit all of SSA, but especially the more advanced countries there.

Most SSA countries are likely to be able to invoke the eleven year transition period, and some countries can extend it even further. This depends on whether they already have patent laws in force. Potential administrative costs can also be reduced by establishing mutual recognition systems for patents. For example, Senegal would agree to recognize patents granted by the EU or the United States without further examination as long as a local deposit and application is made. Technical assistance in this area is likely to be needed.

## V. Summary and Policy Conclusions

In contrast to the various statements made on the "cost" or burden for developing countries from their Uruguay Round commitments, the Round is unlikely to burden SSA with many new "obligations". First, most SSA countries made no substantial liberalization commitments on border protection in agriculture, industry or services. This was partly a reflection of the nature of the agreements concluded. As many of the reductions in non-tariff barriers were designed to the types of policies applied in industrial countries, the often different policies in developing countries will be less affected. For example, many developing countries do not subsidize agriculture, but tax it, which is not covered by the agreement. Partly, it reflected the unwillingness of SSA to make meaningful commitments to bind protection to reasonable levels (applied rates will not change).

Second, the agreements offer much flexibility in the adoption of the obligations. The adoption of many new rules is subject to long transition periods, which in most cases can be further extended. Many of the general exemptions or those for balance-of-payments support remain available for unwilling liberalizers wishing to seek legal cover for trade restrictions. Apart from the increase in transparency from the notification requirements, few changes to policies are required by SSA in the short run. Some review may be required in export subsidies, and local content requirements. While the benefits of the TRIPs agreement can be questionable for most of SSA in the short run, the rules in subsidies in most cases should promote sound economic policies.

SSA has not used the Round to support domestic efforts at trade policy reform. The Round provided an opportunity for countries to go beyond their unilateral liberalization efforts in exchange for multilateral concessions, or to bind their domestic reforms to an international framework. As most models showed that most gains from the Round would come from countries' own liberalization efforts, SSA by not making liberalization commitments in the Round, may have thereby lost one opportunity for gains. The exception were the three of the five members of the Southern African Union, that used the Round to consolidate ongoing domestic reform programs. In the end, this

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means that structural change and trade liberalization in most of SSA will depend on unilateral initiatives taken independently or in the context of Bank/Fund adjustment operations. Unless these are pursued, the ability of SSA to take advantage of the emerging opportunities in their export markets may also be lost.

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GATT STATUS OF SSA COUNTRIES ANNEX

| COUNTRY | YEAR OF ACCESSION | PRE-UR SCHEDULES | DEVELOPMENT STATUS |
|---|---|---|---|
| Angola | 1994 | no | D |
| Benin | 1963 | S• | LD |
| Botswana | 1987 | no | LD |
| Burkina Faso | 1963 | S• | LD |
| Burundi | 1965 | S | LD |
| Cameroon | 1963 | no | D♦ |
| Central Africa | 1963 | no | LD |
| Chad | 1963 | no | LD |
| Congo | 1963 | no | D♦ |
| Cote d'Ivoire | 1963 | S• | D♦ |
| Djibouti | 1994 | S• | LD |
| Gabon | 1963 | ? | D |
| Gambia | 1965 | no | LD |
| Ghana | 1957 | no | D♦ |
| Guinea | 1994 | S• | LD |
| Guinea Bissau | 1994 | no | LD |
| Kenya | 1964 | no | D♦ |
| Lesotho | 1988 | no | LD |
| Madagascar | 1963 | S | LD |
| Malawi | 1964 | S* | LD |
| Mali | 1993 | S• | LD |
| Mauritania | 1963 | S• | LD |
| Mauritius | 1970 | no | D |
| Mozambique | 1992 | no | LD |
| Namibia | 1992 | S | D |
| Niger | 1963 | S• | LD |
| Nigeria | 1960 | S | D♦ |
| Rwanda | 1966 | S | LD |
| Senegal | 1963 | S*• | D♦ |
| Sierra Leone | 1961 | no | LD |
| South Africa | 1948 | S | IND |
| Swaziland | 1993 | no | D |
| Tanzania | 1961 | no | LD |
| Togo | 1964 | no | LD |
| Uganda | 1962 | no | LD |
| Zaire | 1971 | S* | LD |
| Zambia | 1982 | S* | LD |
| Zimbabwe | 1948 | S | D♦ |

* = Schedule under waiver for HS.
• = Schedule inherited from France upon accession. Not updated to HS.
D♦ = Income per capita < $1000.
D = Developing
LD = Least developed
IND = Industrial

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