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Position of Alliance Sud
on the Tenth WTO Ministerial Conference
Nairobi, 15-18 December 2015

The Nairobi Ministerial must not bury development

The Tenth Ministerial Conference of the World Trade (WTO) will take place in Nairobi, Kenya, from 15 to 18 December 2015. The original aim of the Organization's Director-General, the Brazilian Roberto Azevêdo, had been to conclude the Doha Round there. Launched in 2001 to rebalance WTO rules and disciplines in favour of countries in the South, this Round should have been concluded in 2005, then in 2006, then by countless other target dates, all of them missed. The same thing happened with the cut-off date of 31 July 2015 for the presentation of a work programme for the Nairobi Ministerial. The fact is that after 20 years of existence and with a membership of 162, the gap between developing and developed countries is wider than ever. In the name of "convergence" and "recalibration", the industrialized countries are challenging all the hard-won achievements of 14 years of negotiations. Will the first WTO Ministerial Conference to take place on the African continent finally bury the Doha "development" Round? It is not impossible.

Nairobi issues

DEVELOPING COUNTRIES	INDUSTRIALIZED COUNTRIES (INCLUDING SWITZERLAND)
Development in general	
Doha Round: The developing countries (DCs) want to conclude the Doha Round as a whole ("single undertaking"). They want to continue it after Nairobi.	The industrialized countries, led by the United States (supported by the European Union (EU), Australia and Japan), view the Doha Round as a failure and want to close it in Nairobi. They maintain that they wish to continue discussing agricultural and industrial issues outside the Doha framework, in addition to the "new issues": investment, government procurement, competition policy (called the "Singapore issues"), climate, e-commerce, etc. Like many other medium-sized countries,

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	Switzerland, that leads the “Friends of the system” group, maintains that it wants to preserve the credibility of the WTO. It would like to find a compromise that allows the multilateral negotiations to continue by lowering the level of ambition and maintaining the interest of all Members in the system. This is easier said than done…
Classification of developing countries The developing countries (especially India) are opposed to the criteria being proposed by the United States, which they consider too vague and subjective.	The United States is proposing to use very vague criteria (“graduation”) to determine the countries that would fall into a new category which should in any case exclude the emerging countries (Brazil, India, China, etc.). In its bilateral relations, the EU already makes distinctions between developing countries. Until 2013, all developing countries benefited under the generalized system of preferences (GSP), in other words unilateral tariff preferences. Since 2014, the EU has been granting GSP preferences to "low income countries" and to "lower middle-income countries" and GSP+ (i.e. even bigger tariff reductions) to those of these same countries that abide by 24 international conventions on human rights and the environment. The "high income" and "upper middle-income countries" are now excluded from these benefits (among them China, South Africa and Brazil, but not India). The number of GSP beneficiaries has therefore fallen from 178 to 92[1]. In its bilateral relations, Switzerland applies the generalized system of preferences to almost all developing countries,[2] with exceptions for certain products (Brazilian sugar, for example).
Special and differential treatment The developing countries want to operationalize the special and differential treatment	The industrialized countries, led by the United States, are unwilling to entertain

[1] http://chartsbin.com/view/2438

[2] https://www.admin.ch/opc/fr/classified-compilation/20061738/index.html#app1

for all developing countries, in other words greater flexibility, longer transition periods and smaller customs tariff reductions, among other things.	further discussion on special and differential treatment for India, China and potentially other emerging countries. The US does wish to spell it out more clearly, as called for by the G90, but only for LDCs and without accepting binding commitments.
More specifically, the G90, which includes the ACP countries (Asia, Caribbean, Pacific), the African Group and the Least Developed Countries (LDCs) has tabled an excellent proposal on special and differential treatment for all developing countries. It aims to clarify and operationalize all the rules on the matter: more policy space for industrialization, extension of the TRIPS waiver (Agreement on Trade-Related Intellectual Property Rights) for LDCs as long as they remain LDCs; greater scope to impose local content requirements (whereby foreign companies must purchase a certain amount of intermediate goods locally, recruit local personnel, etc.); a services waiver for LDCs, etc. (see also LDC proposal below). The Doha declaration called for a review of all measures relating to special and differential treatment so as to make them more operational and efficient.	Switzerland too believes that one cannot expect identical contributions from countries as different as South Korea and Pakistan, for example. Switzerland would like to come up with innovative approaches (as in the Trade Facilitation Agreement), which allow participants to contribute in accordance with their real level of development, without *a priori* having to determine differential regimes.
Agriculture	
The developing countries want a global package based on the 2008 negotiating texts. After tough negotiations, WTO Members agreed that year on relatively balanced texts covering industrial goods, services and agricultural products. The texts on agriculture foresee three pillars: market access; elimination of trade-distorting domestic supports; and elimination of export subsidies. These measures allow the rich countries to support their farmers to the tune of US$1 billion per day… **Export subsidies** The developing countries refuse to single out the elimination of export subsidies for fear that other elements of the agricultural package may also be discarded. They	The EU and Australia are calling for nothing more or less than the elimination of the special and differential treatment for developing countries envisaged under the Agreement on Agriculture. Switzerland seems keen to find a pragmatic approach and achieve balance between all the areas under negotiation. But she refuses to deal with the agricultural package in isolation. The United States is proposing the elimination of export subsidies for agricultural products. But it refuses to eliminate the other forms of export competition that are

argue that while export subsidies have practically disappeared in the United States and the EU (especially because the high prices of agricultural products render them superfluous), domestic support measures have increased exponentially, including those acknowledged to be trade-distorting (amber box, especially under the latest United States Farm Bill), as well as those that are deemed not to be trade-distorting (green box) but which do in fact also distort international trade. Some developing countries have also started to subsidize their exports, even though they are not entitled to do so in their WTO schedule (China for cotton; India for sugar; Thailand for rice, etc) **Special safeguard mechanism** One of the main demands of developing countries concerns the special safeguard mechanism, which is meant to allow them to temporarily raise customs tariffs in the event of a sudden fall in international market prices leading to a surge in imports that would jeopardize their small farmers.	export credits, food aid and state-owned enterprises – as had nonetheless been agreed at Hong Kong in 2005. The EU is ready to eliminate export subsidies by 2018 but would like to include also the other elements of export competition. Switzerland is against the elimination of export subsidies alone because of the "Chocolate law", see below, page 9. On domestic support, the United States response is that they have increased substantially in emerging countries and that it will make no concessions as long as China and India refuse to do so. The industrialized countries and Brazil are unwilling to discuss this. Switzerland is of the view that it should be agreed only if developing countries take market access commitments in the areas of interest to it, i.e. industrial goods and services.
Food security India wishes to push through its proposal for allowing developing countries to set up foods stocks for their poor populations, formulated at the Bali Ministerial in 2013 but never really endorsed. The final Bali document spoke of a "peace clause" but did not specify how long it would remain in effect – for four years or until a permanent solution is found. In November 2014, WTO Members finally agreed on a permanent solution, but it is taking time to materialize. Yet it would suffice to: (1) implement (not question, as the industrialized countries are doing) Article 6.2 of the Agreement on Agriculture, which authorizes flexibilities for developing countries or (2) update the reference price used as the basis for calculating the subsidy and which goes back to 1986-	The United States is unwilling to discuss the Indian proposal at Nairobi, arguing that the Bali final document set a deadline of 2017. Yet, in November 2014 it was decided to bring forward the decision to December 2015…

87, when the prices of agricultural products were much lower.[3]	
LDC proposals	
Market access The LDCs are calling for duty-free and quota-free (DFQF) market access for 97% of their products.	The United States refuses to accept binding measures, especially for LDCs like Bangladesh, Cambodia and Nepal. It is unwilling to go beyond a declaration of intent, as in Bali in 2013. The EU and Switzerland already accord DFQF access for almost 100% of LDC products. "Almost", because, in order to finance its mandatory stocks, Switzerland continues to levy a contribution towards the guarantee fund (effectively a customs tariff) on certain products imported from LDCs.
Rules of origin The LDCs propose that the preferential rules of origin be simplified. Rules of origin serve to stipulate what part of a product must have been processed in a country to be considered as originating from that country. They are often too complex and restrictive for LDCs to profit fully from their trade advantages. Currently, these rules are drafted unilaterally, without harmonization, and this makes it extremely difficult for LDCs to export. It was agreed in Hong Kong in 2005 that preferential rules of origin applicable to LDCs should be transparent and simple. LDCs are requesting, for example, to be allowed to deduct the cost of freight and insurance from the value of non-originating materials. Or to abolish the requirement to provide a document of origin for imports worth less than US$2000.	The United States maintains that it cannot simplify its rules of origin for the LDCs. The EU and Switzerland regard some LDC demands as excessive (75% of non-originating materials, for example).
Services waiver	

[3] See Alliance Sud Position on the Bali Ministerial of 2013: «Food security in exchange for trade facilitation»,

http://www.alliancesud.ch/fr/politique/commerce/securite-alimentaire-contre-facilitation-des-echanges

At the 2011 Ministerial, Members adopted a waiver concerning the General Agreement on Trade in Services (GATS) permitting preferential market access for services and service suppliers of LDCs. This is of paramount importance to LDCs, as the sector is growing steadily and contributes substantially to their gross domestic product (GDP); that share is as much as 50% in some sub-Saharan African countries although it comprises a mere 0.5% of world trade in services (LDCs represent 1% of overall world trade). Yet the operationalization of this waiver is not clear, in particular, in the sector of greatest interest to LDCs, which is mode 4 supply of services – movement of natural persons, including low-skill persons. A decision along these lines was adopted at Bali in 2013 but has not been made binding.	To date, only some 20 industrialized countries, including Switzerland, have notified the waivers they grant in regard to LDC services.
Cotton The LDCs propose that domestic support and export subsidies for cotton be eliminated and that they be granted duty-free, quota free (DFQF) market access.	The United States and EU maintain that they are unable to eliminate domestic support and improve market access. The issue is sensitive because some developing countries like China have also started to subsidize cotton. This does not concern Switzerland, and the country already grants DFQF market access.
Fisheries The LDCs wish to strengthen the disciplines on fishing subsidies. But as the sector is crucially important to many of them, they wish to be able to maintain those subsidies that do not contribute to overfishing.	There is no real North-South divide on this subject, but a divergence of opinion between countries that wish to abolish the subsidies (estimated at US$14-20 billion per year) (United States, Peru, Argentina, and Norway…) as they view them as contributing to overfishing and the depletion of fisheries, and those who deny this link and do not wish to eliminate them (Japan, South Korea, Taiwan). This does not concern Switzerland.
New issues	
Singapore issues The developing countries have always been opposed to these issues, at least as long as the Doha Round is not concluded. The	The industrialized countries wish to wind up the Doha Round so as to introduce the "Singapore issues" at the WTO (trade

attempt by the industrialized countries to impose them was one of the reasons for the failure of the Cancun Ministerial in 2003.	facilitation, investment, government procurement and competition policy. Trade facilitation and government procurement are already covered by new WTO agreements, but not (yet) investment and competition policy).
21st century issues Developing countries do not wish to assume new commitments that would reduce their policy space even further.	The industrialized countries are keen to introduce the 21st century issues at the WTO (environment, e-commerce) and those proposed in the TISA (Trade in Services Agreement), the TTIP (trans-Atlantic partnership between the EU and the United States), and the TPP, trans-Pacific partnership between the United States and 11 other countries): public services, state-owned enterprises, government procurement, the free transfer of personal data, etc.
Trade Facilitation Agreement Thirteen developing countries have so far ratified the Agreement. In Bali in 2013, developing countries feared that once this Agreement was concluded, the industrialized countries would lose interest in the Doha Round. The facts would seem to bear this out.	The industrialized countries were the ones mainly pushing for this agreement. Adopted in Bali in 2013, it was expected to enter into force in Nairobi, but it has so far received only 52 ratifications (half the required number), including that of Switzerland.
Intellectual property	
Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) At the beginning, with the exception of Switzerland and the United States, all countries were opposed to it, even the industrialized countries.	Switzerland and the United States were the only countries calling for an end to the moratorium on TRIPS non-violation complaints. Under this moratorium, the possibility for a country to file a complaint against another even if no agreement has been breached, does not apply to the TRIPS Agreement. Switzerland and the United States were calling for an end to this moratorium so as to avoid the proliferation of "frivolous" laws, which would jeopardize intellectual property. However, the TRIPS Council has decided to extend this moratorium for two more years and Switzerland will have to rally to the consensus.

The LDCs are seeking a waiver of the application of the TRIPS Agreement while they remain LDCs, and this so as to promote generic medicines.	The EU is ready to support the LDC demand not to be required to apply the TRIPS Agreement while they remain LDCs. The United States and Switzerland are opposed to this. They had initially called for a transition period of just 10-years. In the end, a compromise solution of 17 years was found between the United States and LDCs and adopted by the TRIPS Council. Switzer-land will have to rally to the consensus.

Probable Nairobi outcome: mini-package

Far from attempting to conclude the Doha Round, the Director-General, Brazil's Roberto Azevêdo, is aligning himself with the United States and the industrialized countries. He proposes the adoption of the following mini-package:

1. A package for LDCs that includes special and differential treatment in some fields – but for LDCs only -, cotton, services waiver, rules of origins, etc...
2. The elimination of agricultural export subsidies.
3. Transparency measures in anti-dumping rules and fisheries.

(Azevêdo's initial proposal of introducing transparency measures into domestic services regulations elicited opposition from developing countries, which do not wish to further reduce their policy space.)

Switzerland's position and Alliance Sud demands

As is clear from the table above, in this growing North-South confrontation, Switzerland is largely aligned with the United States and other industrialized countries, though with a few exceptions, particularly regarding the elimination of agricultural export subsidies, which concerns it most directly.

In the view of Alliance Sud, Switzerland should accept "less than full reciprocity" for developing countries, in other words, a certain asymmetry of concessions, which is the very spirit of the Doha Round!

Switzerland should commit to a pro-development conclusion of the Doha Round, as development is not limited to LDCs alone. More specifically:

Switzerland's positions	Alliance Sud demands
Agricultural package Switzerland aligns itself with the industrialized countries, which refuse to discuss the agricultural package based on the 2008 negotiating texts – as demanded by the developing countries. The agricultural package includes, *inter alia,* the lowering of customs tariffs, disciplines with regard to trade-distorting domestic support and the special safeguard mechanism. Switzerland maintains that it cannot envisage concluding an agreement on the agricultural package alone, as it wants to be able to negotiate concessions under the other pillars of the Doha Round, such as industrial goods and services.	Switzerland should discuss the agricultural package on the basis of the 2008 texts. It should agree to recognize that agriculture is the most important subject for developing countries and should grant concessions, even if developing countries are not ready to do likewise for industrial goods and services.
Switzerland is not openly opposed to India's food security proposal, but neither does she support it.	Switzerland should expressly support the Indian proposal, all the more so as it has no direct interests in the matter.
Export subsidies for agricultural products Switzerland maintains that it wishes to honour the commitments it made at the Hong Kong and Bali Conferences regarding the elimination of export subsidies. But it points out that these commitments arose in a particular context, that of the conclusion of the Doha Round and the implementation of all commitments relating to export competition. This is why Switzerland refuses to eliminate export subsidies in isolation, without disciplines also being imposed on the other pillars of export competition, which are	The view of Alliance Sud is that Switzerland should eliminate the subsidies for processed agricultural goods envisaged under the “Chocolate law”, and this should be done even if WTO Members fail to reach agreement on the other aspects of the agricultural package and on export competition. Switzerland is amongst the last industrialized countries, along with Canada, that still maintain this particularly harmful trade instrument. It in fact creates a dumping effect that jeopardizes agriculture in the

state-owned enterprises, export credits, and food aid. Although Switzerland no longer subsidizes basic agricultural products, it is directly concerned by the United States proposal on the elimination of export subsidies because of the "Chocolate law", which serves to subsidize processed agricultural exports by offsetting the additional cost of Swiss inputs in the agri-food sector. It foresees CHF 115 million per year even though that amount has never been fully spent. Should the conditions be created for the elimination of export subsidies, Switzerland maintains that it needs time and more flexible adaptation modalities than envisaged in the draft 2008 agreement.	countries of the South, which are unable to withstand the flood of subsidized agricultural products (processed or not). It is time to put an end to this.
LDC package But for a few exceptions (contributions to the guarantee fund for financing mandatory stocks), Switzerland already grants DFQF market access for all products from LDCs. Switzerland recently accorded them a services waiver. Simplification of rules of origin: Switzerland regards some LDC demands as excessive (75% of non-originating materials, for example).	Alliance Sud welcomes Switzerland's commitments but urges it to cease funding its food reserves by levying a tax (an integral part of customs tariffs) on imports of certain products (semi-milled and milled rice, broken rice, edible oils and fats, feed commodities) coming from LDCs. A solution must be found as part of the current revision of Switzerland's National Economic Supply Act. She must simplify its rules of origins even further.
Special and differential treatment (SDT) Switzerland wishes to reserve this to the LDCs.	Switzerland should support the G90 proposal on special and differential treatment for all developing countries and not just for the LDCs. There is no denying that the world has changed since the launch of the Doha Round in 2001 and some developing countries have made spectacular progress, but in per capita income terms, none of them can be classified alongside the industrialized countries. Therefore, wanting to limit SDT to the LDCs is abusive, as it still makes sense for the great majority of developing countries.

	Besides, creating new categories would open a Pandora's box allowing industrialized countries to divide developing countries so as to better impose their decisions on them.
Singapore issues Like other industrialized countries, Switzerland would like to reintroduce the Singapore issues at the WTO – investment, government procurement, competition policy – although they were rejected by developing countries in 2003 in Cancun. Officially, it would be a matter of "conducting an in-depth reflection", but at the WTO, all negotiations that have led to new liberalizations, began officially with an "in-depth reflection"…	Switzerland should cease pushing the Singapore issues, at least while the Doha Round is not concluded. On the one hand, developing countries must be able to retain some policy space on those issues and not be bound by disciplines subject to the WTO Dispute Settlement Body. On the other, they are the topics of greatest importance to the industrialized countries, which if they succeed, would lose interest once and for all in the Doha Round. This is clear from their intention to "bury" it in Nairobi, once they had obtained the Trade Facilitation Agreement (also one of the Singapore issues).

Conclusion

Alliance Sud is not clinging to the Doha Round. In 14 years the world has changed, and it is obviously no longer possible to reach a global agreement as initially envisaged. Perhaps more pragmatic solutions need to be sought. The problem is that a “cherry picking approach” may well prevail, and that the only subjects retained are those that best suit the interests of the industrialized countries, those on which they are prepared to make some minimal concessions... Yet, the very spirit of the Doha Round was "less than full reciprocity", meaning that industrialized countries would make greater concessions than developing countries. Switzerland seems to have forgotten this. For example, she is only willing to make concessions in agriculture if developing countries liberalize industrial goods and services. But if everyone remains unyielding, not only will it be impossible to conclude the Doha Round, but *a fortiori*, to make any progress on development outside of a clear legal framework. The Doha Round was originally launched to rebalance the rules of international trade in favour of developing countries. Now, 14 years on, this is still a far way off. The industrialized countries still subsidize their agriculture in a manner that is harmful to developing countries (there is talk of US$1 billion per day), customs tariffs on agricultural exports from developing countries are still high in the industrialized countries (including in Switzerland, except for LDC exports); special and differential treatment is far from being fully applied, and today the industrialized countries wish to reserve it to the LDCs – to mention but a few of the issues raised in this paper, which are not exhaustive anyway.

Alliance Sud urges Switzerland to commit to a pro-development WTO within a transparent framework. This means moving beyond the "quid pro quo" approach and taking yet another step towards favouring developing countries.

Isolda Agazzi, 4th December 2015