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ISBN : 978-1-907247-57-6

## ***Reflections on a new democratic South Africa's role in the multilateral trading system***

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**October 2011**

**BWPI Working Paper 158**

*Creating and sharing knowledge to help end poverty*

[www.manchester.ac.uk/bwpi](http://www.manchester.ac.uk/bwpi)

## **Abstract**

The paper argues that South Africa's participation in the World Trade Organization since the birth of its democracy in 1994 was informed by its domestic development challenges. It claims that South Africa's values were derived from its long struggle against apartheid and its transition to a new democracy. South Africa's political leadership in the Doha negotiations was also strengthened by its deep democratic institutions and consultative processes. South Africa's values, articulated by Nelson Mandela, reflected a deep commitment to multilateralism and consensus building, fairness and justice, inclusiveness, and a concern to support and promote development, within South Africa, and also in developing countries, especially the African continent. The paper discusses how and why South Africa's unique value system enabled it to play a significant role in the Doha Round. The paper concludes that South Africa is both part of the group of major emerging developing countries and a crucial bridge to a smaller group of developing countries, particularly in Africa.

**Keywords:** South Africa, multilateral trading system, WTO, democracy, Mandela, normative

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**Acknowledgement:** This paper is written in the author's personal capacity. He is indebted to Rorden Wilkinson, James Scott and Xavier Carim for valuable comments on an earlier draft.

## I. Introduction

Jim O'Neill, the chief economist of Goldman Sachs, who coined the acronym BRICS (Brazil, Russia, India and China) in 2001, predicts that the combined GDP of the four BRICs economies could overtake the combined GDP of the G7 economies by 2050.<sup>1</sup> The BRICs economies began to meet as a group at a summit in Russia in 2009 and then again in Brazil in 2010. As of December 2010, South Africa (SA) became a full member of the BRIC countries and participated in the third summit of BRICS held in China in April 2011.<sup>2</sup> The invitation extended to SA to join the BRICs<sup>3</sup> surprised many observers, including the founder of the acronym, O'Neill.<sup>4</sup> In an op-ed in the *Financial Times* he argued that South Africa is not a likely member of the BRICs and was not even included in the 'Next 11' emerging economies after the BRIC countries.<sup>5</sup> O'Neill considered that South Africa did not have a sufficiently large population (with just under 50 million people) to be a BRIC country.

However, O'Neill's view was not shared by all observers of South Africa's growing economic role in the African continent. Some business observers were to argue that

South Africa is becoming the corporate captain of Africa because it has more pan-African companies than any other country in Africa and this gives it a seat at the table of the BRICs.<sup>6</sup>

A *Financial Times* analyst argued that South Africa's influence within Africa gives it 'disproportionate weight, making it an attractive partner for the BRICs when they seek to exercise diplomatic muscle'.<sup>7</sup> He went on to state,

that influence was visible late last year in Copenhagen when South Africa – alongside Brazil, India and China – took an active role in climate change negotiations, giving birth to the so-called BASIC group.<sup>8</sup>

South Africa's Minister of International Relations and Cooperation argued that the inclusion of South Africa in the BRIC countries recognised the role it was playing in:

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<sup>1</sup> See O'Neill, J. (2011). 'Why we must stop talking about "emerging markets"', *Europe's World*, Spring.

<sup>2</sup> See 'South Africa's full membership of BRICS', *The Diplomat*, December 2010. Internal newsletter of the Department of International Relations and Cooperation, Pretoria, South Africa.

<sup>3</sup> The acronym 'BRIC' is used in this paper to describe the BRIC countries before South Africa's inclusion and the acronym 'BRICS' is used to describe the inclusion of South Africa in the original BRIC countries.

<sup>4</sup> O'Neill, J. (2010). 'How Africa can become the next Bric', *Financial Times*, 27 August. The 'Next 11' emerging markets, according to O'Neill, were Bangladesh, Egypt, Indonesia, Iran, Korea, Mexico, Nigeria, Pakistan, Philippines, Turkey and Vietnam.

<sup>5</sup> Two African countries were included in O'Neill's 'Next 11' – Nigeria and Egypt and not South Africa.

<sup>6</sup> See quote by Michael Powers from Investec Asset Management (Cape Town), in Lapper, R. (2010), 'Out of the bottle', *Financial Times*, 1 February.

<sup>7</sup> *Ibid.*

<sup>8</sup> The acronym 'BASIC' is used to describe the group of four countries – Brazil, South Africa, India and China – that emerged at the Copenhagen COP 16 UNFCCC Summit as a coalition or negotiating group on Climate Change.

advancing the restructuring of the global political, economic and financial architecture into one that is more equitable, balanced and rests on the important pillar of multilateralism.<sup>9</sup>

This paper argues that the reasons for the non-inclusion of South Africa in the BRICS group of countries offered by O'Neill are too economic and fail to appreciate the role played by these countries, including South Africa, in shaping the emerging architecture of global governance. It argues that the inclusion of South Africa in the BRICs group recognises the significant role that South Africa has played and continues to play in contributing to several areas (political, financial, environment, trade) of global governance. The paper discusses the role of South Africa in the multilateral trading system, since the birth of the new democratic South Africa in 1994, and focuses particularly on South Africa's role in the World Trade Organization's (WTO's) Doha Round. South Africa participated in the historic emergence of stronger and more assertive developing countries in the multilateral trading system, both before and after the launching of the Doha Round. South Africa was to contribute and participate in the process of shaping the debates and the demands for a fairer, more balanced, development-friendly and inclusive multilateral trading system.

The paper argues that South Africa's participation in the WTO was informed by its domestic development challenges, and that its values were derived from its long struggle against apartheid and its transition to a new democracy. In addition, its political leadership in the Doha negotiations was strengthened by its deep democratic institutions and consultative processes. South Africa's values, articulated by Nelson Mandela, reflected a deep commitment to multilateralism and consensus building, fairness and justice, inclusiveness, and a concern to support and promote development, within South Africa, and also in developing countries of the South, especially the African continent.<sup>10</sup>

The argument unfolds as follows: in the next section, the paper elaborates the principles that have guided South Africa's negotiators in the WTO since the birth of its new democracy in 1994. The discussion sets out some approaches that South Africa's negotiators have drawn from South Africa's struggle for freedom, democracy and human dignity, and the example of its leaders, and argues that these principles and approaches have guided South Africa's negotiators in the WTO Doha Round and have contributed to building its credibility and influence, thus making it eligible to join the newly emerging group of countries that have become known as the BRICS. O'Neill's narrow economic approach, that gives undue weight to large population size, fails to take into account the positive contribution that countries such as South Africa have been making in building the new architecture of global governance, and its role in advancing the concerns and interests of the African continent.

The paper then discusses South Africa's role and participation in the WTO Doha Round in five areas - i) the launching of the Doha Round; ii) the negotiations on TRIPS and Public Health; iii) the formation of the G20 group of developing country alliance on agriculture; iv) the negotiations on Special and Differential Treatment for developing countries; and v) the NAMA (Non-Agricultural Market Access)<sup>11</sup> group of developing countries. The paper then goes on to discuss how and why

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<sup>9</sup> See 'South Africa's full membership of BRICS', *op cit*.

<sup>10</sup> See 'A South African Trade Policy and Strategy Framework', Department of Trade and Industry South Africa, 2010, <http://www.dti.gov.za/publications.jsp?year=2010&subthemeid=> (accessed 11 October 2011).

South Africa's unique value system enabled it to play a significant role in the Doha Round. The paper concludes that the role South Africa has played in the Doha Round illustrates that it is both part of the group of major emerging developing countries and a crucial bridge to a smaller group of developing countries, particularly in Africa.

## **2. Principles and approaches guiding South Africa's role in the multilateral trading system**

### **2.1 Principles**

In Mandela's first major statement on foreign policy, he argued that the new democratic South Africa should base its foreign policies on six principles, namely: human rights; justice and respect for international law; peace; the interests of Africa; and international cooperation on economic development.<sup>11</sup> In setting out the new South Africa's foreign policies in this way, Mandela was to embed the new South Africa's policies in the best tradition of idealism, reflecting the new South Africa's 'own collective self-concept'.<sup>12</sup> In setting out this vision, Mandela was reflecting aspirational goals in a similar manner to that of Woodrow Wilson when he set out in his 14 points after the First World War.<sup>13</sup> Indeed, Mikhael Gorbachev was to also paraphrase Woodrow Wilson when setting out his own vision for the post-Cold War in a speech to Stanford University in 1990. John Ruggie, an eminent observer of US foreign policy, has lamented the missing idealist dimension in US foreign policy since the Cold War. Instead, he argues that 'the interest-driven discourse of realism and the triumphalist discourse of unilateralism' have remained dominant in US foreign policy debates and practice.<sup>14</sup>

Mandela's arrival on the world stage has added a fresh breath of air in bringing these concepts back onto the agenda of the global debate. The perspective that Mandela advanced was not just his alone, but is deeply embedded in the struggle for freedom, democracy and justice waged by the people of South Africa against an unjust apartheid regime.<sup>15</sup> In his seminal paper on foreign policy, Mandela argued that the new South Africa's policies should be based on the principles, approaches and lessons learnt from it and from his own struggle against apartheid and oppression. Thus, Mandela argued that the new South Africa cannot be indifferent to the rights of others and boldly asserts that 'human rights will be the light that guides our foreign affairs'. He argued too that struggle has taught us that 'only true democracy can guarantee rights' and that 'respect for diversity' should be promoted in international institutions. He declared that South Africa's relations with the continent of Africa should be based on the 'principles of equity, mutual benefit and peaceful cooperation', and he committed the new South Africa to taking responsibility for the Southern African region, 'not in a spirit of paternalism or dominance but mutual cooperation and respect'.

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<sup>11</sup> Mandela, N. (1993). 'South Africa's future foreign policy', *Foreign Affairs*, 72(5), November/December.

<sup>12</sup> Ruggie, J. G. (1994). 'Third try at world order? America and multilateralism after the Cold War', *Political Science Quarterly*, 109(4).

<sup>13</sup> Macmillan, M. (2002). *Paris 1919. Six Months that Changed the World*. New York: Random House Trade (pb).

<sup>14</sup> Ruggie, J. G. (1994), *op cit*.

<sup>15</sup> Sachs, A. (2009). *The Strange Alchemy of Life and Law*. Oxford: Oxford University Press.

These values were developed within the liberation movement and the cauldron of the South African struggle for freedom, democracy and human dignity. One example provided by Albie Sachs illustrates this poignantly. Sachs recounts to us the time (1985) when Oliver Tambo, the President of the ANC in exile, called him to Lusaka (the headquarters of the ANC in exile) to draft a code of conduct for ANC security officials when interrogating suspected spies of the apartheid regime. Sachs had drafted a code of conduct based on international law principles and Oliver Tambo called on the ANC to debate the draft code of conduct. Sachs points out that the ANC, including its security officials, voted overwhelmingly in favour of such a code of conduct. He reflects that in coming to this decision the 'young soldiers (of the ANC) were making unambiguous statements about the kind of people we were, what we were fighting for, and what our morality and core values were about'. Thus Sachs observes that ANC members had voted against torture in all circumstances, as 'they had seen in practice how torture had dehumanized not only the tortured, but the torturers themselves...'.<sup>16</sup>

The ANC in exile led by Oliver Tambo had worked tirelessly to obtain the support of the international community to isolate the apartheid regime. It took many years of dedicated and relentless work to persuade the overwhelming majority of members of the United Nations to vote in support of resolutions that denounced apartheid as a crime against humanity, and eventually to support sanctions against the apartheid regime.<sup>17</sup> The ANC, in turn, was influenced by the values of the international community, reflected in the United Nations Universal Declaration of Human Rights. These values of democracy, freedom and human dignity that evolved in the cauldron of the struggle against apartheid injustice and the active support and engagement of the international community, were incorporated in the new Constitution of South Africa and a Bill of Rights.<sup>18</sup>

In the first few years of his presidency of the new South Africa, Mandela expressed his commitment to the multilateral system. He reminded the audience that although South Africa had been a member of the GATT since its inception, when 'the vast majority of South Africans had no vote', South Africa was committed to 'vastly improve on the management of the world trading system to the mutual benefit of all nations and people',<sup>19</sup> and he committed South Africa to work for a rules-based multilateral trading system that was 'just'. Thus, Mandela's statement to the WTO expressed the need for a strengthened multilateral trading system that was fair, balanced, inclusive and that addressed the needs of the developing countries. In his earlier paper in *Foreign Affairs*, Mandela clarified that addressing the deep-seated economic development challenges of South Africa will be the driving force of its foreign policy. In particular, he set out the need to address 'severe poverty, and extreme inequality in living standards, income and opportunity'.<sup>20</sup> These principles were to guide South Africa's trade negotiators in the WTO since 1994. We argue that the approaches taken by South Africa's negotiators to each of the negotiating issues discussed below reflect the 'idealist and aspirational' values that have emerged from South Africa's struggle for democracy, freedom and human dignity, reflecting its 'own collective self-concept', in sharp contrast to 'the interest-

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<sup>16</sup> Sachs, A. (2009), *ibid.*

<sup>17</sup> Callinicos, L. (2004). *Oliver Tambo. Beyond the Engeli Mountains*, South Africa: David Philip,

<sup>18</sup> Constitution of the Republic of South Africa, 1996. Pietermaritzburg: LexisNexis, Interpak Books.

<sup>19</sup> WTO document (1998). 'Statement of Nelson Mandela, President of South Africa', at the 50th Anniversary of the Multilateral Trading System, May 1998, Geneva.

<sup>20</sup> Mandela, N. (1993), *op cit.*

driven discourse of realism' that reflects the negotiating positions and approaches of the major developed countries in the Doha Round. In addition to these values, we set out below the negotiating approaches that were to guide South Africa's negotiators in the Doha Round.

## 2.2 Negotiating approaches

In the discussion below, we identify five negotiating approaches that have become the hallmark of South Africa's particular negotiating style. These include: the need to take into account the interests of 'both' South Africa and others, especially that of the African Continent; the capacity to listen to different sides of an argument; consultations with constituencies at home; balancing principles with capacity to implement; and adhering to 'principles' whilst being pragmatic on 'strategy'.

In advancing the principles he articulated above, Nelson Mandela also took into account South Africa's development interests and concerns. However, Mandela was to clearly state that, when considering the balance between these issues, the reality of South Africa's own development concerns and interests had to be considered and not undermined. Richard Stengel argues that Mandela cultivated the habit of considering 'both' or often several sides of a question, rather than adopting a simple 'yes' or 'no' answer. This capacity to consider 'both' the concerns and interests of South Africa and the concerns and interests of its African neighbours when engaging with the major developed countries became a defining characteristic of South Africa's approach.<sup>21</sup> In addressing the issues and concerns of the continent, Thabo Mbeki was to argue that South Africa had to learn to 'walk on two legs', as the Chinese proverb stated.<sup>22</sup>

In discussing the approach that he had evolved as a Judge of the Constitutional Court of South Africa, Sachs was to draw on the experience of the Truth and Reconciliation Commission (TRC) of South Africa. He identifies four categories of truth: observational truth; logical truth; experiential truth; and dialogic truth. Observational truth is based on observation – it is detailed and focused. Logical truth is arrived at by deductive and inferential processes. Experiential truth, he states, is the truth to which we are all exposed by living through a particular experience. Dialogic truth, he argues, is a truth based on an interchange between people. He argues that we all have different experiences of reality, and diverse interests and backgrounds that influence the meaning of those experiences for ourselves. The South African Truth Commission, he states, placed dialogue as the foundation on which to rebuild the dignity of people and build a common citizenship. Sachs postulates that this dialogue reflects 'the equality of voice that marks a decisive start, the beginning of a sense of shared morality and responsibility'. This approach, of listening to different sides of an argument and to the different experiences of South Africa, was to characterise the approach to resolving issues in the new South Africa.

It is for this reason that South Africa developed an institutional framework for policy making and development as its new democracy was born in 1994. Rob Davies, the South African Minister of Trade and Industry since 2009, explained this as follows:

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<sup>21</sup> See 'A South African Trade Policy and Strategy Framework', *op cit*.

<sup>22</sup> See Mbeki, T. (2002). *Africa: Define Yourself*. Cape Town: Tafelberg Publishers and Mafube Publishing.

In 1994 we recognized that any transformation programme on the scale we envisaged would entail significant social and economic adjustment costs. Consequently, constitutional provisions were made for co-operative governance between all tiers of government, as well as the establishment of representative policymaking institutions which would further our pursuit of socio-economic transformation in South Africa. In this regard the National Economic Development and Labour Council (NEDLAC) was established in 1995 as a statutory body drawing together Government, organized labour, business, and community organizations to develop consensus around key areas of economic, trade, labour and development policy-making.<sup>23</sup>

This consultative framework provides a great deal of discipline to the positions of government negotiators in bilateral, regional and multilateral negotiations.

South Africa has one of the world's most progressive constitutions and Bill of Rights, which provides for socio-economic rights for its citizens. However, the South African state has also inherited huge socio-economic challenges from its apartheid legacy. The government is therefore challenged to balance the need to respond positively to the socio-economic and development needs of its people and the capacity of the state to provide for these needs. How to find an appropriate balance between these concerns arose in the case of Mrs Grootboom.<sup>24</sup> When the case was referred to the Constitutional Court, Albie Sachs explains that the key concept in the provision of access to adequate housing was the obligation on the state to take reasonable legislative and other measures progressively to realise the right. The Court took the view that if measures taken by the state to address adequate housing failed to meet the standard of reasonableness, then the state would be in breach of its constitutional obligations. Thus, the approach taken by the court went beyond determining whether the state had the capacity to provide for the right enshrined in the constitution, but it created the onus on the state to explain what reasonable steps were taken to provide for these rights. This is the basic approach that has guided the government of the new South Africa in the many debates on how to address the challenges of poverty and inequality that prevail in South Africa. It was also to guide South Africa's trade negotiators in the multilateral trading system.

In his book, *Mandela's Way: Lessons on Life*, Richard Stengel argues that: 'Mandela is a man of principle – exactly one: Equal rights for all, regardless of race, class or gender. Pretty much every thing else is a tactic'.<sup>25</sup> He goes on to argue that: 'Mandela is a thorough-going pragmatist who is willing to compromise, change, adapt, and refine his strategy as long as it got him the promised land'. Stengel argues that Mandela learnt to examine these principles against the changing conditions. Thus, for Mandela, 'when conditions change you must change your strategy and your mind'. Mandela's approach can be described as a 'mixed distributive strategy' in the academic discourse of trade negotiations. In an attempt to develop a theory of negotiating strategies used by

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<sup>23</sup> For a discussion of South Africa's participatory decision making system, see Papadakis, K. (2006). *Civil Society, Participatory Governance and Decent Work Objectives: The Case of South Africa*. International Institute for Labour Studies, Research Series, 112, ILO, Geneva. Available online: <http://www.ilo.org/public/english/bureau/inst/download/112.pdf> (accessed 11 October 2011).

<sup>24</sup> Sachs, A. (2009), *op cit*.

<sup>25</sup> Stengel, R. (2010). *Mandela's Way. Lessons on Life*. London: Virgin Books.



negotiators, John Odell argues that the behaviour of negotiators could be described in 'two polar ideal types' – a 'purely distributive strategy' and a 'purely integrative strategy'. The first is described as 'a set of tactics that are functional only for claiming value from others and defending against such claiming, when one party's goals are partly in conflict with those of the other'. The second strategy is described as 'a set of tactics instrumental in the attainment of goals that are not in fundamental conflict and hence can be integrated for mutual gain to some degree'. Odell suggests that a 'mixed-distributive strategy' can provide more gains than a purely distributive or purely integrative one.

It will be argued that, in the course of the WTO negotiations, South Africa's negotiations were to adhere to the principles of striving to build and strengthen a multilateral trading system that was fair, balanced, inclusive, and that addressed the needs of the developing countries whilst adhering to these principles. South Africa's negotiators adopted different strategies and tactics at different stages of each of the negotiations as the 'conditions' changed. Following Odell's conceptualization, we argue that South Africa was to use a mix of a 'purely distributive' and a 'purely integrative' strategy, depending on the nature of the negotiations (conditions) and the stage (time) of the negotiations. We proceed to discuss the role of South Africa in the WTO negotiations.

### **3. South Africa's role in the Doha Round**

In this section, we set out five of the issues where South Africa was to play a significant role in the Doha Round. In each case – the launching of the Doha Round; the negotiations on TRIPS and Public Health; the formation of the G20; the negotiations on Small and Vulnerable Economies; and its contribution to the formation and coordination of the NAMA 11 – it is argued that South Africa played a central role in advancing these negotiations and the development objectives of the Doha Round.

South Africa was a founding member of the General Agreement on Tariffs and Trade (GATT) in 1947. However, the apartheid regime then considered South Africa to be a 'developed' country. As it mainly represented the interests of the small white minority, it did not argue the case for development issues to be considered. In the Uruguay Round, South Africa was thus forced to undertake developed country commitments in key market access areas, including agriculture, industrial tariffs (NAMA) and services.<sup>26</sup> These commitments have become a major issue for South Africa in the current Doha Round of negotiations, as South Africa's legal commitments (bindings) in each of these areas are vastly higher than those of its comparator developing countries in the WTO.

In March 1999, Minister Alec Erwin set out South Africa's approach to a new round of negotiations in a speech to the 'High Level Symposium on Trade and Development' in Geneva.<sup>27</sup> Erwin argued that it was mainly the developed countries that were required to undergo reforms this time, to allow for a structural shift of resources to developing countries. He repeated this argument in another

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<sup>26</sup> Hirsh, A. (2005). *Season of Hope: Economic Reform Under Mandela and Mbeki*. Scottsville, South Africa: University of KwaZulu Natal Press, and Ottawa, Canada: IDRC.

<sup>27</sup> Erwin, A. (1999). 'The integration of developing countries in the multilateral trading system'. Speech presented to the High Level Symposium on Trade and Development, Geneva, WTO, 18 March.

speech in Stockholm.<sup>28</sup> He called for the structural impediments on developing countries' development to be removed, by opening up the agricultural markets and other so-called 'grandfather industries' of developed countries to developing countries. The grandfather industries included the highly protected sectors in developed countries, such as sugar, cotton, textiles and steel. He argued thus that 'the challenge of development remains fundamental and will have to be a top priority for the coming deliberations in the WTO'. Erwin was to acknowledge that the existence of the rules-based system 'was an essential achievement and starting point'. However he argued that 'it is imperative that the rules are designed to achieve clear and equitable objectives'.

Thus it was from this perspective that South Africa was to play a key role in supporting the launch of a new round of negotiations at Doha.<sup>29</sup> Minister Alec Erwin was to be appointed as a friend of the Chair, together with five other Ministers, assisting the chair to broker a consensus on the objectives and mandates of the Round. South Africa was also instrumental in ensuring that the final text that did eventually emerge as the Doha Declaration (later called the Doha Development Agenda) contained various commitments to the development objectives of developing countries. The first issue in which South Africa was to play an active role during the course of the Doha Round was that of TRIPS (trade-related aspects of intellectual property rights) and public health.

The TRIPS agreement has been controversial since it was adopted as an outcome of the Uruguay Round of trade negotiations. Policy makers in both developed and developing countries continued to debate how to: create an optimum balance between the interests of society; use patents (market exclusivity) as an incentive to pharmaceutical companies to invest in research and development, so that new drugs can be developed to combat diseases; and ensure that this exclusivity does not make drugs unaffordable for the majority of people, particularly in poor developing countries. The TRIPS agreement contained some flexibility (use of compulsory licences and parallel imports) to prevent abuse by patent owners. However, this flexibility was contested by the US pharmaceutical industry. Thirty-nine pharmaceutical companies launched a case against the South African Medicines Act in 1998 after failing to persuade the South African government to withdraw or modify the provisions of Article 15(c) of the South African Medicines and Related Substances Act of 1965. The US believed that this legal provision was 'inconsistent with South Africa's obligations and commitments under the WTO TRIPS Agreement'.<sup>30</sup>

Thus, there was increased public pressure from developing countries and NGOs in the US and Europe for the WTO, at Doha, to re-affirm the right of governments to act in the interests of public health. In addition, there was recognition that many developing countries were unable to use the compulsory licence mechanism provided by the TRIPS agreement to access affordable drugs, as they did not have the capacity to manufacture pharmaceuticals. Ministers in Doha thus instructed

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<sup>28</sup> Erwin, A. (1999). 'The integration of the developing countries into the world's multilateral trading system'. Speech made to a Symposium on 'The Global Trade Agenda – Challenges and Opportunities', Stockholm, 12 April.

<sup>29</sup> See Harbinson, S. (2009). 'The Doha Round: "death-defying agenda" or "don't do it again"?' , Brussels: *ECIPE Working Paper, No 10/2009*.

<sup>30</sup> For a detailed discussion of this issue, see Deere, C. (2009). *The Implementation Game: The TRIPS Agreement and the Global Politics of Intellectual Property Reform in Developing Countries*. Oxford: Oxford University Press

the WTO, in Paragraph 6 of the Doha Declaration, to develop a legal mechanism that would enable those countries that did not have sufficient manufacturing capacity to produce these life-saving drugs before the end of December 2002. In the subsequent negotiations in the WTO, South Africa was to make a significant contribution at each stage of these negotiations.

Firstly, South Africa was to help build convergence between the two major developing country groups that had a deep interest in the proposed solution: the Africa Group (that had no or limited manufacturing capacity to produce drugs); and a group of developing countries (with some capacity to manufacture drugs) led by Brazil and India. Secondly, South Africa played a leading role in the process of building consensus on a range of very complex negotiating issues involved in the agreement that was sought. These included the scope of diseases to be covered by the mechanism, the scope of products, the eligible beneficiary members, the eligible exporting countries, and the need for additional safeguards. Thirdly, South Africa was to play a leading role in the building of convergence and support for the Chairman's 16 December 2002 text, with other developed countries, such as the EU, Canada, Australia and Switzerland. Fourthly, during the impasse that prevailed on the Paragraph 6 issue in the WTO in the first half of 2003, South Africa continued to engage the US and its pharmaceutical industry on the issue, including at the Davos 2003 meetings. At these meetings, Minister Alec Erwin was to warn the leaders of several pharmaceutical companies that their intransigence threatened the entire system of intellectual property rights.<sup>31</sup> Fifthly, South Africa was to work with the US Ambassador to the WTO, Linnet Deily, as part of a small team of ambassadors that included those from Brazil, India and Kenya, to draft a Chairman's Statement in an attempt to build a compromise that would enable the US to join the December 2002 consensus. This Chairman's Statement, together with the December 2003 Chair's text on Paragraph 6, was finally adopted by the WTO General Council by consensus on 30 August 2003.<sup>32</sup> South Africa had thus played a leading role in the building of consensus on this issue. Soon thereafter, at the next Ministerial Conference of the WTO at Cancun, in September 2003, South Africa was to contribute to the formation of one of the most important developing country alliances in the WTO – the G20 alliance of developing countries on agriculture.

The Doha mandate envisaged agreement on 'modalities' for the agriculture negotiations by March 2003. In the lead up to Cancun, however, the EU failed to table any proposal that would meaningfully meet its Doha commitment. The March 2003 deadline for the establishment of a methodology for agriculture negotiations was thus missed. As the Cancun Ministerial drew closer, the US and the EU shifted to a strategy of bilateral engagement. The product of the intense bilateral discussions between the EU and the US was an accommodation of each other's trade-distorting farm support policies. In return for protecting payments under the Farm Bill, the US reduced its ambition to open EU markets and fully eliminate the EU's destructive export subsidies. The EU-US joint text tabled on 13 August 2003 galvanised developing countries into action to prevent another 'Blair House' type agreement that would accommodate the interests of the EU and the US and

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<sup>31</sup> This speech was then published in Ismail, F. (2003). 'The Doha Declaration on TRIPS and Public Health and the negotiations in the WTO on Paragraph 6. Why PHRMA needs to join the consensus!', *Journal of World Intellectual Property*, 6(3), May.

<sup>32</sup> See WTO document (2003). General Council, Minutes of Meeting on 25, 26 and 30 August 2003, WT/GC/M/82, 17 November.

reduce the ambition of the Round once again.<sup>33</sup> The text was strongly challenged by a range of countries, including Australia, Brazil, Argentina, South Africa and many other former US allies, who had coalesced around the common objective of securing freer global agriculture markets.<sup>34</sup> Developing countries, led by Brazil, India, China, South Africa, Argentina and some others, established a broad-based alliance that grew into the G20. The group, which was later to become known as the G20, was based on the need for developing countries to advance liberalisation and reform of agriculture in the developed world, with social justice and development in developing countries. The G20 subsequently captured the world's attention.

South Africa stood on the side of the more competitive CAIRNS Group.<sup>35</sup> However, its internal concerns to obtain more policy space for small emerging farmers, and its concerns to support the needs and interests of its African neighbours, made it more sensitive to the concerns of the more defensive countries that included India, China and most African countries. South Africa thus began to provide a natural bridge in the debate on finding the right balance between the various interests. Thus it was natural that after Brazil and India were able to find a balance in their positions, South Africa became the next country to join the emerging new historic alliance amongst developing countries – the G20. Secondly, South Africa is an important link between the G20, the African Group and other developing country groups and alliances, such as the ACP (African, Caribbean, and Pacific group of states) and the NAMA 11. South Africa's immediate entry into the G20 provided the impetus for other African members – including, Egypt, Nigeria, Zimbabwe and Tanzania – to join the G20. At Hong Kong, the G20 was to meet at ministerial level with all the other major developing country groups, including the G33, the NAMA 11, the Africa Group, the ACP Group and the LDC (least developed countries) group (the latter three groups are known as the G90 Group)! Ministers from all these groups were to come together as a group called the G110 in Hong Kong.<sup>36</sup> South Africa, together with Brazil and India, played a significant role in building this united platform. It was due to South Africa's capacity to build bridges amongst developing countries that it was to play a significant role too in advancing the negotiations on special and differential treatment for developing countries in the WTO – an issue that was of vital importance to developing countries at the launch of the Doha Round.

In February 2004, I was nominated by the WTO members to serve as the Chair of one of the Doha Round negotiating groups: the Committee on Trade and Development Special Session (CTDSS). I held this position for two years, until March 2006. There were three significant areas where South Africa, as the Chair of the CTDSS, was to make a significant contribution to the Doha Round and the WTO architecture. These included, firstly, the evolution of the concept of 'situational flexibility' that sought to address the concerns of the small and vulnerable developing country economies. Secondly, the Chair of CTDSS facilitated the negotiations and drafting of a compromise text on the

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<sup>33</sup> See Wiener, J. (1995). *Making Rules in the Uruguay Round of the GATT* (pp.191-215), Aldershot, UK: Dartmouth Publishing Company.

<sup>34</sup> Ismail, F. (2004). 'Agricultural trade liberalization and the poor: a development perspective on Cancun', *BRIDGES* 8(1), January.

<sup>35</sup> See: <http://cairnsgroup.org/Pages/default.aspx> (accessed 10 October 2011).

<sup>36</sup> See Ismail, F. (2008). 'The G20 and the NAMA 11: perspectives revisited', *The Indian Journal of International Economic Law*, Inaugural Issue: I(1).

concept of 'small and vulnerable economies' during the July 2004 Framework Agreement negotiations. Thirdly, the Chair of the CTDSS facilitated the process of evolving a positive outcome for LDCs at the Hong Kong Ministerial Conference for LDCs.<sup>37</sup> It was due to this experience and reputation that South Africa was entrusted to co-ordinate another important developing country alliance – the NAMA 11 – that was to play a crucial role in the NAMA negotiations.

In the period leading up to the Hong Kong Ministerial Conference, a group of developing countries began to work closely together on NAMA. They produced a critique of the EU and other developed countries' emerging approach to the Doha Round negotiations.<sup>38</sup> In a paper submitted to the WTO Committee on Trade and Development, this group of countries argued that developing countries:

cannot be expected to pay for the much-needed reforms in the agriculture sectors of developed countries (referred to above), by overly ambitious requests of them in industrial tariffs that do not take into account the realities of their levels of economic development and their adjustment needs.<sup>39</sup>

South Africa was instrumental in building convergence amongst these members and presented a statement on behalf of this group to the WTO Committee on Trade and Development. These developing countries called for the 'development content of the Round to be reclaimed' and began to unite around their common concerns in the NAMA negotiations before the Hong Kong Ministerial Meeting. The aggressive approach taken by the EU to the formula for developing countries in NAMA, in its submission of 28 October 2005, led these countries to unite on the need to defend the flexibilities that developing countries had succeeded in obtaining in the July 2004 Framework Agreement.<sup>40</sup>

South Africa was to play a key role in consolidating this increasing convergence amongst a significant group of developing countries in Hong Kong, where ministers of the so-called NAMA 11 presented joint proposals in the negotiations on NAMA.<sup>41</sup> Deputy Minister Davies chaired the first meeting of this group and South Africa was requested to co-ordinate the group's efforts. Due to their increased bargaining power in the WTO, the NAMA 11 was able to achieve three important victories.<sup>42</sup> First, the coalition successfully resisted the attempts by developed countries to force a

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<sup>37</sup> See Ismail, F. (2006). 'How can small, weak and vulnerable countries also gain from the WTO Doha Development Round?' *Journal of World Trade* 40(1), February.

<sup>38</sup> See WTO document (2005). 'Statement by South Africa to the 55th session of the Committee on Trade and Development on behalf of Argentina, Brazil, India, Indonesia, Namibia, the Philippines and Venezuela'. 28 November 2005.

<sup>39</sup> WTO document (2005). 'Reclaiming development in the WTO Doha Development Round', Submission by Argentina, Brazil, India, Indonesia, Namibia, Pakistan, the Philippines, South Africa and Venezuela to the Committee on Trade and Development WT/COMTD/W/145 1 December 2005.

<sup>40</sup> See TN/MA/W/65 'Market access for non-agricultural products. Flexibilities for developing countries'. Communication from Argentina, Bolivarian Republic of Venezuela, Brazil, China, Egypt, India, Indonesia, Namibia, Pakistan, Philippines and South Africa. 8 November 2005.

<sup>41</sup> See letter by the above countries, and Tunisia, sent to the Chairman of the Conference and the Director General of the WTO at the Hong Kong Ministerial Conference. South African Permanent Mission to the WTO, Geneva.

<sup>42</sup> The NAMA 11 Group of developing countries was formed in the period shortly before the Hong Kong Ministerial Conference in December 2005. Its members are: Argentina, Brazil, Egypt, India, Indonesia, South Africa, Philippines, Namibia, Tunisia and Venezuela.

premature agreement on modalities in NAMA ahead of any significant agreement on the main issues in agriculture. Second, these developing countries were able to confirm that the principle of less than full reciprocity would be adhered to when making reduction commitments, and appropriate flexibilities would be provided to them, in order to preserve their domestic policy space. Third, the group was also able to establish a strong link in the final text of the Hong Kong Ministerial Declaration between the level of ambition in NAMA and the level of ambition in agriculture.<sup>43</sup>

After the failure of the Potsdam Ministerial meetings, in June 2007, WTO Director-General Pascal Lamy requested the Chairs of Agriculture and NAMA to begin to draft texts after consultations with members. The chair of NAMA produced three draft texts, the first on 17 July 2007.<sup>44</sup> Finally, the ministers of the G7 deliberated over this text until the collapse of the July 2008 Ministerial Meetings convened by Lamy. South Africa played a significant role in advancing the negotiating positions of the NAMA 11 in each of these processes, in maintaining the cohesion and solidarity of the NAMA 11, and in strengthening the alliances between the NAMA 11 and other developing country groups. We proceed now to evaluate the role of South Africa in the WTO negotiations.

#### **4. Assessment of South Africa's role in the WTO**

In this section we evaluate the role of South Africa on each of the five negotiating issues discussed above and the extent to which it adhered to the principles and negotiating approaches that were based on its 'idealist and aspirational' values that emerged from its struggle for democracy, freedom and human dignity and that reflected its 'own collective self-concept'.

The Doha Ministerial Conference and its outcomes were very controversial. South Africa's role was criticised by many NGOs that were opposed to the launching of a new Round at Doha. Vickers observes that some academics and NGOs described South Africa's approach to the launching of the Doha Round as 'middle-power diplomacy', characterised as 'broadly accommodatory, pragmatic, and even technocratic to the North's offensive demands'.<sup>45</sup> Minister Erwin is criticised as privileging 'trade-offs' rather than 'stand-offs' with the North. He goes further by 'stating that this middle power agency has essentially served to promote and legitimise the WTO's liberalisation agenda and its neoclassical model of development'. Other writers have argued that 'South Africa's support before and during the Doha Conference helped the developed countries to achieve their "success" in Doha...'.<sup>46</sup>

South Africa's approach, as some observers have argued, may have been 'too accommodating' of the demands of developed countries. However, South Africa's negotiators at the time were attempting to contribute to redressing the existing imbalances in the multilateral trading system and

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<sup>43</sup> See WT/MIN (05)/DEC. Para 24 of the Ministerial Declaration. Doha Work Programme. 22 December 2005.

<sup>44</sup> See WTO document (2007). 'Draft NAMA modalities'. Job (07)/126 17 July 2007.

<sup>45</sup> Vickers, B. (2009). 'Re-claiming development in multilateral trade: South Africa and the Doha Development Agenda', in Narlikar, A., and Vickers, B. (eds.), *Leadership and Change in the Multilateral Trading System*. University of Cambridge, UK and Institute for Global Dialogue, South Africa: Republic of Letters Publishing.

<sup>46</sup> Jawara, F. and Kwa, A. (2003). *Behind the Scenes at the WTO: The Real World of International Trade Negotiations*, London: Zed Books.

to the creation of a fairer, more balanced and development-oriented World Trade Organization. The accommodating approach adopted by South Africa's negotiators to the interests of developed countries was possibly due to its lack of experience and a naïve belief that the developed countries would live up to their promises of delivering a development outcome in the Doha Round. South Africa was to heed this criticism of its approach to the launch of the Doha Round in the years ahead of the Doha negotiations.

The Like Minded Group (LMG)<sup>47</sup> that was created by a group of developing countries to oppose the launch of the Doha Round was to dissipate in strength and dissolve soon after the launch of the Doha Round, as new issue-based alliances were formed in the WTO, on issues such as TRIPS and public health, agriculture and NAMA. South Africa was to play a central role in each of these new alliances. In the discussions below we discuss the role of South Africa in these new alliances, beginning with the issue of TRIPS and public health.

Some NGOs, such as OXFAM and Médecins Sans Frontières had criticised the 30 August 2003 'Decision' on TRIPS and public health, discussed above, as being unwieldy and complex to implement. However, WTO members and other expert observers of the negotiations hailed the agreement on TRIPS and public health as a major victory for social justice and consensus building in the WTO.<sup>48</sup> South Africa had played a very significant role in this success. Thus, early in its active participation in the WTO, South Africa had built respect amongst its developed country trading partners for its tenacity and steadfastness and credibility amongst developing countries, and for the leadership role it played in building convergence among the various developing country groups. This experience was also to erase much of the suspicion and criticisms by NGOs and some developing countries for its role in launching the Doha Round. These criticisms were also to fade as South Africa was to join with Brazil, India, China and Argentina in the formation of one of the most formidable developing country alliances in the WTO – the G20 group of developing countries.

The then EU Commissioner Pascal Lamy's first reaction was to see the G20 as a political formation and to predict its demise.<sup>49</sup> His counterpart in the US, the then US Trade Representative (USTR), Robert Zoellick, responded with even more pique. He accused the ACP of causing the collapse of the WTO Cancun Ministerial Conference, and Brazil of deliberately taking up a North-South posture.<sup>50</sup> South Africa's Minister of Trade and Industry, Alec Erwin, thus responded in an op-ed in the *Financial Times* that attempted to rebut the assertions made by Lamy and Zoellick.<sup>51</sup> South Africa's officials in Geneva denied that the G20 was 'intended to be a North-South divide' and argued that the G20 was 'an issue-based alliance'. They called on the US to "reconsider its

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<sup>47</sup> The LMG (Like-Minded Group) included India, Cuba, Egypt, Indonesia, Malaysia, Pakistan, Tanzania, Uganda, Sri Lanka with Jamaica and Kenya as observers. For a discussion of the role of the LMG before and during the launch of the Doha Round, see Narlikar, A. (2003). *International Trade and Developing Countries. Bargaining Coalitions in the GATT and WTO*. London: Routledge.

<sup>48</sup> See Abbott, F. M. (2005). 'The WTO medicines decision: world pharmaceuticals trade and the protection of public health', in *The American Journal of International Law*, 99(317), pp. 317-358.

<sup>49</sup> See Lamy, P.(2003). 'The EU, Cancun and the future of the Doha Development Agenda'. Speech made to the *Journal of Common Market Studies*, London, 28 October.

<sup>50</sup> See Zoellick, R. (2003). 'America will not wait', [www.fordschool.umich.edu/rsie/acit/TopicsDocuments/Zoellick030921.pdf](http://www.fordschool.umich.edu/rsie/acit/TopicsDocuments/Zoellick030921.pdf) (accessed 10 October 2011).

<sup>51</sup> See Erwin, A. (2003). 'What was the cause for the collapse of Cancun?' *Financial Times*, 30 September.

“unnatural alliance” with protectionist positions in the EU-US joint text’.<sup>52</sup> South Africa was principled in its defence of the G20 and reflected the views, aspirations and hopes of many in the developing world. Its defence of the G20 was partly responsible for the eventual recognition of the G20 by the major developed members, the EU and the US, as a legitimate negotiating partner. Pascal Lamy, the then EU Commissioner, attended the ministerial meeting of the G20, in Brasilia, in December 2003, that was hosted by Brazil in an attempt to re-ignite the Doha negotiations.<sup>53</sup>

By January 2004, the then USTR, Bob Zoellick, had also changed his tone, from rebuke and criticism to constructive dialogue. Both Pascal Lamy and Bob Zoellick travelled to several capitals to discuss the re-launch of the negotiations. The US initiated an agriculture negotiating group of five countries (US, EU, Australia, India and Brazil), which began to meet regularly in the next few months until the end of July 2004, at both officials and ministerial levels. As a result of these negotiations, including in the Trade Negotiations Committee (TNC), the July 2004 Framework Agreement was concluded. The G20 played a major role in the negotiations and shaped the architecture of the deal on agriculture that led to the July 2004 WTO General Council Framework Agreement.<sup>54</sup>

The G20 has continued to play a leading role in the agriculture negotiations, at the Hong Kong Ministerial Conference, and subsequently during the July 2008 Ministerial Meetings held in Geneva. Notwithstanding the predictions of Lamy and Zoellick, the G20 has forged ahead to become the most important developing country interlocutor with the major developed countries in the agriculture negotiations. It has continued to strengthen its alliance with other developing country groups and provide them with leadership in the Doha Round. South Africa was to assist the G20 in forging consensus on a range of issues of interest to the small and vulnerable developing countries, including market access in developing countries, preference erosion, food aid, special products, special safeguard mechanism, etc. On all these issues, South Africa has worked within the G20 and between the G20 and other developing country groupings in the WTO to build convergence between developing countries. It was South Africa’s experience and reputation on building convergences on these issues that led it to be nominated to become the chair of the WTO negotiating group on special and differential treatment issues.

The first issue on which South Africa was requested to help forge a consensus was the treatment of so-called ‘small and vulnerable economies’ (SVEs). South Africa drew on its principles of equity, its experiences of dealing with inequity in its own country, and its own responsibilities towards its less developed neighbours on the African continent. South Africa could understand the concerns of the larger developed countries, who feared that the developed countries were intending to use this debate as an opportunity to ‘graduate’ them out of developing country status altogether and deny them any of the special and differential treatment flexibilities that the WTO granted to developing countries. It also understood the special needs and vulnerabilities of the smaller developing

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<sup>52</sup> Ismail, F. (2004). ‘A development perspective on Cancun’. *Bridges, Agricultural Trade Liberalisation and the Poor*, 8(1), January.

<sup>53</sup> See G20 Ministerial Communiqué. Brasilia, 12 December 2003.

<sup>54</sup> See Ismail, F. (2005). ‘A development perspective on the WTO July 2004 General Council decision’, *Journal of International Economic Law* 8(2), pp. 377-404.



countries, most of which are on the African continent. The trust and confidence that South Africa enjoyed in both these groups enabled it to contribute towards forging a consensus. This consensus was to become critical in the years ahead, when developing countries in the NAMA 11 needed to maintain unity with these SVEs and build a united front against attempts by the major developed countries to undermine and erode the development dimension of the round. We proceed to discuss how South Africa was to help forge such unity amongst developing countries as the coordinator of the NAMA 11 group of developing countries.

The NAMA 11 became the main interlocutor with the EU and the US in the NAMA negotiations, since its formation at the Hong Kong Ministerial Meeting in December 2005. It has been able to use its collective leverage to advance the interests of its members. It provided leadership and support to other developing country groups, and had taken on board its responsibility towards the poorer members, especially the LDCs. In Hong Kong, 'developing countries in a position to do so' pledged to provide Duty Free Quota Free Market Access (DFQFMA) to all LDCs. The NAMA 11 recognised the concerns of small and vulnerable economies, and agreed that they should be treated differently and provided with greater flexibilities. It succeeded in building convergence amongst its own diverse members and has forged deeper relationships and mutual trust with other developing country groupings representing the least developed and small and vulnerable countries. In advancing this process, they themselves have been undergoing a process of learning on how to build fair trading arrangements, with more balanced rules, that will create the opportunities for development for all developing countries.

South Africa's role as bridge-builder between the diverse group of NAMA 11 members helped it to forge consensus within the group and to build unity with the SVEs and LDCs. The NAMA 11 developed a negotiating personality of engagement and pragmatism on the formula and flexibilities, whilst maintaining a steadfast and resolute approach on the principles of equity and proportionality of contributions with that of developed countries. Its negotiating approach could thus be characterised as a 'mixed distributive approach'. South Africa as the coordinator of the group was required to remain firm on principle and pragmatic on its approach to the specific situations and stages of the negotiations. South Africa thus changed its approach as the conditions changed. However, when required to, South Africa was able to provide the leadership that was necessary to build a united front against attempts to impose unfair deals upon the NAMA 11 and other developing countries. The NAMA 11 was able to create a united platform with the G20, G33, Africa Group, ACP and LDCs in the formidable G110 in Hong Kong and at subsequent Ministerial Meetings. South Africa's strong relationships with several of these groups, including the G20, Africa Group and ACP group, provided it with the relationship and insight into the common concerns and interests of these various groups.

## **5. Conclusion**

The discussion above has considered the role of South Africa on the five WTO negotiating issues: the launching of the Doha Round; TRIPS and public health; the formation of the G20; small and vulnerable economies; and the formation and coordination of the NAMA 11. It illustrates that South Africa maintained a strong commitment to the principles of equity, fairness and a strengthened,

balanced and development-oriented multilateral trading system. On each of the negotiating issues discussed above it was resolute and remained steadfast on these principles, whilst being willing to engage with its trading partners and search for pragmatic solutions. Its negotiating approach changed when the conditions changed. At the launch of the Doha Round, it was willing to 'accommodate' the interests of developed countries when developing the negotiating mandate. In the course of negotiations on agriculture, when the EU-US alliance threatened to undermine the promise of a development outcome, it rose to the challenge when invited by Brazil and India to help build a formidable alliance of developing countries in the G20. Similarly, when it was thrust into the leadership of the TRIPS and public health negotiations for cheaper and more affordable medicines, it played this role with a deep sense of commitment. It was willing and able to facilitate a compromise amongst developing countries when requested, to chair the negotiations on small and vulnerable economies. And when there was the threat of onerous obligations being imposed on developing countries to reduce their industrial tariffs, thereby undermining their industrial policies, it played an effective role in leading the NAMA 11 group of developing countries.

In each of these cases, the effectiveness of South Africa's leadership role was assisted by its own experiences in building compromises at home in its challenge to build equity in the society inherited from its apartheid past. South Africa also had good experience in building consensus amongst its constituencies at home, through the well developed institution of the National Economic Development and Labour Council (NEDLAC). It also drew on its commitment to contribute to the development of its neighbours in the African continent, given that it had more capacity. This willingness to recognise its responsibilities vis-à-vis the smaller and more vulnerable economies on its own continent helped it to build consensus between developing countries within each of the alliances of which it was a member (G20, NAMA 11, African Group) and between these developing country groups. Thus its role of bridge-builder between developing countries in all the negotiating issues discussed above was strengthened. South Africa was also thrust into these leadership positions because it was willing and able to be independent minded, not beholden to the major developed countries, and willing to engage with them on specific issues and remain resolute on principle. It is for this reason that developing countries too were able to build trust and confidence in South Africa's leadership when this was required on specific issues.

We have argued that the experiences of South Africa in the multilateral trading system have been inspired by the vision and principles set out by Nelson Mandela. This vision is based on the 'idealist and aspirational' discourse in foreign policy, rather than the narrow 'interest driven discourse of realism'. South Africa's negotiators were also to heed Mandela's exhortation to South Africans to take responsibility for the African continent 'not in a spirit of paternalism or dominance but mutual cooperation and respect'. It is for this reason that South Africa's negotiators were to strive to address the interests of South Africa *and* the African continent. They had to learn to 'walk on two legs'. South Africa's negotiators were also to heed the exhortation of Nelson Mandela, in his statement to the WTO, to 'vastly improve on the management of the world trading system to the mutual benefit of all nations and people'.<sup>55</sup>

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<sup>55</sup> WTO document (1998), *op cit*.

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