Chapter 5 South African Trade Policy: Interactions between Trade Policy and the WTO Negotiations

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INTRODUCTION

Trade continues to play an important role in the South African economy after democratisation. The degree of dependence upon foreign trade has been hovering around 50% since 2000, in comparison to the ratio in the early 1990s, which was around 35%.[1] Exports are regarded as an engine to achieve robust and sustainable growth for the country as a whole. Trade policy is inevitably a basic policy of a country. In general, it is planned and decided in line with domestic development programmes as well as international obligations. This is because trade policy amalgamates factors from both international and domestic contexts.[2] In other words, trade policy is part of economic policy and, at the same time, part of foreign policy. In terms of the external aspect, South Africa's trade policy is, as with other member countries of the World Trade Organization (WTO), naturally influenced by international trade rules and multilateral trade negotiations, which have been governed by the General Agreement on Tariff and Trade (GATT) and its successor, the WTO.

Under the current legal system of the WTO, the obligations of a developing country differ from those of a developed country. It is well-known that the WTO adopted a non-discrimination principle which requires that all members be treated equally under WTO law. However, the principle of special and differential treatment (SDT) allows developing countries in the WTO system to opt out of obligations that they might

[1] World Bank World Development Indicators.

[2] Evans (1999: 622) calls this character of the trade policy "intermestic" and regards, other than trade policy, commerce, fiscal stability, investment policy, drugs, and immigration as obvious examples of intermestic issues.

Makino, Kumiko, and Chizuko Sato, eds. *Public Policy and Transformation in South Africa after Democratisation.* Spot Survey 33. Chiba: IDE-JETRO, 2013.

otherwise have as non-discrimination. The SDT principle is based on the concept of substantial equality which ensures the equality of opportunity for developing countries in spite of differential level of development between developed countries and developing countries. The SDT principle allows developing countries to have flexibility in their trade policy and to get preferential treatments from developed countries[3].

South Africa changed its status in the GATT/WTO from being a developed country to a developing country when a new democratic government was born in 1994. Only South Africa, in the history of the GATT/WTO, has changed its status in this way. Did this particularity of South Africa affect its trade policy? If so, how? This chapter, therefore, examines South African trade policy by focusing on the interactions between South Africa's trade policy and the WTO. After the introductory section, Section 1 looks at trade policy during the democratic transition period, which greatly influenced the future direction of South Africa's trade policy. Section 2 deals with the WTO commitments that South Africa has to implement domestically, while Section 3 discusses the country's attitude toward the WTO. The final section provides a summary of the chapter.

1. DEMOCRATIC TRANSITION PERIOD

South Africa was a founding member of the GATT, which was signed in 1947. It also participated in the Bretton Woods Conference in 1944, which was held to agree upon a series of new rules for the post-World War II international monetary system.[4] During this period, South Africa was considered a "western" state (Erasmus 2005: 352) and was expected to play a leading role in international economic stability in the postwar world. South Africa itself actively worked in the GATT to strengthen the open world trading system by eliminating discriminatory trading blocs.

However, the racial discrimination policy, apartheid, made South Africa suffer from both multilateral and bilateral sanctions, which isolated it from international society for a long time. South Africa was barred from participation in international organisations and conferences. For example, in 1974, the United Nations General Assembly suspended South Africa from participation in its work, due to international opposition to the policy of apartheid.[5] Rarely for international organisations, South Africa could keep its seat in the GATT and participated in multilateral trade negotiations even though it was not an

[3] Within the WTO legal system, SDT has taken two main forms: provisions providing preferential access for developing country exports to the markets of developed countries and provisions allowing for a modulation of commitments by different types of member (IISD 2003). The principle of SDT is designed to promote developing countries' integration into the WTO system by granting them preferential treatment.

[4] It participated in the conference as the Union of South Africa.

[5] To be exact, the President of the General Assembly ruled that the South African delegation to the General Assembly could not continue to participate in the work of the Twenty-Nine Session of the Assembly because the delegation's credentials had not been accepted by the Assembly. All other organs in the United Nations derive their membership through election by the General Assembly. Therefore, South Africa could not work in any of these organs (Jhabvala 1977: 615-617). South Africa was re-admitted to the UN in 1994 following its transition to a democracy.

active participant. In 1986, when the eighth multilateral trade negotiation under the GATT, the Uruguay Round, was launched at Punta del Este, not a few members called for the expulsion of South Africa. However, this proposal was not accepted. Throughout the apartheid era, South Africa worked in the GATT without changing its status as a developed country.

After the then President FW de Klerk took the fateful decision to abolish apartheid in 1990, South Africa experienced drastic and fundamental political change in the early 1990s. There were hard debates between the de Klerk administration and the tripartite alliance consisting of the African National Congress (ANC), the Congress of South African Trade Unions (COSATU), and the South African Communist Party (SACP) on all kinds of policies for post-apartheid South Africa. Especially over economic policy, fierce controversy arose in political, financial and academic circles (Marais 2011: 97-111). Over trade policy, however, both sides agreed on trade liberalisation in order to realize export-oriented industrialisation.

These controversies over policy coincided with the final stage of the Uruguay Round. When the de Klerk administration substantially participated in the negotiations, an outline for a final agreement had already been fixed. One of the items was that all developed countries, including South Africa, were supposed to lower their tariffs by one third on average. The de Klerk administration agreed to substantial trade liberalisation by offering sharp and comprehensive tariff reduction, covering 98% of all industrial products. In addition, South Africa undertook to implement a tariffication process that would replace its remaining non-tariff barriers, such as quotas or import levies, with an equivalent tariff. The following are the detailed commitments that the de Klerk administration promised in the final agreement of the Uruguay Round;

- reduce industrial tariffs by one third from 1995 to 2000, with the exception of clothing, textiles and motor vehicle industries, where the phase-down was over the period 1995-2003;
- rationalize over 12,000 tariff lines, and unilaterally reduce the number of tariff bands to six (0%, 5%, 10%, 15%, 20% and 30%), with the exception of clothing, textiles and motor vehicle industries;
- increase the number of bindings for industrial products from 55% to 98% for all lines, and replace all quantitative restrictions (QRs) and formula duties with bound ad valorem rates;
- convert all QRs on agricultural products to ad valorem rates, lower agricultural tariffs by a minimum of 15% individually and by 21% on average, and reduce agricultural subsidies by an export weighted amount of 36%; and
- phase out the export subsidies scheme (the General Export Incentive Scheme: GEIS) by the end of 1997 (Alves and Edwards 2009: 93).

Although South Africa had to accept requirements under the Uruguay Round, such as lowering its import tariff levels by one third, and although it stated its commitment to an

export-oriented economic development policy and trade liberalisation, the comprehensive and drastic tariff reduction was not a requirement that it had to fulfil in order to meet its responsibilities in the GATT. The following four factors made South Africa do more than was expected.

Firstly, President de Klerk embarked on a new diplomacy based on non-confrontational relations with the outside world (Landsberg 2010: 59). Central to de Klerk's foreign policy was the desire to end South Africa's isolation from international society. Therefore, it set "re-integration into the global economy" as a basic target in and after 1990 when South Africa declared its abandonment of the policy of apartheid. International society also expected South Africa to rejoin the world economy and it applied strong pressure on South Africa to liberalise its trade policy. For example, the GATT Council evaluated South African trade policy and practice in June 1993,[6] at the time of the Uruguay Round negotiations, and demanded further liberalisation. The report stated:

> 7. Council members stressed that South Africa's tariff structure was complex and far from transparent … . … Members also urged South Africa to improve its Uruguay Round tariff offer;
> 29. In conclusion, the Council recognized that the South African economy was subject to many constraints. … South Africa … should make every effort to align its economy fully with the multilateral trading system. The Council stressed the benefits to be obtained from a resolute pursuit of trade liberalization. It also emphasized that a successful outcome of the Uruguay Round would provide external discipline for the liberalization process, assisting South Africa in its reintegration into the world economy (GATT 1993).

For the de Klerk administration, the Uruguay Round was a good chance to establish its presence in international society by aggressively accepting its responsibilities in the GATT.

Secondly, while, internationally, the latter stage of Uruguay Round negotiation was happening, South Africa itself was in the middle of a heated domestic argument over economic policy. Even the basic direction of South Africa's economic policy had not been determined, so the government could not formulate its trade policy. It did not have any strong objectives to the Uruguay Round nor did it lead trade negotiations. Therefore, priority was given to the wish to realize "re-integration into the global economy" by establishing a presence in the GATT.

Thirdly, South Africa joined the negotiation of the Uruguay Round after the negotiation framework had already been established. Officials of the South African Department of Trade and Industry (DTI) found it difficult to stay abreast of discussions

[6] This evaluation was conducted as the first Trade Policy Review of South Africa under the trade policy review mechanism.

during the early stages of the Uruguay Round, because other African governments actively opposed their participation. Although South Africa was not officially kicked out of the GATT, it could not actively participate. The Uruguay Round had started in 1984, and by 1990, when South Africa began to participate in the negotiations, it was already decided that all the developed countries in the GATT were supposed to reduce their industrial tariffs by one third. Actually, it was by March 1990 that South Africa had to submit its proposal for the reduction of its tariffs.[7] South Africa had no choice but to accept the GATT's requirements at that point.

And, fourthly, South Africa had been regarded as a developed country in the GATT since the organisation's beginning. It was therefore asked to undertake the obligations of a developed country with regard to access in key markets, including agriculture, industrial tariffs and services.

Coinciding with the end of apartheid, the closing stages of the Uruguay Round provided South Africa with an opportunity to reintegrate itself into the international society of political and economic cooperation, and so accelerate the liberalisation and simplification of its trade regime. The "Final Act" to conclude the Uruguay Round was signed at Marrakesh, Morocco on 15 April 1994. The very next month after the adoption of the Marrakesh Agreement, Mandela became the president of a democratic South Africa.

2. TAKING OVER WTO COMMITMENTS

The new South African government, assuming office in May 1994, conducted policies by rejecting the measures of the former party. However, it did not challenge the Uruguay Round commitments, which were handed down by the previous administration. Keet (2002: 6) regards this as understandable under the circumstances. During the period just after the transition, the priority in policy was to build a new nation by freeing the economy from the effects and structural distortions of apartheid. In order to make apartheid a matter of history, the new government faced many problems all at the same time. Even economic policy was in a process of trial and error. The new government did not have enough capacity to build a firm trade policy. In addition, the commitments that South Africa made at the Uruguay Round were both legally binding and essential if South Africa was to be integrated into the global economy (Keet 2002: 6).

The ANC government conceived of the export-led growth model as a path in which South Africa could accelerate its economic growth in accordance with liberal philosophy. The ANC government had also intention to reduce the monopoly power of large conglomerates which has been associated with the National Party government and the isolation resulting from international sanctions (Cling 2001: 104). The opening of trade has therefore been envisaged as one of the ways in which to break away from the

[7] In fact, the submission of South Africa's offer list was delayed until September 1990 (GATT 1990a; 1990b). South Africa might have needed the time to reconsider its proposal because President de Klerk had just announced the liberalisation of the economy in February 1990.

previous order.

Moreover, the new government had to guide the country towards a constructive international role with special responsibilities not only in the southern African region or on the African continent, but also in the global economy. The Mandela government was interested in being a full and respected member of the family of nations. It was eager to attain a new reputation for being a good global citizen (ANC 1994). In 1995, the WTO was established and South Africa was a founding member. There was a global trend at that time to strengthen an open world trading system with a free flow of goods, services and investment. Under such circumstances, it was natural for South Africa to continue with substantial liberalisation by taking over the international commitments of the previous regime.[8]

All the WTO agreements that resulted from the Uruguay Round negotiations applied to all WTO members. Each member accepted all the agreements as a single package with a single signature.[9] The WTO agreements consist of an umbrella agreement and several annexed agreements for the three broad areas of trade: goods, services and intellectual property. For goods, the WTO agreements mainly relate to non-tariff measures such as anti-dumping, technical barriers to trade, trade-related investment measures, the application of sanitary and phytosanitary measures, rules of origin, subsidies and countervailing measures and safeguards. The Anti-Dumping Agreement (ADA) and the Trade-Related Aspects of Intellectual Property (TRIPs) Agreement are part of that package. The only exceptions to this package are a couple of "plurilateral" agreements, such as the plurilateral Agreement on Government Procurement (GPA). When it joined the WTO, South Africa became a contracting party to a set of these WTO agreements.

In the sense of obligations, the schedules of commitments constitute the core of the agreements. In these, each member country lists its binding commitments on tariffs for goods. Other than this, South Africa, as a member of the WTO, has to make its domestic regulations compatible with these WTO agreements.

2.1 *Tariff Reduction*

Based on the Uruguay Round agreements mentioned in Section 1, South Africa started to reduce its overall tariff rate in 1995. South Africa could reach its goal sooner than promised. As a result, simple mean most-favoured-nation tariffs for manufactured products fell from 18.0% in 1993 to 6.0% in 1999 (Table 1).

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[8] As a matter of fact, some foreign and local economists warned the risks linked to this opening up. However, the warnings have been largely ignored because the risks were uncertain (Cling 2001: 104).

[9] This system for decision-making in the GATT/WTO is called a "single undertaking" approach.

Table 1 Tariff Rates in South Africa*

(%)

	1991	1993	1996	1997	1999	2001	2004	2006	2008	2010
All products	9.9	15.8	13.8	7.3	6.0	8.0	8.0	7.7	7.5	7.7
Primary	6.4	8.1	7.7	6.8	6.0	6.7	6.0	4.9	4.7	5.9
Manufacturing	11.0	18.0	16.2	7.4	6.0	8.4	8.6	8.5	8.3	8.2

Source: World Bank database.

*Most-favoured-nation and simple mean rates.

In order to keep to its WTO commitments, South Africa has also simplified its complex tariff structure by reducing the number of tariff lines and cutting back the number of tariff bands (Table 2). Besides, it converted all the quantitative controls on agricultural products to ad valorem duties and eliminated its export subsidies scheme.

Table 2 Structure of Tariffs in South Africa

	1990	1994	1998	2002	2004
Number of tariff lines	12,475	11,231	7,773	7,919	6,697
Duty-free tariff lines (% all lines)	24%	26%	42%	44%	53%
International tariff spikes* (% all lines)	43.7%	43.5%	39.4%	35.1%	21.2%

Source: Edwards (2005); Flatters and Stern (2007: 5).

* Tariff spikes are tariff rates that exceed a certain threshold value usually taken to be three times the overall simple bound rate, or above 15 per cent.

2.2 *Anti-dumping System*

Anti-dumping is a countermeasure for the injury done to a domestic industry as a result of imports of "dumped" goods. It has a long history, and, at the time of the GATT negotiations, it was a well-known and accepted practice. The GATT of 1947 propounded Article VI, which allows a member country to impose anti-dumping duties unilaterally. In the Kennedy Round (1963-67), an Anti-dumping Code was adopted in order to make anti-dumping rules more precise.[10] As anti-dumping practices have become a policy

[10] In particular, it sought to ensure speedy and fair investigations, and it imposed limits on the retrospective application of anti-dumping measures.

option to protect domestic firms by providing for administrative measures (Deardorff and Stern 2004: 1), both developed and developing countries have made use of anti-dumping measures. As anti-dumping measures proliferated, the chance to use them as a protectionist tool increased. The GATT has tried to strengthen anti-dumping rules at every multilateral trade negotiation. Consequently, of all the WTO agreements, the Anti-Dumping Agreement (ADA) prescribes the strictest and most advanced rules. Therefore most of the developing countries have difficulties in enforcing all the requirements of the WTO ADA in their domestic anti-dumping legislation. South Africa, however, could carry out reforms of its anti-dumping scheme and make them consistent with the ADA, because it had shaped as highly a developed anti-dumping system as the industrialized countries through various legislative changes.

South Africa's anti-dumping legislation will mark a centenary next year. South Africa was the fourth country in the world to introduce anti-dumping legislation in 1914,[11] following Canada, New Zealand, and Australia. Its first anti-dumping measure was imposed in 1921 by the Customs Department, and the responsibility for dealing with anti-dumping remedies was taken over by the Board on Trade and Industries (BTI) in 1923 (Joubert 2005). Since then, it has initiated about 1,000 anti-dumping investigations. South Africa was one of the most frequent users of anti-dumping measures in the 20th century. It has also been a major user in the first 15 years of the WTO (Brink 2012).

South Africa embarked on a process of rapid liberalisation by lowering tariff protection in line with that in the developed countries. This left domestic firms facing increased competition from both fair and unfair international trade. With tariff reductions, trade remedies such as anti-dumping and countervailing measures became increasingly important for domestic producers to protect themselves from the rise in imports. This led to a sharp increase in South Africa's application of trade remedies, in particular anti-dumping measures.

In 1995, South Africa made some amendments to bring its anti-dumping regime more into line with the WTO agreement.[12] However, there were still pressures from other WTO members to make South Africa's anti-dumping regime strictly conform to WTO rules. As a result, South Africa finally passed the International Trade Administration (ITA) Act in 2003, which requires more precise pre-investigation before taking an anti-dumping measure. In this legislation, a new body was created in order to carry out remedies for trade problems. Since then, it has become more difficult to use anti-dumping measures as a protectionist tool. Because its anti-dumping regime was highly developed, South Africa could respond to the WTO commitment in the field of anti-dumping in the same way as the developed countries.

(http://worldtradereview.com/webpage.asp?wID=437).

11 The Customs Tariff Act of 1914.

12 For example, the definition of anti-dumping was changed and certain new concepts, such as 'normal value,' were introduced.

2.3 *Intellectual Property Law*

The TRIPs Agreement sets the minimum standards for intellectual property rights (IPR) protection in trade-related areas for WTO members and requires them to provide an appropriate legal framework for IPR protection, including legislation such as intellectual property laws and the enforcement of these laws. The TRIPs Agreement covers various types of intellectual property[13] with substantive provisions.[14] There were some developing countries that had no intellectual property laws in some IPR categories at the time of the adoption of the TRIPs Agreement. Such members had to incorporate new laws to protect IPR. Under the principle of SDT, the TRIPs Agreement contains some flexibility provisions that provide for grace periods. While developed countries had to comply with the TRIPs Agreement within one year from the date of effect of the TRIPs Agreement, in other words before 1 January 1996, developing countries had to do so within five years, until 1 January 2000, with some exceptions.[15]

Like its anti-dumping regime, South Africa has a 100-year-old system of intellectual property laws, which originated with the Patents, Designs, Trade Marks and Copyright Act of 1916. Since then, many related laws and regulations have been enacted or amended.[16] Since the TRIPs Agreement was adopted, South Africa has carried out many legal reforms in the form of upgrading, amending and making laws. Some of them were aimed at keeping the law compatible with the TRIPs Agreement. For example, the Intellectual Property Laws Amendment Act (1997) was enacted in order to comply with the TRIPs Agreement. However, most of them have been conducted in order to harmonise intellectual property law with other domestic legislation (Teljeur 2002) or in order to make intellectual property law conform to new situations which are beyond the assumed scope of the law, for example, computer programming and the effective use of intellectual property resulting from publicly financed research.[17]

South Africa's IPR regime is quite advanced and mature in terms of its legal framework and is regarded as at the same level as developed countries (Teljeur 2002: 40, 61). Therefore, South Africa was considered a developed country under the TRIPs Agreement.

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[13] The TRIPs Agreement explicitly covers copyrights and related rights, patents, trademarks, geographical indications, layout-designs of integrated circuits, industrial designs and undisclosed information, including trade secrets and test data.

[14] However, certain provisions of the TRIPs Agreement are cited as examples of a non-self-executing treaty (WIPO 2010: 8). In this paper, prepared by the WIPO Secretariat, the situation is regarded as unclear as to whether members of the WTO are able to apply the agreement directly or they have to incorporate it into national law through legislation.

[15] Least-developed countries (LDCs), because of their economic level, are given ten years from the general enforcement date to comply with their TRIPs obligations. After the Doha Ministerial Conference, LDCs were given a further extension until 1 July 2013 to ensure that their IPR regimes are in line with their TRIPs obligations.

[16] This Act was replaced by individual specific laws such as the Copyright Act (1978), the Patents Act (1978), the Trade Marks Act (1993), the Designs Act (1993). These Acts have been elaborated and developed by amendments. In other areas of IPR, new laws were passed, such as the Merchandise Marks Act (1941) and the Counterfeit Goods Act (1997).

[17] The Intellectual Property Rights from Publicly Financed Research (IPR) Act, 2009.

Actually it did not need to make a lot of effort, for instance, by amending laws, in order to be accepted as having met the requirements of the TRIPs Agreement. However, Teljeur pointed to a concern that South Africa's intellectual property laws are too advanced for the country's stage of development. She provides two perspectives: (i) South Africa was well ahead of its middle-income country peers and ready to engage with international trading partners on equal terms; and (ii) South African intellectual property laws were an apartheid-relic and inappropriate for a country in the early stages of its reintegration into the world economy. The reality of South Africa's IPR regime is, as she reveals, a rather mixed picture of the two (Teljeur 2002: 5).

2.4 *Government Procurement*

Government agencies need to procure goods, services and works to carry out their policy objectives. The size of the government procurement market is very big. It typically accounts for 10-15% of a country's GDP.[18] One characteristic of a government procurement system is that it is prone to a preference for its own country's goods and services. The use of preferential procurement as a tool to promote social and industrial policies has been widely adopted in developing countries as well as in developed countries (METI 2011; Manchidi and Harmond 2002). Therefore GATT Article III: 8 (a) specifically exempts government procurement from the requirement of national treatment.

However, as a matter of fact, the government procurement system can be a non-tariff barrier and distort the international flow of products and services by discriminating against foreign suppliers (METI 2011). As government procurement markets constitute an important part of international trade, the GATT recognized the necessity to apply national treatment in government procurement. During the Tokyo Round (1971-79), a Government Procurement Code was negotiated and adopted as part of the Tokyo Code,[19] which required signatories to provide national treatment to other signatories[20].

As one result of the Uruguay Round, the WTO Agreement on Government Procurement (GPA) replaced and strengthened the Government Procurement Code. It is a "pluri-lateral" agreement, in other words it is excluded from the package of Uruguay Round agreements, which means that not all WTO members are bound by it. The Agreement currently has 15 parties. These are mainly major industrialized economies but some developing countries have also joined, such as Armenia, Hong Kong, Korea, Singapore, and Chinese Taipei[21]. As for South Africa, it is neither a party nor even an observer to the GPA. It has reason not to accede to the GPA.

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[18] See the WTO homepage (http://www.wto.org/english/tratop_e/gproc_e/gproc_e.htm) and the USTR homepage (http://www.ustr.gov/trade-topics/government-procurement).

[19] The Tokyo Code was only applicable to GATT members who signed it.

[20] In addition to national treatment, the Government Procurement Code also stipulated most-favoured-nation treatment.

[21] Several countries such as China, Jordan, and Moldova, are currently under the accession negotiation process to the GPA.

The main characteristics of government procurement in South Africa are targeted procurement[22] and a constitutional principle. Prior to 1994, the South African government procured almost all goods and services from large, established and white businesses. It was difficult for small and marginalized black businesses to join this procurement system. During the transition period, there was a conflict of views on the use of government procurement between the de Klerk administration and the tripartite alliance. The tripartite alliance regarded government procurement as a policy instrument to empower people who had historically been disadvantaged as a result of unfair discrimination. This notion is represented in the Reconstruction and Development Programme in Section 4.4.7.7 and the 1996 Constitution of South Africa in Section 217, which permits government agencies to make use of preferential procurement. By contrast, the de Klerk administration did not attach much importance to government procurement as an instrument to implement socio-economic policies. Based on this attitude, the de Klerk government stated its intention to eliminate preferences in government procurement in its reply to the GATT Council on the Trade Policy Review (GATT 1993). Besides, there was no explicit provision that addressed the use of government procurement as a policy tool to correct past imbalances in the 1993 Constitution (in Section 187) (Bolton 2006: 203).

South Africa chose not to accede to the GPA due to these controversial views. This allowed South Africa to employ an affirmative government procurement system as a significant policy measure to uplift groups that had previously suffered from discrimination. South Africa has elaborated very complex laws and regulations on government procurement, including the Preferential Procurement Policy Framework Act of 2000 and the Public Procurement Act of 2001. The Black Economic Empowerment (BEE)[23] scheme also gives preferential treatment to a previously disadvantaged group in the government procurement process. Even though it is under continuous pressure from its trading partners to accede to the GPA, South Africa has to keep to its policy of not signing the GPA in order to make its BEE policy legitimate (Bolton 2008: 795). By asserting the status of a developing country, South Africa regards preferential procurement as necessary for its socio-economic development. If the GPA were part of the package of Uruguay Round agreements, South Africa would face difficulties in making its BEE policy consistent with WTO rules.[24]

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[22] A targeted procurement is defined as a system of procurement to provide employment and business opportunities for marginalized individuals and communities (Manchidi and Harmond 2002).

[23] The BEE is a programme launched by the South African government to redress the inequalities of apartheid by giving previously disadvantaged groups (black Africans, Coloureds and Indians who are South African citizens) economic opportunities that were previously not available to them. It includes measures such as employment equity, skills development, ownership, management, socio-economic development and preferential procurement.

[24] In relation to the interaction between trade and competition policy, South Africa said "there is no clarity on how the concept of non-discrimination will or will not prevent developing countries from implementing their development policies, such as South Africa's Black Empowerment policy" (Khor 2003b).

3. ATTITUDE TOWARD THE WTO

After the transition in 1994, democratic South Africa, as described above, has positively kept the previous government's word as a developed country at the Uruguay Round negotiation. At the same time, however, newly born South Africa has expressed its own attitude as a developing country at the WTO.

3.1 *Singapore Issues*

The Uruguay Round has already introduced new areas into the multilateral trading system, such as services and intellectual property rights, which have led to the expansion of the scope of the WTO. Even after the Uruguay Round, the developed countries kept up the pressure to incorporate more and more issues into the WTO. Mainly, but not only, on the initiative of the European Union (EU), four new issues were introduced as subjects for discussion at the WTO Ministerial Conference held in Singapore in December 1996: investment, competition policy, transparency in government procurement and trade facilitation.

Many developing countries opposed the idea to deal with these four issues as part of the negotiating agenda at the WTO. They thought that (i) the capacity of each developing country to handle new issues is insufficient because developing countries are already facing problems implementing the Uruguay Round agreements, (ii) there are strong concerns that new issues might damage developing countries once trade rules are established on these issues; and (iii) the new issues are beyond the trade topics that the WTO is supposed to cover (Keet 2002; Khor 2003a). South Africa stood in line with other developing countries and supported the position that Tanzania expressed at the Singapore Ministerial Meeting on behalf of the Southern African Development Community (SADC), of which South Africa is a member.

> In the two years of WTO existence, SADC member countries have, despite sincere efforts, been struggling with limited success to meet their obligations as provided for under the WTO agreements. Our capacity therefore to take on new commitments over and above our existing obligations under the built-in agenda would be limited. …this Ministerial Meeting should focus on implementation of the Uruguay Round Agreements (WTO 1996).

South Africa insisted that the Singapore issues would place enormous burdens on WTO members (Kohr 2003a) and that it would have no more commitments other than the Uruguay Round agreements.[25] South Africa, with emphasis on its being a developing country, especially an African country, conceived the trade system should have more

[25] South Africa again expressed a denial on inclusion of the Singapore issues in the economic partnership agreement (EPA) negotiation between the EU and the SADC (Inter Press Service, "TRADE: South Africa Won't 'Roll Over' on Singapore Issues," Sam Nzioki, 13 October 2007).

equitable and development friendly rules. In order to encourage developing members to engage on Singapore issues, South Africa thought that the sequence was of importance. The negotiations to ensure developing countries' issues should be addressed first, SDT, TRIPs-public health, agriculture, non-agricultural market access (NAMA) negotiation and only then Singapore issues (Khor 2003b).

Despite the strong opposition of developing countries, these four new subjects, which are categorized as Singapore issues, were originally included on the Doha Development Agenda (DDA). However, at the 2003 Cancún Ministerial Conference, WTO members could not reach a consensus on identifying the Singapore issues, except with regard to trade facilitation, as part of the negotiating agenda of the DDA.

3.2 *New Round*

Since the WTO established, South Africa has took the position as a developing country at the WTO and strengthened the cooperation with the group of developing countries especially with the Africa group. This posture was explicitly shown in the argument on setting up a new round from 1998 to 1999.

Based on the Uruguay Round agreements, the mandated negotiation on agriculture and services was to start in 2000 (so-called "built-in agenda"). On this occasion, the United States initiated a new and comprehensive round of trade negotiation including not only Singapore Issues but also other new areas such as environment and labour. The developed countries, led by the United States and the EU, aimed to launch the "Millennium Round" at the Third Ministerial Meeting held in Seattle in 1999.

Against the pressure from developed countries, developing countries expressed strong opposition to launch a new round. As mentioned above, most developing countries were still dealing with problems implementing the Uruguay Round agreements. They did not want to take any new commitment which might impose further burdens on them (Keet 2002: 7). South Africa itself could respond to the commitment resulted from the Uruguay Round. However, in order to strengthen an alliance with other developing countries, South Africa took a general position against the setup of a new round (WTO 1999a; 1999b).

At the same time, however, South Africa hoisted a flag of "re-integration into the global economy." Its economic policy framework based on neoliberal globalisation which resulted in the Growth, Employment and Redistribution (GEAR) programme internally and the policy to make a world trading system further liberalized externally (Keet 2002). As a matter of fact, Keet (2002: 7) pointed out that "South Africa's multilateral trade officials, whether in Geneva or Pretoria, in fact shifted quite rapidly … towards an approach explicitly preparing for a new multi-sectoral round." In 2001, at the last stage of preparing for a new round, South Africa was to play even a key role for launching it (Ismail 2011: 10).

South Africa showed a complicated and sometimes contradictory attitude toward the WTO at this period. On one hand, South Africa opposed a comprehensive and ambitious

round because it went along with developing countries as a member of the African group at the WTO. On the other hand, it supported a new round because it needed the free, open and rule-based multilateral trading system for its economic development.

3.3 *Doha Development Agenda*

The WTO launched the DDA at the WTO Ministerial Meeting in 2001. The DDA has nine areas that are up for negotiation on the agenda, such as agriculture (including cotton), non-agricultural market access (NAMA), services, rules (including anti-dumping, non-agricultural subsidies and countervailing measures), trade facilitation, development (including the revision of SDT provisions), TRIPs, and the environment. South Africa actively participates in all these areas, intensively negotiating in the fields of agriculture, NAMA, and services. It participates in or creates negotiating groups in some areas. For example, in the negotiations on agriculture, South Africa is a member of the Cairns Group, and in the NAMA negotiation it is a core member of the NAMA 11 group of developing countries.

Through the DDA negotiation, South Africa seems to focus more on acquiring flexibility for the developing countries as a whole than on realizing its own national interests. The main objective of South Africa in the DDA negotiations is to make the current unfair multilateral trading system more favourable for developing countries (Ismail 2011) and to correct inequalities between the developed and developing countries in the WTO (WTO 2003; 2005; 2010). In order to realize a sustainable trade system, South Africa aims to reduce/eliminate tariff and non-tariff barriers on products which have an influence on developing countries' trade and to make development-friendly trade rules. This was because South Africa thought that the WTO system was still in favour of the developed countries and that a structural shift in the WTO was necessary in terms of development objective. The DTI listed South Africa's objectives in the DDA;

- To ensure that developmental issues are at the centre of the WTO agenda and the multilateral trading system,
- To address the imbalances in existing WTO agreements,
- To strengthen the rules-based multilateral trading system vs unilateralism,
- To reduce protectionism against products of export interest to South Africa and other developing countries, especially in agriculture,
- To ensure meaningful African participation (DTI 2003).

From a look at these objectives, it can be seen that South Africa at the DDA thinks of itself as a leader of the developing countries. This is not trade policy, but foreign policy. Nowadays, it makes use of the WTO as a forum to realize its foreign policy.

CONCLUSION

The trade policy of South Africa, as with other members of the GATT/WTO, has been influenced by international trade rules and multilateral trade negotiations. However, two distinctive circumstances regarding South Africa make its trade policy different from others. Firstly, at the beginning of the 1990s, the process of democratisation in South Africa coincided with progress in the GATT Uruguay Round. Secondly, South Africa changed its status in the GATT/WTO from being a developed country to being a developing country when a new democratic government was born in 1994.

When it returned from its long isolation, South Africa put the priority on "re-integration into the global economy" and strongly wished to re-establish its presence in international society. South Africa swept away the policy of the apartheid age and attached importance to its responsibilities as a developed country and to keeping its system compatible with the GATT/WTO rules. During the Uruguay Round, only developed countries were supposed to offer to lower their tariff levels by one third on average. The then President de Klerk administration agreed to substantial trade liberalisation. The newly born, democratic South Africa had to take over this commitment to the GATT/WTO. At the beginning of the Mandela government, trade liberalisation was in line with the broader goal of "re-integration into the global economy."

South Africa also signed agreements, as products of the Uruguay Round, stipulating strict rules on non-tariff measures, such as anti-dumping duties, subsidies, import licenses and sanitary and phytosanitary measures, as well as setting standards on new issues like IPR. Because these agreements deeply influence domestic systems and policies, it is necessary for WTO members to reform their existing legal systems or to legislate new laws in order to be consistent with WTO requirements. Most developing countries are not willing to, and in some cases are not able to liberalise domestic regulations. Therefore, the WTO provides extra time for developing countries to fulfil their commitments in accordance with SDT provisions. However, South Africa reformed its anti-dumping and IPR systems without any grace period as a developed country. On the other hand, South Africa has not yet acceded to the GPA.

The implementation of extensive tariff reductions began to have manifestly negative effects on production and employment within South Africa in the years that followed afterwards. South Africa has gradually changed its trade policy from actively promoting liberalisation to considering industrial protection. President Mbeki aptly described South Africa as a country of two nations;

> …South Africa is a country of two nations. One of these nations is white, relatively prosperous, regardless of gender or geographic dispersal. It has ready access to a developed economic, physical, education, communication and other infrastructure … The second and larger nation of South Africa is black and poor, with the worst affected being women in the rural areas, the black rural population in general and the disabled (Cling 2001: 55).

In the latter half of the 1990s, South Africa wavered between two conflicting requirements; to fulfil its responsibilities as a developed country, and to protect its industries as a developing country. However, in the 2000s, South Africa has consolidated its position as a developing country in the WTO. Especially after the new round of trade talks, the DDA, was launched in 2001, South Africa has willingly played a role as a leader of the developing countries.

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