

NEGOTIATIONS ON SINGAPORE ISSUES: TO BE OR NOT TO BE  
A NIGERIAN PERSPECTIVE

BY

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## **I. Introduction**

There was apparent lack of consensus at the end of the Fifth Session of Ministerial Conference of WTO held in Cancun between September 10 and 14, 2003 (Cancun Ministerial Conference (CMC) hereafter). Singapore issues were identified as the main set of issues that led to the break-down of talks at the Conference even though other contentious issues in agriculture, non-agriculture market access (NAMA), development issues (special and differential treatment, implementation, technical assistance, etc), and other issues (eco-labelling, geographical indications under TRIPS) as well as the Cotton Initiative were on the CMC agenda. A review meeting has been fixed for December 15, when all contentious issues would hopefully have been resolved. In other words, it should be clear then whether negotiations on Singapore issues would be launched or they would be referred to Geneva for continued clarifications needed to generate further understanding by Member countries.

The Singapore issues are four in nature. They include trade and investment, trade and competition policy, trade facilitation and transparency in government procurement. Part of the failure of the CMC was due to the linking of progress achieved on issues in agriculture and others to an agreement to launch negotiations on Singapore issues. The other part relates to the three irreconcilable different positions that emerged at the meeting. While one group of countries favoured that the four issues be referred back to the Working Groups (WGs) in Geneva (since there was no explicit consensus on any of them), another group was in support of launching negotiations on all four issues on the basis of the Doha Development Agenda (DDA) and the progress so far made in the WGs. The third group was in favour of unbundling the four issues, considering each issue on its own merit, and launching negotiations on two namely, trade facilitation and transparency in government.

The CMC though could not reach agreement on any issue, it gave a clear mandate for the continuation of work with a sense of urgency and purpose considering the discussions at Cancun to resolve outstanding issues. The General Council was also mandated to meet no later than 15 December 2003 to take necessary actions to move negotiations forward apparently with a view to completing the DDA work programme on January 1 2005. The implication for Nigeria of the failure of the CMC can be explained within the context of the intense post – Cancun pressure from developed country trade partners whose trade interests seems endangered. In this regard, an

assessment of the costs and benefits of launching negotiations on Singapore issues and an articulation of strategies on the way forward become crucial to dealing with such external pressure. The rest of the paper is arranged in four parts. Section 2 describes Nigeria's pre-Cancun position on Singapore issues and examines this in relation to African Union's position with a view to identifying whether the latter represents an aggregation of the former with those of other countries in Africa. In section 3, the possible impact of negotiations and subsequent agreement on these issues is analysed. Section four examines those factors that are likely to undermine the launching of negotiations on Singapore issues despite whatever consultations might have occurred since Cancun. It also discusses options currently on offer to continue the DDA work programme even without agreement to negotiate on Singapore issues. The paper is concluded in section 5.

## **II. Nigeria's Pre-Cancun Position on SI**

Nigeria's pre-Cancun position on each of the four Singapore issues is as follows<sup>1</sup>. With respect to trade and investment, the core WTO principles of most-favoured nation (mfn) and national treatment (NT) if applied to cross border investment flows (essentially portfolio investment and foreign direct investment (FDI)) would not only reduce Nigeria's right to regulate foreign investment but also the development concerns of the Working Group is not likely to be sufficient for the country to forego this right. In effect, Nigeria supports other developing countries in maintaining the statusquo, pushing the issue forward until a time when the Working Group is able to convince the generality of developing countries of the necessity of considering investment issues under the WTO arrangement. In the case of trade and competition policy, Nigeria favours the discontinuation of discussions, arguing that existing global rules set by WTO should be adequately implemented to complement domestic competition regulations. This is because multilateral rules on competition make multinational firms operate freely in a manner that frustrates domestic investment, and is likely to jeopardize Nigeria's benefits from the Organisation of Petroleum Exporting Countries (OPEC) which may be forced to conform to these rules after agreement.

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<sup>1</sup> Proposals to the Enhanced National Focal Point on Multilateral and other Trade Matters before Cancun.

Nigeria is opposed to having binding obligations under transparency in government procurement even with its support for the clear advantages that might arise from an agreement in terms of transparency and generating improvement in internal decision making process induced by larger supply base for government procurement, particularly in consideration of the sufficiency of national procurement legislation. It is also of the opinion that subjecting local suppliers, which are operating under high cost conditions, to similar treatment with foreign ones under the mfn and NT principles will probably worsen their competitiveness, the unemployment situation, and poverty. In effect, international guidelines on transparency in government procurement with appropriate flexibility will be sufficient while the mfn and NT principles should not be applied at this stage of its development.

The country is deemed to benefit more from the status quo than to agree to negotiations and subsequent agreement on trade facilitation for two seemingly obvious reasons. One, it lacks the resources to modernize its customs capacity and engage in more costly port reforms. Two, assuming additional legal obligations without adequate resources to implement them may expose it to unnecessary dispute from trade partner countries.

The AU position on these issues is essentially that of maintaining the status quo while work continues on articulation of the likely costs and benefits of agreement on these issues to Member countries<sup>2</sup>. This position arose from purported complexity and importance of the issues of which developing country and least developed country members have generally expressed lack of substantive and procedural understanding. The clarifications sought were to be complemented by a request for effective technical assistance and capacity building to African countries. This position, though aggregative, re-echoes that of Nigeria which was given in respect of each of the Singapore issues. There is thus every reason to believe that the AU position reflects those of individual African countries especially when it is considered that its position was announced at the end of an African Trade Ministers meeting in June. However, it is not clear whether this position derives support from rigorous technical analysis, mandated and funded either from within individual African countries or from a representative platform in Africa. There is clearly a link between national and regional positions. According to Oyejide et al, (2003, p. 104), "... the debate that

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<sup>2</sup> Mauritius Ministerial Declaration on the Fifth Ministerial Conference of the WTO issued at the end of African Ministers of Trade Meeting in Grand Baie, Mauritius, 19-20 June, 2003.

typically accompanies any trade policy reform programme would be more productive if it was guided by analytical and empirical studies which help to illuminate the key issues, and identify and assess the set of feasible options from which an informed choice can be made". Elsewhere in the study, they assert that research and policy analysis that focus on estimating the benefits and costs of implementing specific regional and multilateral trade agreements would be beneficial to the trade policy making process to the extent that they assist in enhancing the knowledge of all stakeholders about the substantive issues as well as the complementary institutions and policies needed for their implementation. National and regional interests are thus aggregated during the process of harmonisation which is made possible by the identification and assessment done in empirical studies.

### **III. Possible Impact of Negotiations and Agreement on Singapore Issues on Nigeria**

Two interpretations can be offered for the main outstanding issue, at the end of the CMC, of whether or not to initiate negotiations on Singapore issues. One, if it is agreed to commence negotiations, there will likely be agreements on each of them individually if unbundled. Two, there is also a possibility of an agreement if all of them are negotiated as a group. Each possibility would require an upfront adequate articulation of the potential impacts of either an aggregate agreement or a set of individual agreements on all the issues on Nigeria for understanding what the country's position should be. Part of the required understanding relates to whether Nigeria can implement all the agreements concurrently alongside others to which it currently has commitments and in which it experiences implementation difficulties. Each of the issues is taken in turn for a limited analysis of costs and benefit to Nigeria of an agreement in each.

#### **a) Trade and Investment**

There is no gainsaying that Nigeria requires investment in form of foreign inflows to bridge its savings – investment gap. Table 1 shows that foreign direct investment constituted the second largest share of Nigeria's services trade during 1989-1998. It also is the second largest share of Nigeria's Gross Domestic Product. These proportions reveal the degree of importance of FDI in Nigeria's economic growth. On the other hand, the growth of foreign direct investment in other sectors except oil has

decelerated in recent times, which suggests that Nigeria's investment regulations that have been rendered more liberal (especially the Nigerian Investment Promotion Commission decree 16 of 1995 and the Foreign Exchange (Monitoring and Miscellaneous Provisions) (FEMMP) Decree No 17 of 1995) to take cognizance of its need for foreign direct investment are either inconsequential or not sufficient to attract much-needed FDI.

**Table 1: Total services Trade by Modes (1989 - 1998)**

	Value (US\$million)	Share of Total	Share in GDP
Mode 1: Cross-border supply	29478	57.4	8.9
Mode 2: Consumption Abroad	9224	18.0	2.8
Mode 3: Commercial Presence	12647	24.6	3.8
Mode 4: Movement of natural Persons	0	0.0	0.0
Total	51349	100	15.6

Source: Computed from (a) International Monetary Fund, Balance of Payment Statistics Yearbook, 1995 and 1999. (b) Federal Office of Statistics, Abuja, National Accounts, 1998.

Specifically, the NIPC decree provides the enabling environment for speedy establishment of foreign businesses in Nigeria by ensuring, in principle, that a foreign investor: can establish a business in Nigeria with 100% ownership in contrast to a limit of 40% hitherto permitted under the Indigenisation Decrees; invest and participate in the operation of any enterprise (except sectors on the negative list) in Nigeria; buy the shares of any Nigerian enterprise in any convertible foreign currency through the Nigerian Stock Exchange; is guaranteed unconditional transferability of funds through an authorized dealer, in freely convertible currency, dividends or profits, loan repayment, proceeds remittances after liquidation. Such foreign investor's enterprise shall not be nationalized or expropriated by any government of the Federation; or compelled by law to surrender his interest in the capital to any other person.

The Foreign Exchange (Monitoring and Miscellaneous Provisions) (FEMMP) Decree No 17 of 1995 also permits foreigners to invest in Nigeria through equity ownership in real sector firms or in money market instruments using foreign capital legally imported. Free repatriation of dividends accruing from such investments and

or of capital in the event that the foreign owner sells or liquidates them is also permitted. Nigeria also operates a much liberalised visa regime in line with the Federal Government policy and commitment to attract foreign investments into the country. Basically, for the purposes of business visits, employment (temporary or permanent residence) three (3) types of visas/entry permits are required. These are: business, temporary work permit (twp), and subject to regularisation (str) visas.

These unilateral investment liberalization efforts considered along with the country's experiences in privatization, liberalization of oil refining licensing and easing of entry conditions in the financial sector, suggest that the slow growth of FDI is thus not justified. Two implications can be offered. One, if the current investment regulatory environment and other bilateral agreements have not produced results the difference that might be expected from a multilateral arrangement may not be substantial. Two, it may be that the international investing public require binding obligations to muster courage to increase investment in Nigeria in the presence of other socio-political risks where they expect that gains from multilateral disciplines will far outweigh losses from domestic socio-political squabbles that can generate policy reversals. Experiences in tourism, and banking and insurance though revealed marginal increase in FDI, suggest that multilateral arrangement does not offer the answer for increased investment in Nigeria. Binding obligations require setting up structures that will overstretch the country's resource capacities the burden of which the current technical assistance and capacity building framework in the WTO cannot shoulder.

Furthermore, negotiations under the investment aspect of the Singapore issues are likely to include portfolio investments which are short term-capital flows whose effects have led to "boom and burst" of economies in Asia. The weakness of Nigeria's financial sector makes it vulnerable to such havoc unleashed on the Asian financial system.<sup>3</sup> Thus, while it is advantageous for countries like Nigeria to rely more on investments that are tied to commercial presence than volatile short-term flows, foreign investors' response to previous multilateral investment liberalisation efforts under the General Agreement on Trade in Services (GATS) does not give an

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<sup>3</sup> According to Bankole (2003), an indicator of financial sector growth, financial deepening, shows that growth of the sector decelerated after unilateral financial sector reforms.

indication that such inflows will be large enough to affect sectoral prices and output<sup>4</sup>. It is thus reasonable to maintain that capital account liberalization is not an issue to be considered under the aegis of the WTO, along with the fact that even FDI may not offer net benefits to the country in the presence of implementation obligations that will be required.

#### b) Trade and Competition Policy

The Doha Declaration regarding trade and competition policy recognizes the case for a multilateral framework to enhance the contribution of competition policy to international trade and development. It thus mandated the Working Group on the Interaction between Trade and Competition Policy to focus on the clarification of: core principles, including transparency, non-discrimination and procedural fairness, and provisions on hard core cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity-building. While negotiations were expected to commence after Cancun if the explicit consensus was in favour of it, full account of the needs of developing and least-developed country participants and appropriate flexibility provided to address them was promised.

Though Nigeria's development objective within the context of private sector-led growth should be to grow a competitive domestic economy, there is need to defend domestic producers against unfair competition from multinational corporations and unfair imports, on the one hand and domestic consumers from private and public monopolies, on the other, through a competition policy and law. A competition policy is a general government approach and action to ensure an efficient market economy given effect through generic and sector regulations that cover privatisation, investment, trade liberalisation, public purchasing, among others. In contrast, a competition law is the specific body of laws which embed principles of competition and designed to curb anti-competitive business practices by firms. It is a piece of legislation, rules and regulations designed to tackle restrictive business practices in a generic (applicable to the economy as a whole) or sectoral (aimed at firms in each sector) sense.

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<sup>4</sup> Bankole (2003) found that foreign participation in banking did not affect interest rates in the sense that it should fall as a result of increased participation of foreign banks (supply of financial services).

The main thrust of competition policy as conceived in the WTO work programme is to curb anti-competitive trade practices with cross-border effects. These practices include international cartels (e.g. OPEC), anti-competitive mergers and abuses of dominant position; practices that affect market access for imports; and practices at home market that affect other countries markets. It is argued that multilateral framework on competition policy would be more effective not only in countering such practices that may escape national competition authorities but also it is more efficient than international cooperation in the form of communication between competition authorities, dissemination and exchange of information .

However, such multilateral framework will oblige Nigeria to commit resources to drafting and harmonising as well as implementing a competition policy and law with associated efforts in employing and training personnel to enforce the law<sup>5</sup>. In other words, the issue for Nigeria is two-pronged. One, it should be prepared for pressures to develop policies, laws and institutions as well as ready to implement and enforce its competition policy and law. Whether the benefits of signing on to a multilateral framework outweighs these costs is an empirical issue that should be addressed. Two, a ban on international cartels spells the doom for OPEC. The issue for Nigeria is then to identify the costs and benefits of its continued membership of OPEC as an approximation for the death of the organisation. Of course, the market structure in both cases will be different. Findings from these studies will help Nigeria deal with such issues as the need for global rules on competition policy; and whether if a multilateral agreement is signed it would positively impact its economy at this stage of its development.

#### c) Transparency in Government Procurement

The Doha Declaration implores that multilateral negotiations in this area would be limited to the transparency aspects and as such would not restrict the scope for countries to give preferences to domestic supplies and suppliers. The Doha Declaration thus recognises that the case for an agreement on transparency in government procurement while it is flexible in the sense that it allows governments to give preference to domestic suppliers. The WTO Working Group on Transparency in Government Procurement has had extensive discussions on the scope of the law in terms of the type of purchase – goods, services or a mixture of the two; whether the

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<sup>5</sup> There is a draft competition policy and law that is being finalised by the Ministry of Justice.

law will cover central/federal government, states and local authorities procurement; extension of procedural rules into a country's appeals procedure; domestic publication of public procurement rules; and link to the WTO dispute settlement procedure.

While the advantages of economic efficiency in terms of generating value for money from public procurement is not in doubt, there are important constraints to subjecting public procurement to internationally binding transparency agreement in development context. These constraints, though recognised by proponents, essentially are made up of the costs that it would impose on countries like Nigeria in drafting legislation, creating and nurturing administrative infrastructure for notification, information dissemination, rules enforcement, and in training personnel. The issue then is the net benefit from such multilateral framework since it also denies the country the opportunity to use government procurement to achieve socio-economic objectives. These issues tend to generate political opposition to the need for an agreement at this time. Most importantly, public procurement is used by several countries as an instrument of domestic industrial support through preferences for domestic producers in public purchasing.

Though Nigeria's rules and procedures for public procurement are currently compatible with what is expected from a multilateral framework<sup>6</sup>, it is not yet clear whether it should accede to WTO Agreement on Transparency in Public Procurement, due mainly to other institutional building requirements that such internationally binding will impose on it. Currently, invitations to tender for large public purchases are issued on the internet and there is no restriction on nationality of suppliers, while selection of the winning tender is based on value for money criteria. Nevertheless, preference is given to Nigerian suppliers. An Agreement may however help to expand supply base for government procurement, curb rent-seeking activities of domestic suppliers through publication of rules, and generate international confidence in Nigeria's system of governance in general.

#### d) Trade Facilitation

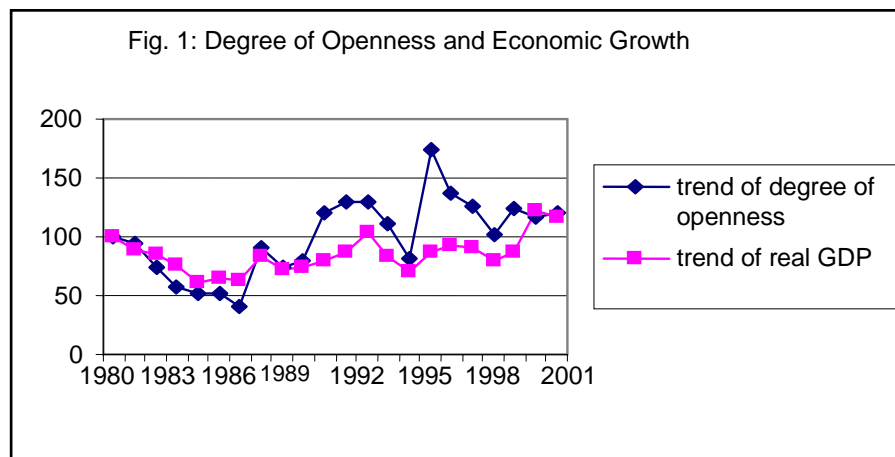
Trade facilitation is an agenda item that aims at the simplification of trade procedures brought about by concerns of traders regarding the problems they face from excessive trade documentation requirements; lack of automation and insignificant use of information technology; lack of transparency (unclear and

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<sup>6</sup> In principle, all public purchasing above a threshold of N100,000 is published in the official gazette

unspecified import and export requirements); inadequate procedures (lack of audit-based controls and risk assessment techniques); and failure to modernise, and lack of cooperation among customs and other government agencies which generate trade costs in excess of costs of tariff (Oyejide, 2003). Trade facilitation is thus a vehicle for achieving larger volume of global trade which in turn is an engine of growth.

Trade facilitation makes countries trade more efficiently and effectively and therefore leads to positive impact on income distribution and poverty, helping to realise the goal of poverty alleviation and reduction of income inequality. Gilson (2003) is of the view that small and medium sized enterprises are the main beneficiaries of trade facilitation, which enhance trade-induced growth, increase employment, infrastructure, and government revenue, all increasing the available resources that can be used to tackle poverty. Because high transactions costs certainly fall as a result of trade facilitation, small and medium scale firms to that extent tend to be the net gainers. In figure 1, the close association between the degree of openness and economic growth measured as changes in real Gross Domestic Product (GDP) is confirmed by Nigerian data. Both move together whether when rising or falling, with the correlation appearing very strong. This strong and close association suggests that Nigeria should embark on policies that would strengthen this relationship, trade facilitation, in particular.



Trade facilitation would help reduce unpleasant port conditions and processes such that importation and exportation of goods and services are enhanced. This should result from expeditious movement, clearance and release of goods. This objective was contained in some GATT articles and other WTO Agreements in the sense that they

focus on a set of principles which include simplification, predictability, transparency, non-discrimination and consultation. Specifically, GATT Article V on Freedom of transit focuses on strengthening and operationalising of its provisions through new binding rules.

In contrast, Article VIII on Fees and Formalities Connected with Importation and Exportation contains such issues as simplification, standardisation and streamlining of import/export procedures, use of risk assessment, and pre-arrival processing and post-auditing techniques. Article X on Publication and Administration of Trade Regulations is concerned with improvement and clarifications of its provision on issues of transparency relating to establishment of enquiry points, and advance ruling system; consultation between customs administration and traders; and putting in place effective appeal procedures. However, because a multilateral arrangement to implement trade facilitation rules would need substantial institutional and capacity building, the required resources to enforce new rules and update customs procedures to more modern technological standards are quite enormous, apart from the additional legal obligations that may expose Nigeria to dispute settlement.

In other words, in spite of the many advantages that trade facilitation potentially offers to Nigeria, additional binding WTO obligations have the tendency to also overstretch implementation capacities which would inadvertently culminate in costly dispute settlement problems. According to Oyejide (2003), there are additional costs in terms of the threat that trade facilitation poses to customs revenue and the pressure placed on overstretched infrastructure. Hence, the benefits of trade facilitation in terms of modernisation of customs procedures, and the reduction of unpleasant port conditions and processes that will give rise to expeditious movement, clearance and release of goods cannot compare favourably with associated identified costs

In any case, Nigeria has embarked on far reaching reforms of port services but faces perennial problem of reversals, without which still needs time to be realised. For example, after noting many discrepancies with the pre-inspection scheme (PSI) committees comprising Ministries of Transport and Commerce, Nigeria Shippers Council, NMA, NACCIMA, MAN, CBN, NDLEA, among others recommended the adoption of Destination Inspection (DI) at the ports. The implementation date for this recommendation has been shifted five times, and has finally been scheduled for 1 January 2004. In addition, many of the security agents that accounted for unnecessary

port costs of about 45% of the total cost of clearance have returned to the ports with many of them having duplicated work schedules.

The NPA is embarking on streamlining the functions and placements of security agents at the ports. In compliance with International Maritime Organization's (IMO) new port security regulation, NPA has embarked on three phases of enforcement namely, access and vulnerability studies to determine areas of risks, mapping out a security plan, and determining equipment requirements and their installation. In effect, the physical infrastructure, such as the control tower that has stopped functioning for 15years, is being over-hauled. Furthermore, inadequate space for examination, loading/stacking and maneuvering resulting from undue emphasis on outmoded shed system designed for general cargoes is being looked into. The rehabilitation of the stacking area to account for increased containerization and that of the quayside is at 85% completion.

Nigerian port processes are still burdened with overbearing influence of government through port security agents, the delayed adoption of ASYCUDA++, unnecessary port charges, congestion, lengthy and cumbersome procedures. Such port reforms, it would seem paves the way for acceding to launching of negotiations in trade facilitation by Nigeria. But the main constraints identifiable from the reversals and delayed implementation of elements of reforms are resources based. Launching of negotiations may help speed up port reforms but also lead to increased costs of implementing the associated obligations. Adeyemo and Bankole (2003) in their study of Nigeria's participation in international standards setting and maintenance of the enquiry point and National Codex Committee mandated by WTO's Agreement on Sanitary and Phytosanitary Standards (SPS) found that there was inadequate funding of the Committees work (including lack of office equipment and staff) apart from its inability to frequently attend standards-setting meetings also due to paucity of funds.

Thus the main issue under trade facilitation is the potential costs that an agreement will generate in terms of setting up required structures.

#### **IV. Concluding Remarks: Negotiations on SI - To be or not to be?**

Nigeria's pre-Cancun position in the four areas of Singapore issues essentially was to maintain the status quo, urging further clarifications on the potential effects of multilateral agreements supposedly on output, prices and employment. This position tallies with that of the African Union. However, post-Cancun pressures suggest that this position may not be maintained for too long, especially with the European Union's proposition that the issues may be unbundled, agreed on a plurilateral basis, and that developing countries may participate in the negotiations but not necessarily sign on to the agreements.

A Plurilateral Agreement would be designed by the developed countries, which will then be applicable to Nigeria when it wishes to join in such arrangement. There is a disadvantage in accepting rules that will only suit developed country purposes. The WTO framework provides scope for recognizing developing countries development problems and allow for certain flexibility that will be absent under plurilateral agreements. This issue is for consideration for Nigeria along with the degree to which the promise of technical assistance will address developing countries concerns of substantial constraints in implementing these agreements if they finally agree to negotiate. Essentially, WTO's technical assistance has been limited to the provision of workshops, conferences and general training courses. The need to address capacity building in the drafting and implementation of laws, establishment of the necessary institutions and the training of staff is very important to any decision to shift ground on Singapore issues. Currently, WTO cannot pretend to be an aid agency since it is not in a position to provide such technical assistance. Responsibility for providing technical assistance directly to countries should be the focus of any framework that will make developing countries including Nigeria agree to negotiate on some of these issues.

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