

STATEMENT BY AMB. DR. WAFIK Z. KAMIL, SECRETARY-GENERAL OF THE AALCO AT THE REGIONAL CONFERENCE ON “THE WTO AT 10: THE ROLE OF DEVELOPING COUNTRIES IN NEGOTIATIONS AND DISPUTE SETTLEMENT”, ORGANIZED BY THE CAIRO REGIONAL CENTRE FOR INTERNATIONAL COMMERCIAL ARBITRATION AND THE WTO, 11-13 FEBRUARY 2006, CAIRO, ARAB REPUBLIC OF EGYPT.

H.E. Dr. Ahmed Fathy Sorour, Prof. Georges Abi-Saab, H.E. Mr. Amr Moussa, Dr. Aboul-Enein, Distinguished Speakers, Experts, delegates, ladies and gentlemen

Allow me first to congratulate Dr. Aboul-Enein, Director of the Cairo Regional Centre for International Commercial Arbitration (CRCICA) for organizing this Regional Conference in cooperation with the World Trade Organization at this very important juncture, in the backdrop of the recently concluded sixth WTO Ministerial Conference in Hong Kong. May I also thank the organizers of the Conference for giving me the opportunity to address this distinguished gathering. Indeed, it gives me immense pleasure to note that the Cairo Regional Arbitration Centre, which was established in 1979 under the auspices of the AALCO, in cooperation with the Government of the Arab Republic of Egypt, had succeeded in serving its intended purpose and has grown to be one of the major arbitration institution of the world today.

Distinguished delegates,

Ten years have passed since the establishment of the WTO and its Dispute Settlement Mechanism, and the time is ripe to reflect on the role that the developing countries played and could play in the evolving WTO legal and policy framework. During these years, the WTO has witnessed phenomenal growth and prestige in becoming one of the most hotly contested negotiating forums on liberalization and regulation of international trade. AALCO, an intergovernmental organization, the majority membership of which comprises developing countries, has been following with keen interest the activities of the WTO, particularly the Doha Development round of negotiations.

The role of developing countries in trade negotiations during the GATT 1947 until the Uruguay Round negotiations was fairly limited. This was because GATT 1947 was never viewed by developing countries as an institution through which they could promote their interests in international trade. It was only during the Uruguay Round that the developing countries started recognizing the potential and the need to defend their interests in the trade negotiations at the multilateral level. However, because of their inferior power relation vis-a-vis developed countries, the developing countries could only influence the outcome of the Uruguay round in a limited way.

The Doha Round of negotiations was launched in 2001 with the objectives of – clarification and implementation of the existing agreements; and negotiate and liberalize new areas in international trade. During the course of this negotiation, one could witness a gradual transformation of developing countries from ‘passive’ to an ‘active’ player in international

trade negotiations. While it is true that till date, little of the Doha Round agenda has actually been achieved, it is worth acknowledging that the developing countries, with their inherent drawback as a heterogeneous group, has succeeded in building coalition among them and identifying issues of common concern, which is key to reaching a successful outcome. Unity of purpose among developing countries in WTO is indeed a positive development. Good coordination also means a stronger voice in the WTO because you speak for a group of countries and those countries are supporting you for a common cause.

In fact at the Cancun Ministerial Conference, though generally considered a failure, it was a turning point in successfully demonstrating the negotiating power of the developing countries and proved that a group of countries that has a coherent position have a greater chance of defending their interests, especially when negotiating against the economic powers such as the United States and the European Union. The emergence of developing country groups such as the G20, the African Group, Group of LDCs etc., at the WTO is a trend in the right direction and proves first that they can modify the outcome, protect their interests, and finally can initiate their own issues in the negotiations. The shift in negotiation dynamics continued at the Sixth Ministerial Conference at Hong Kong, where the developing countries proved major players in the negotiation outcome. I sincerely hope that this trend would not crumble to pressure and would persist till the WTO rules could provide free and fair trade rules, reflecting adequately the different social and economic factors.

Ladies and Gentleman,

The “Understanding on Settlement of Disputes” of the WTO, another significant achievement of the Uruguay Round of the Multilateral Trade Negotiations, marked the shift from the ‘power’ based GATT to the ‘rule’ based dispute settlement system. The DSU was viewed with great expectation by the developing countries as it was thought that it would guarantee a level playing field in the settlement of disputes vis-à-vis the developed countries. The WTO DSU consolidated all parts of the WTO system, established a unique new appellate procedure, and more importantly, eliminated veto power that parties had enjoyed under the principle of consensus decision-making. Moreover, it provided for an elaborate and automatic compliance and enforcement mechanism which was a leap forward towards ensuring the adjudicative nature of the WTO Dispute Settlement Mechanism and thereby making it more attractive to developing countries.

The new dispute settlement system, as expected, was an instant success and installed in the developing countries the confidence that even the smallest of the developing countries could challenge and win cases against very large countries. The result was a phenomenal increase in the use of the DSU by the developing countries, who initiated more than 50 percent of the cases. However, the experience with the DSU also revealed certain ambiguities and drafting oversights which were of great concern for the developing countries. While the idea of ‘special and differential treatment’ for the developing countries was incorporated in the DSU, its scope of application was very limited. Most of them were only procedural concessions and the remaining was not adequately clarified to ameliorate the concerns of the developing countries. Most importantly, the developing countries encountered major problems in the

implementation of the adopted reports, the ever increasing cost of the litigation, and lack technical capacity to access the DSU.

While most of these problems have been addressed in the ongoing review of the DSU, which is part of the Doha Round of negotiations, no concrete outcome has been achieved. Since the review initially started in 1997, till date, consensus was reached only on very few provisions, mostly procedural ones'. The Special Session of the DSB has achieved no further progress in the negotiations even after the circulation of negotiating text of proposals. Neither the Cancun Ministerial Conference, nor the Hong Kong Ministerial Conference, did reflect on the progress and direction of the review of the DSU, except reiterating the earlier decisions. In fact the negotiation on DSU review are effectively on hold, because of the pressing areas of the ongoing talk such as Agriculture, NAMA and Services.

Ladies and gentleman,

I believe that it is high time for the developing world to concentrate on capacity building in the area of negotiation and adjudication. Capacity building is the key to realize developing countries objectives at the WTO negotiations and dispute settlement. AALCO as a body of Asian-African States is willing to facilitate the capacity building under its Centre for Research and Training (CRT).

I am sure that the this Regional Conference would enable us to learn from our past mistakes and provide future strategies for the developing countries and work towards the successful conclusion of the Doha Development round of negotiations.

I wish the Conference all success.