Chapter 6

Development Dimension of the Doha Agenda
A Major Concern for South Asia

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1. Introduction

1.1 Background of the Study
The establishment of the World Trade Organisation (WTO), in 1995, as a rules-based organisation, following the successful conclusion of the Uruguay Round (UR) of trade negotiations has important implications for developing countries, including the least developed countries (LDCs). The coverage of WTO is much wider than that of the General Agreement on Tariffs and Trade (GATT). While GATT covered only trade in goods, the WTO covers trade in goods, trade in services and intellectual property rights (IPRs). Moreover, GATT was provisional in nature and all the codes agreed under the auspices of GATT were not mandatory for all contracting states. In contrast, all Members had to accept the WTO agreement with all its annexes as a single undertaking. By incorporating the principle of ‘single undertaking’, it diluted the special and differential provisions, as this effectively meant that all the WTO agreement should be taken as a package and Members are not allowed to opt out of any of the provisions/agreements of the WTO. Moreover, several new agreements were brought within the ambit of multilateral trading disciplines – General Agreement on Trade in Services (GATS) and Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) being two such examples. Hence, the level of commitments and obligations is much higher than that of GATT. In addition, rules agreed under WTO Agreements not only determine the external policies of the WTO Members but also those internal policies that have a direct or indirect bearing on trade. While implementation of the former forced developing countries to open their services sector for foreign competition by creating serious adjustment costs, the latter, with serious implementation costs and negative externalities, dampened the hopes of the developing countries to reap the benefits of WTO Membership. Hence, the implications for economic development and livelihood issues are wide.

Some argue that the developing country Members of WTO had signed the Agreement without having any clear understanding of the agreements and their consequences in the national economy. They did not examine whether the political, social and economic conditions could sustain such commitments. Others are of the view that the developing and least developed countries had successfully incorporated special & differential treatment (S&DT), which are mostly best endeavour clauses, as they need to be negotiated to be made mandatory as well as precise, effective and operational. Gradually, it was realised that the domestic regulatory framework that has a direct impact on internal policies and negotiated in the WTO was diverting the attention of policy-makers from the development-oriented policies, especially for low-income countries. Moreover, most of the regulatory frameworks agreed during the Uruguay Round (UR) were framed in line with regulatory frameworks that were already in place in developed countries. Hence, developed countries did not have to bear the cost of implementation of the WTO
agreements. On the contrary, the implementation cost of the WTO Agreements was huge for developing countries due to scarcity of financial and human resources in effectuating the obligations and commitment undertaken by them. The developing countries also realised that there were imbalances in the existing WTO agreements. During the implementation stage, these concerns have been increasingly raised by the civil society in the developing countries. Also, market access opportunities, which the developing countries were to avail of the liberalisation during the UR, was also disappointing for developing countries. At the conclusion of the UR in 1994, calculations by the United Nations Development Programme (UNDP) and Organisation for Economic Cooperation and Development (OECD) showed that within six years global income would grow by US$200-500bn as a result of the round. It was acknowledged in these studies that all these gains would go to the industrialised countries of the OECD and to the richer middle-income developing countries.

Among the developing countries, the LDCs are at a more disadvantaged position in terms of bargaining power and negotiating position. LDCs constitute more than a quarter of the total WTO Members. But they have been lagging behind in sharing the benefits of free trade. The share of LDCs in world merchandise exports declined from 0.48 percent in 1990 to 0.40 percent in 1999. This is because the growth rate of the LDCs’ exports was spectacularly lower than that of the global exports. Moreover, LDCs’ exports are concentrated in a few products, including coffee, cocoa, fish, wood, leather, tobacco, jute, mineral and textiles & clothing (T&C). This makes the LDCs vulnerable to external shocks.

In recognition of all these concerns, there was a call for a development round, which was clearly reflected in the Doha Ministerial Declaration of the Doha Ministerial Conference in November 2001, where concerns of the developing countries were put at the centre of a new round of negotiations. Against this backdrop, the development agenda has become an issue of the WTO. Originally, a three-year time-period was earmarked for the completion of the Doha Round of trade negotiations. But this did not happen, as the WTO Members could not come up with agreed recommendations by the deadlines. Moreover, the failure of the Cancun Ministerial in September 2003 was a major set back. Later, consultations began and finally a framework was adopted on August 01, 2004, known as the ‘July Package’. The ‘July Package’ has set the stage for negotiations to be conducted among the Members during the run up to the Hong Kong Ministerial Conference in December 2005. It identifies five issues as priority areas of negotiations: Agriculture, Non-agricultural Market Access (NAMA), Services, Trade Facilitation and Development Dimension. The Doha Declaration prescribed only broad objectives in agriculture and NAMA. The ‘July Package’ prescribes specifics in terms of directions of commitments and alternative approaches to achieve these objectives.

South Asia is a diverse region with four LDCs (Bangladesh, Nepal, Bhutan and Maldives), two large developing countries (India and Pakistan) and one small vulnerable economy (Sri Lanka). Except Bhutan, all South Asian countries are Members of WTO. The issues that concern each group are a bit different and, hence, they cannot agree on every possible WTO issue. Moreover, some South Asian countries find commonality outside the region, e.g. as illustrated by the formation of G-20 at Cancun. But all the three groups would benefit from the issues related to development dimension of the Doha Round.
Hence, there is a need to consolidate and bring some sort of coherence to the South Asian stance of the Hong Kong Summit on development dimension.

1.2 Scope of the Study
The intention of WTO is that an open and liberal trade regime offers enormous opportunities for reducing poverty, narrowing inequality, overcoming economic injustice and attaining overall economic development. These can be attained if the right conditions prevail. In reality, the international trading regime is characterised by significant differences in economic power, major distortions in global markets by protectionist policies of developed countries, and high costs of implementation of WTO agreements for developing and least developed countries. The ‘Doha Development Agenda’ of 2001 puts poverty-reducing economic growth and development dimension at the centre of the WTO’s considerations.

Although the Work Programme agreed by the Doha Ministerial Conference recognises the increased importance of the developing countries and contains numerous provisions on the concerns of the developing countries; making the outcome of the negotiations development-oriented remains a major challenge for all WTO Members. The developing countries, including LDCs, have to define the development dimension in the context of the WTO. On the other hand, the developed country Members have to identify the measures, whose acceptance will turn the results of the negotiations development-oriented. In this context, the objectives of this study are to examine:

- How the development issues came up-front in the WTO agenda?
- How the Doha declaration defined the development dimension?
- What has been the outcome on development dimension so far?
- How to move forward to achieve a pro-development outcome?

The study will also focus on the South Asian perspective on Doha development, bearing in mind the differences in level of economic development as well as their priorities in the WTO negotiations. At the Hong Kong Ministerial meeting, the responsibility lies on the negotiators to include development dimension in the negotiations and frame it meaningful and development-oriented. Further stalling and collapse of the negotiations is still possible. Hence, adequate preparations, especially at national and regional fronts, are a pre-condition for designing appropriate positions in forthcoming negotiations. These issues are briefly examined from a developing and least developed country perspective in order to have a South Asian voice.

1.3 Methodology of the Study
The study has been based on review of several WTO documents and available literature related to development issues. A country generally takes a negotiating position without much consultation with a wider set of stakeholders. In order to overcome this ‘democratic deficit’ in the process of negotiation, all the stakeholders, including the policy-makers, trade bodies, development and trade partners, academia, trade unions, and women’s group were consulted to express their views in order to understand the real bottlenecks of the trade sector in the economy and the region in the context of development dimension in the July Package and the Doha Agreement.
1.4 Outline of the Study
The study has been divided into five broad chapters. Following the introduction in chapter one, a brief discussion on the integration in the multilateral trading system of the developing and least developed countries is provided in chapter two. Chapter three defines development dimension of the Doha Ministerial Declaration, while chapter four gives an overview of the outcome on development dimension especially since the Doha Ministerial Conference. In chapter five, the perspective on negotiating strategy of South Asian countries has been addressed. Stakeholders’ perceptions of development dimension are discussed in chapter six, while concluding remarks are provided in chapter seven.
2. Integration in the Multilateral Trading System

2.1 Pre Doha: Integration of Developing Countries
In recognition of the inequality of the WTO Members in terms of differences in stages of economic, financial and technological developments, some elements of development dimension are inherited in General Agreement on Tariffs and Trade (GATT) and WTO agreements. These are basically in the form of S&DT, which are directed towards increased market access opportunities for developing countries, fewer obligations, longer time frames for implementation of the obligations, transition periods, and technical assistance for capacity building. Shortly after the coming into force of the UR agreements, the developing countries noticed that there were several problems with the implementation of these agreements. Their frustration and dissatisfaction became evident within two years of the WTO’s existence. By this time, through their participation in the meetings of the General Council and various committees of the WTO, they had also gained adequate knowledge about WTO negotiations. Therefore, in December 1996, when the first Ministerial Conference of the WTO was held in Singapore, they not only pointed out the ineffectiveness of the S&DT provisions, but also raised implementation issues. They raised these issues again at the Geneva Ministerial Conference in 1998. The Ministerial Declarations on these occasions referred to these problems of the developing countries, but there was no effective solution.

In the process of preparation for the Seattle Ministerial Conference in 1999, the developing countries realised the difficulties and challenges faced by them in implementing the Agreements, in particular, anti-dumping, technical regulations & standards, Sanitary and Phytosanitary (SPS) measures and the integration programme of T&C in the WTO. It was found that the way the WTO Agreements is drafted made it impossible for them to reap any benefit out of them. Rather, commitments and obligations were really a huge burden for them. Moreover, there was gross neglect of some of the important issues of concerns for the developing countries and LDCs by the developed countries. The developing countries succeeded in getting them included in the General Council (GC) Chairman’s text for that conference. This gave a formal status to these issues as a part of the Ministerial Conference. Naturally, when the developed countries were insisting on launching a new round, the developing countries viewed that they would not be in a position to agree on launching a new round without full implementation of Agreements and corrective measure to remove the imbalances inherited in the WTO Agreement. In addition, there was dissatisfaction among the LDCs due to non-implementation of the commitment of High Level Meeting on LDCs held in 1997 and Integrated Framework (IF) initiated by this meeting. As a result, the first attempt to launch new round of negotiations in Seattle failed due to unequivocal resistance from the developing countries and LDCs.
After the failure in Seattle, it was realised that it was not possible to revive the confidence in the WTO system without addressing the implementation-related issues and concerns raised by the developing countries. Eventually, the GC agreed to address these issues in May 2000. At the same time, the GC had also decided to take initiatives for opening up markets by WTO Members for the products of LDCs and to revive IF. Perhaps, the May 2000 meeting of the GC is the turning point in the history of the WTO, where a first step was taken to address the implementation issues of the WTO. However, this was only the starting point. After this meeting, discussions continued to be held in various WTO fora on how to address the concerns of the developing countries. During the period between the May 2000 GC meeting and the Doha Ministerial Conference, a number of proposals were submitted by the developing countries, which were confined to the existing WTO agreements. These included the review of existing S&DT provisions, bringing specificity in some of the provisions of Technical Barriers to Trade (TBT) and SPS Agreements in respect to reasonable time periods, full implementation of commitments by developed countries etc. Finally, specific decisions were taken about these issues in the Doha Ministerial Declaration in 2001 and became part of the Doha Work Programme. The views and positions of many developing countries in key areas were not adequately reflected in the drafts of the Doha Ministerial Declaration, which were prepared in Geneva and transmitted to the Doha meeting. A ‘clean text’ was instead produced. The final Declaration implied that the negotiations had been agreed on the ‘Singapore Issues’ (investment, competition, transparency in government procurement and trade facilitation) as well as on environment on the basis of an explicit consensus on ‘modalities’. But the developing and LDCs actually opposed the inclusion of the ‘Singapore Issues’. The trade round launched at Doha was christened the Doha Development Agenda (DDA) and it had seven major development friendly outcomes as highlighted in Box 1.

<table>
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<th>Box 1: Major Development-related Outcomes of the Doha Ministerial</th>
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<td>First, the Ministerial not only recognised the implementation-related issues and concerns, but also issued a separate declaration on this subject, paving the way for some serious discussions/negotiations on these issues before the conclusion of the round.</td>
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<td>Second, in response to the public outcry against the monopolistic tendency of the pharmaceutical producers with patent protection and the resultant rise in prices of medication due to the provisions of the TRIPs agreement, a declaration on TRIPs and Public Health was also included in the Ministerial Declaration. This Declaration also absolved the LDCs of the responsibility of providing patent protection on pharmaceutical products until December 31, 2016.</td>
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<td>Third, in response to the developing countries’ call for addressing the problems of conflict between the TRIPs Agreement and the United Nations (UN) Convention on</td>
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Biological Diversity (CBD), it was decided to conduct discussions on the ways and means to harmonise these international instruments.

Fourth, to address the problem of the best endeavour nature of the S&DTs, it was decided to make them precise, effective and operational.

Fifth, the issue of labour standards, which had made it to the WTO from the Singapore Ministerial Conference, was dropped altogether from the WTO ambit.

Sixth, in order to assuage the fear of the developing countries that environmental issues could not be used as a form of disguised protectionism, it was decided to narrow down discussion on this issue.

Finally, issues such as trade, debt and finance, trade and technology transfers, and technical assistance and capacity building were included in WTO agenda for the first time.

2.2 Post Doha: Integration of Countries

In the preparation of Cancun and thereafter, the developing countries got too involved with the subjects of agriculture, NAMA and Singapore issues and were not able to pursue implementation issues in the negotiations. As they have not been able to spend time and attention on this subject, there has been inadequate progress.

The Ministerial, which was held in Cancun, Mexico in September 2003, failed mainly due to lack of consensus on two issues – agriculture and Singapore Issues. The failure of Cancun Ministerial is being viewed as a threat to the current global trading order. This is because some developed countries such as the US are making a shift to bilateral and regional agreements. Once many developing countries enter bilateral or regional free trade agreements (FTAs), it might be more difficult for the remaining developing countries to have sufficient bargaining power to get significant S&DT concessions at the multilateral level. Moreover, the developing countries have to accept WTO-plus options at bilateral and regional trading agreements (RTAs) with developed countries. Such actions are also weakening the WTO. For South Asia, multilateralism has much to offer. This is because the system:

- rests on the principle of non-discrimination;
- is based on consensus for decision-making; and
- provides S&DT to developing countries.

Moreover, in South Asia, about 95 percent of the volume of trade is with partners outside the region. The intra-regional trade for South Asia in 2002 was only 4.9 percent. So the South Asian nations must put in concerted efforts to get a better deal at the WTO in order to be net beneficiaries from the multilateral trading system (MTS). The South Asian countries also need to pursue the South Asian Free Trade Agreement (SAFTA) and WTO hand in hand, as participation in multilateral trade does not preclude bilateral trade. Moreover, for this region, multilateralism is not a substitute for bilateralism, but...
rather they reinforce each other. The low intra-regional trade is also caused due to similarity of products in the region and consumer preferences to purchase imported goods from outside the region. Hence, multilateral trade has great importance for the South Asian countries.

**Dynamics of Shifting Power**

At Cancun, there was some unity of developing countries and through the formation of the G-20 alliance, developing countries were able to ward off pressures from the developed countries. Although there has been some significant development in the negotiating process in the ‘July Package’, many other important items were still not addressed. The process used in developing the text of the ‘July Package’ as well as the text itself reflect that there has been some evolution of balance of geo-political power. The importance of G-20, which includes Brazil and India, is quite evident. At the same time, the increasing marginalisation of the priority claims of the LDCs is also very striking. The formation of a new dominant hub of power in the group of Five Interested Parties (FIP) has important implications for LDCs’ future strategies and their positioning in the global trade regime.

**Slow Start for a Development Round**

In the ‘July Package’, positive outcomes have been reached for developing and least developed countries in the area of agriculture in regard to commitment to eliminate export subsidy by developed countries and the elimination of three Singapore issues. But there is no time frame for the elimination of export subsidies. Developing countries have identified their key developmental objectives through the G-20 and the G-90 and other negotiating groups. The expectation that the G-20 would support and incorporate the demand of the poorest was not borne out. Not only has the G-20 focused clearly on its own interests, such as the issue of agricultural export subsidies and domestic support in wealthy countries, but they have also increased the vulnerability of the net food importing countries. Moreover, new non-priority issues, such as industrial tariff cuts and trade facilitation, have received greater priority. But dropping three of the new issues from the negotiations has been considered a success for the developing countries.

**Slow Integration of the LDCs**

The Ministerial process follows a format in which only government representatives can participate. There are difficulties faced by the LDCs in trying to set up negotiating committees to deal with their own interests. They handle the problems through consultative groupings – earmarking countries as focal points for committees. The focal point would have ‘the primary responsibility of following the negotiations and trying to develop, with the other Members of the LDCs, a common position’. In preparation for the Fifth Ministerial Conference, LDCs’ Trade Ministers have adopted the Dhaka Declaration setting out the LDCs’ negotiating agenda and priorities for Cancun and beyond.

Participation of Bangladesh in the Cancun Ministerial was considered to be domestic capacity building, as discussed in Box 2.
Box 2: Bangladesh in Multilateral Trade Negotiation: Cancun

Participation of Bangladesh in the Cancun Ministerial was considered as domestic capacity building. Bangladesh’s diplomatic mission in Geneva played a proactive role in various negotiating committees. A number of proposals were submitted by LDCs and their interest was also prioritised in the Dhaka Declaration. The WTO Advisory Committee in Dhaka held several meetings in which government officials, research organisations, and business chambers participated.

Bangladesh was invited to be one of the three vice-chairs of the Ministerial. As such it had to play three roles: a global role as a vice chair, a partisan role as an LDC leader and her own national role. On many issues, Bangladesh’s priorities and position did not match those of other LDCs. The African LDCs were more focused on agricultural subsidies, while Bangladesh was more concerned with market access for industrial goods, flexibility in the rules of origin (RoO) and movement of natural persons (MNPs). As a vice-chair, Bangladesh had the added responsibility of trying to steer the negotiations to a consensus-based conclusion, which also demanded flexibility. Bangladesh chaired three of the Plenary Sessions and got access to the green room consultations. Hence, at Cancun there was an effort to integrate LDCs in the multilateral negotiations. However, the need for better coordination between Dhaka and Geneva was felt during the negotiations.

Source: CPD (2003)

LDCs have recently adopted a common negotiating position in the Doha Round talks ahead of the global trade body’s December Ministerial conference in Hong Kong. LDC trade ministers met in Livingstone, Zambia, on June 26-27, 2005 to elaborate on bargaining positions and strategies in the ongoing multilateral trade negotiations. The ‘Livingstone Declaration’ articulates a shared LDC position on the Doha Round. It also calls for rich countries to grant immediate, non-reciprocal and binding commitments on duty-free and quota-free market access for all products from LDCs. Forging a common position for the LDCs before the Hong Kong Ministerial is a positive change and it reflects the sense of unity that the LDCs should maintain in order to project their interests at the forthcoming meeting at Hong Kong as well.
3. Defining Development Dimension

The development dimension in the WTO framework concerns the capability of the developing countries, including the LDCs, for effective integration into the MTS. The ‘July Package’ has reaffirmed what was promised at the Doha Ministerial Conference held in 2001 in respect to the development dimension. Members have committed to fulfil the development dimension of the DDA, which places the needs and interests of developing and least developed countries at the heart of the Doha Work Programme. In the Doha Declaration, Ministers have agreed to ensure that developing countries, especially the LDCs among them, secure a share in the growth of world trade, which are commensurate with the needs of their economic development. Hence, they have committed to address the issue of marginalisation of LDCs in international trade and to improve their effective participation in the MTS. Moreover, in order to make WTO’s operations more transparent, they committed to improve dialogue with the public, so as to promote a better public understanding of the WTO.9

The introductory text of the ‘July Package’ reaffirms that ‘development concerns form an integral part of the Doha Ministerial Declaration’, but the actual instructions to negotiators lack vigour and precision. One of the major concerns of the developing countries is how to define the development agenda. The Doha Declaration has recognised the role of: (1) enhanced market access, (2) balanced rules and (3) well-targeted technical assistance and capacity building programmes for ensuring economic development of developing and least developed countries. These can be considered to form the three core crosscutting issues of development dimension across all WTO agreements. Fulfilling the development dimension would enable the developing and least developed countries to reap the benefits of growth in world trade, reducing poverty, narrowing inequality, overcoming economic injustice and attaining overall economic development as intended in WTO.

Enhanced Market Access: Enhanced market access includes market access for goods and market access for services. It would increase trade opportunities of developing and least developed countries. Market access in goods is the most important element of the WTO. The main markets of the developing countries’ products are still developed countries. Issues would include reduction or elimination of tariffs, removal of non-tariff barriers (NTBs), duty-free and quota-free market access for products originating from LDCs, erosion of preferences, and dispute settlement. Market access in the services sector, especially in Mode 4, is one of the major issues for development. For trade in services, this is the priority area for developing and least developed countries of South Asia.
Balanced Rules: Balanced rules are needed because there are differences in level of economic development and availability of financial and human resources among the WTO Members. It is natural that with substantially lower levels of development many developing countries are not in a position to undertake far-reaching commitments. Hence, WTO provides S&DT to the developing countries and the LDCs. From a development perspective, developing countries must be given enough flexibility to undertake commitment, so that they can focus on development priority. Such flexibility is specially required for the rules where the cost of implementation is too high. Flexibility in undertaking commitment is also required for them to pursue national development goals commensurate with their economic needs. Balanced rules would include the safeguard clauses, full implementation of the provisions of the Agreements in favour of developing countries, removal of imbalances that exist in the WTO agreements and formulation of rules and obligations keeping in mind the need and priorities of developing countries. In addition, balanced rules also entail non-reciprocity.

Technical Assistance for Capacity Building: Well-targeted technical assistance and capacity building programmes refer to efforts for strengthening negotiating capacity, powering capacity for implementing WTO agreements and steadying supply-side capacity. There is no doubt that trade liberalisation and rules-making in the WTO increase the trade opportunities for all countries. However, given the low level of economic development, many countries, especially the LDCs cannot avail of these opportunities because of supply-side constraints. Unless the developing countries, especially the LDCs, remove supply-side bottlenecks they cannot draw the benefits out from the WTO. However, they need to have resources to address their supply-side constraints. There are numerous provisions in the WTO Agreement, which address these issues. But they need to be implemented fully so that developing countries, especially the LDCs, can reap the benefits and restore their confidence in the WTO system.

The ‘July Package’ has addressed the crosscutting issues in development dimension using the following tools for negotiation:

- S&DT;
- Technical Assistance;
- Implementation; and
- Concerns of the LDCs.

Besides, the ‘July Package’ also refers to other flexibilities which include:

- Special attention to the trade- and development-related needs and concerns of the developing countries, including capacity constraints;
- Particular references have been made to food security, rural development, livelihood issues, commodity and net food imports and prior unilateral liberalisation. These commitments must be delivered through the agriculture and NAMA negotiations; and
- Fuller integration of the small vulnerable economies in the MTS without creating a sub-category of Members as mandated in paragraph 35 of the Doha Ministerial Declaration.10.
The WTO GC’s July decision is only the starting point for further negotiations and the development objectives have to be realised and not just be reflected in the document. As the Members have also committed to the objective of sustainable development, the goal and dimension of development must be primary in WTO rules and assessment of proposals or measures at Hong Kong. Hence, to achieve the development objectives, S&DT, technical assistance and capacity building, implementation issues, and concerns of the LDCs must be strengthened operationally. This study focuses on the four tools mentioned in the ‘July Package’ and refers to the other flexibilities as needed. The DDA has addressed these as follows.

3.1 Special & Differential Treatment (S&DT)
All issues of development dimension are reflected through the provisions for S&DT in WTO agreements. The need for S&DT arises due to special problems faced by the developing countries, including the LDCs, due to weaknesses in their institutions and productive capacity, which prevent them from benefiting from free trade. Countries at different levels of development have different capacities to take on various commitments and obligations embedded in the multilateral trading agreements. Moreover, these countries also lack bargaining power to negotiate trade concessions with developed countries. Hence, the objective of the S&DT provisions is to promote economic development of developing countries, including the LDCs, so that they could integrate and derive full benefits from the emerging MTS.

Paragraph 44 of the Doha Declaration states that ‘provisions for S&DT are an integral part of the WTO Agreement’. Moreover, the Trade Ministers at Doha directed that all S&DT provisions ‘shall be reviewed with a view to strengthening and making them more precise, effective and operational’. It may be noted that the Enabling Clause11 of 1979 gave a legal basis for S&DT within the multilateral trading framework. The signatories of GATT decided that:

“Notwithstanding the provisions of Article 1 of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries without according such treatment to other contracting parties”.

The Enabling Clause also recognised the special treatment of LDCs among the developing countries. An important feature of the Enabling Clause was that S&DT was to be phased out when a country reached a certain level of development. But that level was never defined and, hence, eligibility for trade preferences was left to the discretion of preference granting countries.

These S&DT provisions give developing and least developed countries special rights, and make it possible for developed countries to treat developing countries more favourably than other WTO Members. These special provisions include, for example, longer time periods for implementing Agreements and commitments or measures to increase trading opportunities for developing countries. The special provisions in the various agreements have been grouped in the following typologies: provisions aimed at increasing trading opportunities, safeguarding interest of developing countries, flexibility of commitments, transition times and sustainable financed technical assistance. Provisions within each group, which are mandatory (i.e. using ‘shall’ rather than ‘should’
language) are shown in bold. A total of 155 S&DT provisions can be found in various WTO agreements, of which 24 are applicable to LDC Members only (see annex table 1). The S&DT, which are applicable to both developing and least developed countries are discussed below.

3.1.1 Enhanced Market Access

- **Provisions aimed at increasing the trade opportunities of developing country Members:**
  These provisions consist of actions to be taken by Members in order to increase the trade opportunities available to developing countries. These are the priorities of the South Asian countries, including the LDCs. As shown in annex table 1, there are 14 such provisions in total across the following four agreements and one decision, namely:

  - GATT 1994: Article XXXVI.2-5, Article XXXVII.1(a) and 4; Article XVIII.2 (c) and 2(e). The Enabling Clause, Para 2(a). Agreement on Agriculture: Preamble. Agreement on Textiles and Clothing: Article 2.18, GATS: Preamble, Article IV:1; and Article IV:2

3.1.2 Balanced Rules

- **Provisions under which WTO Members should safeguard the interests of developing country Members:**
  These provisions concern either action to be taken by Members or actions to be avoided by Members, so as to safeguard the interests of developing country Members. More than half of these are mandatory. These safeguards in agreements should remain and needs to be enforced. As shown in annex table 1, there are 50 such provisions across the following 13 WTO agreements and two decisions:

  - Part IV of GATT 1994: Article XXXVI.6, 7 and 9; Article XXXVII.1(b) and (c), 2 (a)- (c), 3 (a)–(c), and 5; Article XXXVIII.1, 2 (a), (b), (d), (f); The Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries: Paragraphs 3 (i)-(ii); Paragraph 4; and Paragraph 5; Application of SPS Measures: Article 10.1 and Article 10.4.; Textiles and Clothing: Article 6.6 (b), 6.6 (c) and Annex, paragraph 3(a); Technical Barriers to Trade: Article 10.6; Article 12.1; Article 12.2; Article 12.3; Article 12.5; Article 12.9; Article 12.10; Implementation of Article VI of GATT 1994:Article 15; Implementation of Article VII of GATT 1994:Annex III.5; Decision on texts relating to minimum values and imports by sole agents, sole distributors, and sole concessionaires: Text 1 and Text ; Import Licensing Procedures: Article 1.2; Article 3.5 (a)(iv); Article 3.5 (j); Subsidies and Countervailing Measures: Article 27.1 and Article 27.1; Agreement on Safeguards: Article 9.1 and Footnote 2; Understanding on Rules and Procedures Governing the Settlement of Disputes: Article 4.10, Article 8.10, Article 12.10, Article 12.11; Article 21.2; Article 21.7; Article 21.8; GATS: Preamble; Article XII.1, Article XV.1, and Article XIX.3;
• **Flexibility of Commitments, of Action, and use of Policy Instruments:**
  These provisions relate to the following: actions developing countries may undertake through exemptions from disciplines otherwise applying to the Membership in general; exemptions from commitments otherwise applying to Members in general; or a reduced level of commitments developing countries may choose to undertake when compared to Members in general. The majority of these provisions are found in agreements concluded at the end of the UR. None of these provisions are mandatory; hence, efforts should be directed to make them binding. As shown in annex table 1, there are 33 such provisions across the following ten different WTO agreements:

  - GATT 1994: Article XVIII and Article XXXVI, paragraph 8; Enabling Clause: Paragraphs (b) and (c); the Agreement on Agriculture: Article 6.2; Article 6.4; Article 9.2(b)(iv); Article 9.4; Article 12.2; Article 15.1; Annex 2, Para 3, and footnote5; Annex 2, para.4, footnotes 5 and 6; Annex 5, Section B; Technical Barriers to Trade: Article 12.4; Trade-Related Investment Measures: Article 4; Subsidies and Countervailing Measures: Article 27.2 (a) and Annex VII; Article 27.4; Article 27.7; Article 27.8; Article 27.9; Article 27.10; Article 27.11; Article 27.12; Article 27.13; Safeguards:Article 9.2; GATS: Article III:4;Article V:3; Article xix:2, and Paragraph 5(g) of the Annex on telecommunications.; Understanding on Rules and Procedures Governing the Settlement of Disputes: Article 3.12;

• **Transitional Time Periods:**
  These provisions relate to time bound exemptions from disciplines otherwise generally applicable. Transitions time periods were an innovation of the UR. It is to be noted that some transition time periods in different agreements have elapsed. In some cases, the relevant provision, in addition to specifying a time-period, includes modalities through which an extension might be sought. None of these provisions are mandatory. In these provisions, the LDCs are given longer time periods. They need to be exempted not just from transitional time periods but also from such commitments as long as they remain LDCs. As shown in annex table 1, there are 19 such provisions across the following eight agreements:

  - Agriculture: Article 15.2; Sanitary and Phyto-Sanitary Measures: Article 10.2 and 10.3. Technical Barriers to Trade: Article 12.8; Trade-Related Investment Measures: Article 5.2; Implementation of Article VII of GATT 1994: Article 20.1; Article 20.2; Annex III.1; and Annex III.2; Import Licensing Procedures: Article 2.2, footnote 5; Subsidies and Countervailing Measures: Article 27.2 (b); Article 27.4; Article 27.14; Article 27.5; Article 27.6; and Article 27.11; TRIPS: Article 65.2; and 65.4.

3.1.3 **Sustainably Financed Technical Assistance**
The agreements where provisions relating to technical cooperation feature prominently tend to be those which require significant levels of capacity for their implementation. The provisions of technical assistance can thus be closely linked with transition time periods in facilitating the implementation of certain WTO agreements. None of the provisions are mandatory, but developed countries are focusing on these provisions. These are not the priorities of the developing countries. They face supply-side constraints for which technical assistance should be provided. As shown in annex table 1, there are 14 such provisions across the following six different agreements and one ministerial decision:
Decision on measures concerning the possible negative effects of the reform programme on least-developed countries and net-food importing developing countries: Paragraph 3 (iii); Application of SPS Measures: Articles 9; Technical Barriers to Trade: Article 11.1; Article 11.3; Article 11.4; Article 11.5; Article 11.6; and Article 12.7; Implementation of Article VII of GATT 1994: Article 20.3; GATS: Article XXV: 2 and Paragraph 6 of the Annex on telecommunications; TRIPs: Article 67; Understanding on Rules and Procedures Governing the Settlement of Disputes: Article 27.2

The S&DT provisions reflect the increased awareness and understanding of the special problems faced by the developing countries. But there is a need to understand the extent to which these provisions have integrated developing countries into the MTS, and whether the actions to be taken can be specified concretely, monitored and their implementation objectively measured or evaluated. The flexibility and transition provisions tend to specify exceptions to rules, while other provisions specify positive actions to be undertaken by developed countries in favour of developing countries. Only a few provisions are mandatory and the rest are ‘best endeavour’ clauses. Moreover, some of the mandatory provisions lack specificity or clearly defined obligations and hence implementation is difficult. None of the provisions in trade opportunities and technical assistance, which are priorities for South Asian countries, are mandatory. Hence, these need to be made into binding commitments at the Hong Kong Ministerial.

3.2 Technical Assistance and Capacity Building
Paragraphs 38-41 of the Doha Ministerial Declaration address relevant technical assistance and capacity building concerns of Members. The Doha Mandate for Technical Assistance is shown in Box 3. Most of these were technical assistance for ‘Singapore Issues’, which are of interest to the developed countries. Technical assistance relevant for developing and least developed countries are discussed below.

<table>
<thead>
<tr>
<th>Box 3: Doha Technical Assistance Mandates</th>
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<tbody>
<tr>
<td><strong>Paragraphs</strong></td>
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<td>43</td>
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3.2.1 Capacity Building for Participation in Negotiation

- **Development of Technical Assistance Plan**
  In Para 40, the committee on budget, finance and administration is instructed to develop a Plan for adoption by the GC in December 2001 in order to ensure long-term funding for WTO technical assistance.

- **Capacity Building in Trade and Investment**
  Para 21 recognises the needs of developing and least developed countries for enhanced support for technical assistance and capacity building in trade and investment, including policy analysis and development, so that they can better evaluate the implications of closer multilateral cooperation for their development policies and objectives as well as human and institutional development. To this end, Members shall work in cooperation with other relevant intergovernmental organisations, including the UN Conference on Trade and Development (UNCTAD), and through appropriate regional and bilateral channels, to provide strengthened and adequately resourced assistance to respond to these needs.

- **Appropriate Studies on NAMA**
  In Para 16 relating to non-agricultural market access, appropriate studies and capacity building measures for assisting LDCs to participate effectively in the negotiations has been stated.

- **Accession of LDCs**
  Para 42 states that accession of LDCs remains a priority for the Membership and to facilitate and accelerate negotiations with acceding LDCs. The annual plans for technical assistance were to attach priority to LDCs’ accessions.

3.2.2 Capacity Building for Implementation

- **Trade Facilitation**
  Para 27 recognises the case for further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area. Members have committed to ensuring adequate technical assistance and support for capacity building in this area.

- **Implementation of Standards**
  Technical assistance is needed for certification, accreditation, standardisation, and specification, etc. The 14 provisions noted earlier under S&DT technical assistance are associated with implementation-related issues. For example, Articles 9 and 10 of the Agreement on the application of SPS measures and Article 12 of the TBT Agreement contain provisions for S&DT to developing countries, including the LDCs. These two agreements also contain provisions, which call on the Members to provide technical assistance to developing countries and the LDCs and to assist them to put in place the required legal and institutional frameworks for implementation of these measures.
• **Net Food Importing Countries**
  A decision on measures concerning the possible negative effects of the reform programme on LDCs and net-food importing developing countries are provided in paragraph 3 (iii).

3.2.3 **Supply-side Capacity Building**

- **Mainstreaming Trade in National Plans**
  In Para 38, technical cooperation and capacity building are considered to be the core elements of development dimension of the MTS. Domestic efforts for mainstreaming trade into national plans for economic development and strategies for poverty reduction have been stressed for support in coordination with other relevant agencies. By highlighting the importance of mainstreaming trade into development and poverty reduction plans, the Declaration recognises that trade is not an end in itself but rather a means to achieve broader development. The technical assistance shall be designed to assist developing and least developed countries to adjust to WTO rules and disciplines and implement obligations. Priorities are to be given to small vulnerable economies.

- **WTO Technical Cooperation in Collaboration with other Agencies**
  In Para 39, the Declaration underscores the importance of coordinated delivery of technical assistance with relevant bilateral, regional and multilateral institutions and identifies ways to enhance the IF for Trade-related Technical Assistance (TRTA) to LDCs and the Joint Integrated Technical Assistance Programme (JITAP). Hence, it recognises that no single agency or donor can meet the multiple trade needs of the developing countries and that partnership needs to be developed. In Para 43, Members endorse the IF to LDCs as a viable model for LDCs’ trade development and urge development partners to significantly increase contributions to the IF Trust Fund and WTO extra-budgetary trust funds in favour of LDCs. The core agencies, in coordination with development partners, need to explore the enhancement of the IF with a view to addressing the supply-side constraints of LDCs and the extension of the model to all LDCs, following the review of the IF and the appraisal of the ongoing Pilot Scheme in selected LDCs.

3.3 **Implementation-related Issues and Concerns**

Soon after the WTO agreements came into force, the developing countries realised that there were several problems with the implementation of these agreements. As mentioned earlier, this has been raised at the Singapore Ministerial Conference in 1996, and later developing countries prepared a list of hundred issues for the Seattle Ministerial Conference in 1999. This Conference collapsed without reaching any decision and the developing countries persisted on including them in the Doha Ministerial Conference in 2001. Implementation issues have been successfully included in the Doha Mandate given in paragraph 12 of the Doha Ministerial Declaration and the Ministers endorsed the work programme on S&DT set out in the Doha Decision on Implementation-Related Issues and Concerns. Moreover, the Compilation of Outstanding Implementation Issues Raised by Members has also guided subsequent negotiations in specific bodies. For developing countries, the inclusion of two separate declarations on ‘Implementation Related Issues and Concerns’ and ‘Trade Related Intellectual Property Rights (TRIPs) and Public Health’ was a major achievement. These outstanding implementations were
included within the single undertaking. Hence, the problems of implementation of the agreements should be given top priority prior to the Hong Kong Ministerial meeting.

The elements of implementation issues related to development dimension of the WTO are:

- Non-implementation of certain S&DT provisions by the developed countries;
- The way in which some of the provisions of the WTO agreements has been implemented by the developed countries;
- Imbalances inherited in the UR Agreements; and
- The difficulties that are faced by the developing countries in implementing certain provisions.

The first category of issues is basically related to S&DT provisions provided in the WTO agreements in favour of developing countries. For example, Article 66.2 of the TRIPs Agreement requires that developed countries provide incentives to their enterprises for transfer of technology to LDCs. However, there was no evidence of such incentives. Another example was the non-implementation of Article 15 of the Agreement on Anti-dumping. The Article requires that possibilities of constructive remedies provided for by this Agreement be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members. However, there is no evidence of invoking this article by the developed countries.

The second category of implementation-related issues is those provisions of the Agreement, which were implemented by the developed countries purely from their obligations in legal terms, and not in the spirit of the objective of the Agreement. The specific example of such concerns is the way the developed countries integrated T&C products into GATT 1994. The developed countries withdrew few restrictions at the first three stages, and, hence, back loaded most of the quota restrictions towards the end of the implementation period. Another example of this category of issues is the determination of reasonable period for introduction of new SPS and TBT measures. Since the reasonable period was not specified in the Agreements, countries took decisions on their own without considering the fact whether the developing countries were in a position to comply with the new measures.

The third category of the issues refers to those provisions of the WTO Agreements, which are biased towards developed countries and create imbalances in the Agreements. A specific example of such biasness is the provision on domestic support and export subsidies in the Agreement on Agriculture (AoA). The agreement was negotiated in such a way that provides scope for continuation of domestic supports (in excess of de minimis level) and export subsidies for those Members, which provided such support and subsidies at the time of signing the Agreement. In effect, only 38 WTO Members are allowed to provide domestic support in excess of de minimis level and 25 WTO Members are allowed to provide export subsidies.

The fourth category of the issues is related to the difficulties faced by the developing countries in implementing the commitments and obligations they have undertaken. The transition periods they have been provided in the Agreements do not match their capacity.
and need. For example, most of the developing countries have a feeling that they need to maintain trade-related investment measures in order to develop local industries. They also faced difficulties in implementation of Customs Valuation Agreement and Trade Facilitation measures. Accordingly, they proposed amendments in some of the provisions of the Agreement. Implementation of the TRIPs Agreement is also very expensive to them, while the benefit from the Agreement is near to negligible.

3.4 Concerns of the Least Developed Countries

The Doha Ministerial Declaration explicitly recognises the particular needs, interests and concerns of LDCs in Para 42 and 43. In Para 42, the Ministers have committed themselves to the objective of duty-free and quota-free market access for products originating from LDCs. Moreover, the concerns of the LDCs are referred to in 21 different paragraphs. LDCs should be provided with enhanced Trade Related Technical Assistance and capacity building as mandated in Para 42-43. The IF to LDCs was considered as a viable model for LDCs’ trade development and would address the supply-side constraints of LDCs. It may be noted here that in the Doha Declaration when reference is made to developing countries, it includes both developing and least developed countries. Hence, all provisions, which apply to developing countries, apply to LDCs as well.

The development dimension of the concerns of the LDCs has been listed in Para 42 of the Doha Ministerial Declaration as: (1) meaningful market access, (2) support for diversification of their production and export base, (3) and trade related technical assistance and capacity building as essential for integrating the LDCs into the MTS. Priority has been attached to accession-related technical assistance for the LDCs into the WTO’s annual technical assistance plan. The sub-Committee was instructed to design a work programme by 2002, taking into account the trade-related elements of the Brussels Declaration and Programme of Action adopted at LDC-III.

In the Doha Ministerial Declaration, there are some S&DT provisions specifically relating to LDC Members. As shown in annex table 1, there are 24 such provisions across seven agreements and three decisions:

- Agriculture: Article 15.2, Article 16.1 and Article 16.2; Enabling Clause: Paragraph d; Decision on waiver for preferential tariff treatment of Least-Developed Countries.
- Textiles and Clothing: Footnote to Article 1.2, and Article 6.6 (a).
- Technical Barriers to Trade: 11.8; Trade-Related Investment Measures Article 5.2.
- GATS: Article IV; Article XIX; TRIPs: Article 66.1 and 66.2.
- Decision on Measures in Favour of Least-Developed Countries: paragraphs 1-3.

These provisions whose applicability is limited exclusively to LDCs, falls under one of the three core issues of development dimension as follows:
Enhanced Market Access
Six items fall into the category of provisions aimed at increasing trade opportunities:

- Enabling Clause - paragraph d; Decision on waiver for preferential tariff treatment of LDCs.; Agreement on Textiles & Clothing Footnote to Article 1.2.; TRIPs Agreement – Article 66.2; Decision on Measures in Favour of Least-Developed Countries – paragraph 2 (ii) and paragraph 3;

Balanced Rules
Ten items fall into the category of provisions aimed at safeguarding the interests of LDCs:

- Agreement on Agriculture - Article 16.1 and 16.2; Agreement on Textiles & Clothing – Article 6.6 (a); GATS – Article IV: 3 and XIX: 3.; Understanding on Rules and Procedures Governing the Settlement of Disputes: Article 24.1 and 24; Decision on Measures in Favour of Least-Developed Countries: paragraphs, 2(i), 2(iii) and 2(iv).
- One relating to the flexibility of commitments, of action, and use of policy instruments – Article 15.2 of the Agreement on Agriculture.
- Three in the category of transition time periods
- TRIMs – Article 5.2; TRIPs – Article 66.1; Decision on Measures in Favour of Least-Developed Countries – paragraph 1;

Technical Assistance and Capacity Building
Two items in the category of technical assistance are:

- Technical barriers to trade – Article 5.8; Decision on Measures in Favour of Least-Developed Countries – Paragraph 2(v).

An indicative list of the S&DT provisions for LDCs in various WTO Agreements is provided in Box 4. It may be noted that the AoA exempts LDCs from reduction commitments on domestic support, export subsidies and market access. The Agreement on Subsidies and Countervailing Measures (ASCM) exempts LDCs and other poor countries from the prohibition on export subsidies. In many cases, where a transitional period has been allowed to developing country Members (e.g. TRIPs, TRIMs, SPS), the LDC Members have been given a longer time frame.

The Doha Declaration was an important step forward in many ways in addressing development dimension issues. But the launching of a set of negotiations does not ensure that resulting outcomes will favour development. Successfully completing the new round has been left to the forthcoming negotiations. These development issues should become a basis for negotiation for the developing and least developed countries at the Hong Kong Ministerial Conference. The Doha Development round has been extended up to December 2006. Hence, the next Ministerial meeting in Hong Kong towards the end of 2005 is likely to be a milestone in multilateral trading negotiation. The July Framework has effectively narrowed down what the round can achieve in these terms. But much needs to be done as many of the obligations in favour of the developing countries are formulated rather vaguely.
The discussion so far suggests that there are considerable overlaps in these tools for negotiations. The S&DT has been discussed here in the narrow sense of being applicable to developing and least developed countries, so that the S&DT applicable for only LDCs could be discussed separately under the concerns for the LDCs. The technical assistance and capacity building process has overlaps with the technical assistance for implementation in S&DT for developing and least developed countries as well as IF for the LDCs. The implementation issues also address full implementation of the S&DT provisions of the Agreements in favour of developing countries including the LDCs. Addressing the development dimension in the Hong Kong Ministerial should be the priority of the South Asian countries.

<table>
<thead>
<tr>
<th>WTO Agreements</th>
<th>S&amp;D provisions for LDCs</th>
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<tbody>
<tr>
<td>Understanding on the Balance-of-Payments (BoP) Provisions of the GATT 1994</td>
<td>Simplified consultation procedures may be used.</td>
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<tr>
<td>AoA</td>
<td>LDCs are exempt from undertaking reduction commitments.</td>
</tr>
<tr>
<td>Application of SPS Measures</td>
<td>LDCs had the possibility of delaying for up to five years, the implementation of the provisions of the Agreement with respect to their SPS measures affecting imports.</td>
</tr>
<tr>
<td>ATC</td>
<td>LDCs are accorded significantly more favourable treatment than other groups in the application of the transitional safeguard.</td>
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<tr>
<td>Agreement on TB T</td>
<td>Particular account to be taken of LDCs in the provision of technical assistance and in the preparation of technical regulations.</td>
</tr>
<tr>
<td>TRIMs</td>
<td>LDCs had a seven-year transitional period to eliminate TRIMs that are inconsistent with the Agreement.</td>
</tr>
<tr>
<td>Agreement on Import Licensing</td>
<td>In allocating non-automatic licences, special consideration to be given to importers who import products from LDCs.</td>
</tr>
<tr>
<td>Agreement on SCM GATS</td>
<td>LDCs are exempted from prohibition on export subsidies. Prohibition on subsidies that are contingent upon export performance is not applicable to LDCs for eight years.</td>
</tr>
<tr>
<td>Agreement on TRIPs</td>
<td>Special priority given to LDCs in implementing Article IV of GATS (Increasing Participation of Developing Countries) and particular account to be taken of the difficulties encountered by LDCs in accepting negotiated commitments, owing to their particular needs. Special consideration is given to LDCs with regard to encouraging foreign suppliers to assist in technology transfers, training and other activities for developing telecommunications.</td>
</tr>
<tr>
<td>Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)</td>
<td>Delay for up to 10 years in implementing most TRIPs obligations. Possibility of extension following duly motivated request. Members to provide incentives for encouraging the transfer of technology to LDCs.</td>
</tr>
</tbody>
</table>

Source: WTO (2004 d)
4. Overview of Outcomes on Development Dimension

Issues of development dimensions have mainly been discussed in various WTO fora, mainly in the negotiations on S&DT within the Committee on Trade and Development Special Session (CTD-SS). The other committees are also responsible for addressing these concerns and reporting to the GC. The post-Doha work programme includes several key elements (at least 19 areas), each of which is complex and difficult, and involves much time, human resource and technical expertise, which developing and least developed countries do not have. Moreover, the negotiations have given special treatment to the areas of interest favouring the major developed countries and ignored the interest of the developing and least developed countries. It is quite evident from the following discussion that development issues did not progress much after Doha.

4.1 Special & Differential Treatment

The CTD-SS was entrusted with the task to carry out the review on S&DT. According to the original Doha mandate, the CTD-SS was to report to the GC ‘with clear recommendations for a decision’ regarding the S&DT mandate contained in Para 44 by July 31, 2002. The only progress was that the General Council agreed to set up a ‘Monitoring Mechanism’ for S&DT. The deadline has been extended three times: to December 2002, February 2003 and most recently to July 2005 by the ‘July Package’. The July Framework has ‘reiterated’ that provisions on S&DT are an ‘integral part of the WTO agreements’. The Committee should ‘review all S&DT provisions with a view to strengthening them and making them more precise, effective and operational’, so that these provisions can be enforced through the WTO dispute settlement system.

Despite the proliferation of the S&DT provisions as discussed in chapter 3, the developing countries have benefited very little from them because of the non-binding ‘best endeavour’ nature of these provisions. Since Doha, developing countries have tabled 88 proposals to strengthen S&DT provisions and to make them ‘more precise, effective and operational’. Most of the proposals suggest new wording to introduce provisions for developing and least developed countries or to strengthen existing S&DT provisions. The proposals address provisions in almost all GATT/WTO Agreements and calls for deeper market access, increased flexibility and enhanced capacity building. In May 2003, the 88 proposals have been sub-divided into three categories:

- Category I: Those likely to be accepted with minor changes. This also includes 12 proposals on which Members had agreed. There are 38 proposals in this category;
- Category II: Those that are to be discussed more effectively in the relevant WTO body. These proposals relate to areas that have been specifically mandated for
negotiations, such as Agriculture, Services, NAMA, DSU, Rules etc. There are 38 proposals in this category; and

- Category III: Those that require major changes in order to be agreed to by the Members and that are difficult to have a consensus. There are 12 proposals in this category.

Category I covered only issues that are of very limited value addition to developing countries, including the LDCs. Decisions on 28 issues out of 38 issues of category I were proposed in the draft text of September 13, 2003 in Cancun Ministerial. Issues in categories II and III are of greater and more significant economic and trade importance to developing countries and LDCs. These were left un-addressed. No time frame was also indicated. The absence of any significant movement in S&DT review antagonised LDCs, in general, and the African Group, in particular, at Cancun. Of the 88 proposals, 30 are related to the LDCs, while 11 of the 28 proposals in Category I are related to the LDCs.

So far, all efforts to find a common ground to Members’ differences have been unsuccessful. In the ‘July Package’, it was noted that the CTD-SS was instructed to expeditiously complete the review of all the outstanding agreement-specific proposals and report to the GC with ‘clear recommendation for a decision’ by July 2005. All WTO bodies dealing with category II proposals were instructed to report to the GC with ‘clear recommendations for a decision’, no later than July 2005. The CTD-SS was also instructed to address all other outstanding works, including crosscutting issues, the monitoring mechanism to monitor and the incorporation of S&DT treatment into the architect of WTO rules ‘as appropriate to the GC. But no specific deadlines were set for such decision. This clearly indicates that higher priority was given to agreement-specific issues in the ‘July Package’.

Since the adoption of the July Decision, the CTD-SS held five formal meetings on October 28, and December 7, 2004, February 8, April 6, May 10, and July 19, 2005, respectively. A large number of informal meetings were also held. Development issues have always been controversial at the WTO. The progress on S&DT in the post-July 2004 period has been marred by the disagreement over what type of provisions would promote development. The debate was whether the agreement-specific issues or the crosscutting issues, such as the principles and objectives of S&DT, eligibility to receive it, and differentiated treatment, should be addressed. A number of developing country Members had stated that they could not accept a discussion on the cross-cutting issues until work on all the agreement-specific proposals, beginning with those by the LDCs, had been concluded. They have rightly pointed out that the July Decision clearly accorded higher priority to the agreement-specific proposals than it did to the crosscutting issues. On the other hand, developed country Members have been of the view that the crosscutting issues should be discussed in parallel.

Chairman Ismail attempted to bridge the gap by allowing both tracks to proceed simultaneously. The methodology adopted by him calls for negotiators to cluster agreement-specific S&DT proposals on the basis of their motivations or ‘underlying issues’. It outlines four thematic elements of a conceptual approach for doing so.
• Effective market access;
• Enhanced flexibility in WTO rules with appropriate transitional arrangements;
• This flexibility in the rules would need to be consistent with a multilateral rules-based system; and
• Enhanced capacity-building programmes would need to be developed to assist countries to implement WTO rules and address supply-side constraints.

The Chairman also suggested that the crosscutting issues could be clustered into four thematic groups, but Members were not able to agree on the modalities. The Chairman held a number of consultations to bridge the differences on how to structure future work. At the CTD-SS meeting held on February 8, Members decided to move forward with negotiations on agreement-specific S&DT proposals, while keeping Chairman Faizel Ismail’s recently proposed approach to S&DT as a ‘reference point’. However, Members did agree to address the remaining LDC agreement-specific proposals as priority. Accordingly, in the reconvened session on May 10, 2005 Members took up the five LDC agreement-specific proposals, which included proposals on the Understanding in Respect of Waivers of Obligations under the GATT 1994, the Enabling Clause, the Agreement on TRIMs and the Decision on Measures in Favour of LDCs. While introducing the proposals, the LDCs highlighted some of the problems they faced and that needed to be addressed, including problems of coherence, the need for flexibility that took into account their trade and development needs as well as credit for autonomous liberalisation. Although Members were sympathetic to the problems faced by the LDCs, they remained concerned about the open-ended exemptions sought for by the LDCs in a number of their proposals. Some Members even stated that seeking such exemptions would not necessarily lead to development and would instead lead to derogation from rules to which all Members had agreed upon. The LDCs have also proposed that where they have difficulty in implementing obligations, it should be mandatory for the developed country Members to provide technical assistance. While most developed country Members accepted the importance of providing technical assistance to the LDCs, they did not agree that this should be mandatory.

In the CTD-SS held on June 16-17 2005, Members have completed their second reading of the LDC proposals. Members also used this meeting to have a first reading of the remaining African Group agreement-specific proposals. These discussions have revealed a rather wide divergence of views on most of the proposals, especially with respect to the proposals in category III. The LDCs tabled their proposal with changes, but the developed countries regarded these changes as ‘minor’ or ‘cosmetic’. Moreover, the EU, Canada, Japan and the US were unwilling to concede to the demand for exemption of LDCs from the disciplines of the TRIMs, as this would create precedence of exceptions to the rule.

In the report by the Chairman of the Trade Negotiating Committee to the GC it was noted that while Members agree that it is important to provide the LDCs with a certain degree of flexibility and assistance in implementing the WTO Agreements, there continues to be a difference in the perception about the nature and extent of this flexibility. It was recommended that Members would need to address these differences if further progress were to be made on the LDC proposals. In this connection, the Chairman called to provide the LDCs with predictability and security through duty-free and quota-free
market access, and to address the remaining agreement-specific proposals which were still on the table and which represented key concerns to a number of developing country Members. The negotiating bodies and other WTO bodies to which certain agreement-specific proposals have been referred will also need to address these proposals with a renewed sense of urgency and ensure that concrete progress is made by Hong Kong.

4.2 Implementation-Related Issues and Concerns

Implementation problems arise due to non-fulfilment of two types of commitments in WTO. One is related to reducing trade barriers, while the other is related to regulations and processes in the domestic economy, such as technical standards, SPS standards, custom procedures and regulations and intellectual property law. Although LDCs were given certain transitional periods for the implementation of most agreements, there is a lack of capacity to carry out such measures. The non-compliance of LDCs has been most noticeable in the fulfilment of their procedural notification obligations. Enacting new legislation and creating institutions requires specialised legal and administrative skills, which are in limited supply in many LDCs. For example, the TRIPs agreement entails significant changes in the administration of IPRs, judicial procedures and customs administration. Moreover, there are calls to take the TRIPs Agreement out of the WTO, as it is not a trade issue. LDCs face difficulties in implementing virtually all the UR Agreements. Moreover, several agreements are being implemented by the developed countries, which are not consistent with the development interests of LDCs, e.g. anti-dumping, SPS measures and TBTs have created significant unforeseen problems for LDCs. Studies have shown that the costs of implementation of some agreements are very high for LDCs in South Asia (see Box 5).

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<tr>
<th>Box 5: Cost of Implementing Agreements</th>
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<tr>
<td>The cost of implementing three of the UR agreements, namely TRIPs, SPS and customs valuation in Mexico amounts to around US$130mn. It is estimated that the drafting and implementing new IPR laws in Bangladesh will require a one-time cost of US$250,000 and an annual cost of US$1.1mn. Similarly for Nepal, the estimated cost of introducing SPS regime was US$12.5mn, compliance with TBT would cost US$12mn and implementing IPR would cost US$32mn.</td>
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<td>Source: SAWTEE 2004C</td>
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The implementation of S&DT issues related to agriculture and services negotiations suggests that the proposals by South Asian developing countries were related to market access in goods, market access in services and flexibility (see Box 6). Moreover, for the LDCs, duty-free and quota-free market access for all products of LDCs is their priority.

The progress on implementation issues has also been disappointing, with only a few resolved and many ignored entirely. So far, only three out of 99 issues have been resolved. These are (a) a clarification that the ‘reasonable period’ referred to in the Agreements on SPS Measures and TBTs shall not normally be less than six months; (b) the ‘longer time frames for compliance’ referred to in the Agreements on SPS Measures with respect to the products of interest to the developing countries is now clarified to be
not normally less than six months; (c) a concession in the ASCM, that regarding subsidies in developing countries which have a gross national product (GNP) per capita of less than US$1000 per year, a developing country will continue to be in this list until it reaches this level of GNP for three consecutive years. On remaining issues, the Ministerial Conference just took note of issues or urged the Members to consider the issues or referred to the relevant WTO bodies for solutions by specific deadlines.

Box 6: Implementation of S&DT Issues Raised by South Asian Countries

<table>
<thead>
<tr>
<th>Issues</th>
<th>Development Dimension</th>
<th>South Asian Countries</th>
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<tbody>
<tr>
<td>Agriculture</td>
<td></td>
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<tr>
<td>Tariff peak reduction</td>
<td>Market access</td>
<td>Pakistan, Sri Lanka, 9 other countries</td>
</tr>
<tr>
<td>Tariff Rate Quotas</td>
<td>Market access</td>
<td>Pakistan, Sri Lanka, 9 other countries</td>
</tr>
<tr>
<td>Elimination of export subsidies and prohibition of dumping</td>
<td>Balanced rule (flexibility)</td>
<td>Pakistan, Sri Lanka, 9 other countries</td>
</tr>
<tr>
<td>Due restraint clause in ‘development’ box</td>
<td>Balanced rule (flexibility)</td>
<td>Pakistan, Sri Lanka, 9 other countries</td>
</tr>
<tr>
<td>Food Security: Net-food importing countries</td>
<td>Balanced rule (flexibility)</td>
<td>India, 9 other countries</td>
</tr>
<tr>
<td>Allow 20 percent de minimis support for developing countries</td>
<td>Balanced rule (flexibility)</td>
<td>Pakistan, Sri Lanka, 9 other countries</td>
</tr>
<tr>
<td>Domestic support, tariff binding, special safeguard provisions</td>
<td>Balanced rule (flexibility)</td>
<td>India</td>
</tr>
<tr>
<td>Proposal relating to provisions relating to LDCs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax-free and duty free admission of those products originating in LDCs</td>
<td>Market access</td>
<td>Democratic republic of Congo</td>
</tr>
<tr>
<td>Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liberalisation on sectors and mode of export interest of developing countries</td>
<td>Market access</td>
<td>India, Pakistan Sri Lanka and 20 other countries</td>
</tr>
<tr>
<td>Liberalisation of movement of professionals</td>
<td>Market access</td>
<td>India</td>
</tr>
</tbody>
</table>

*Source: Compiled from Implementation of Special and differential Treatment Provisions in WTO Agreements and Decisions, WTO (2001b)*

The discussions on the issues referred to the relevant WTO bodies for solution with specific deadlines did not produce any fruitful outcome by the agreed deadlines. Seemingly, these issues are not on the agenda of the WTO. A summary on the outcome of those issues is given in Table 1. A number of issues were referred to the relevant WTO bodies, which were to submit reports by the end of 2002 to the Trade Negotiations Committee (TNC) for appropriate actions (Table 2). The relevant bodies except the SPS Committee did submit their reports, but without any recommendations.
the report from the relevant WTO bodies on outstanding issues, there was a debate on how to address the issues referred to in Para 12(b). Despite the fact that the Para 12 of Doha Ministerial Declaration maintains that ‘negotiations on outstanding implementation issues shall be an integral part of the Work Programme we are establishing, and that agreements reached at an early stage in these negotiations shall be treated in accordance with the provisions of paragraph 47 below’, some of the Members were reluctant to negotiate on the issues referred to in Para 12(b) arguing that only issues with specific negotiating mandates are subject to negotiations. As a result, in the TNC meeting held in December 2002, the Chairman had to report that significant differences also persisted about what action the TNC should take on the issues referred to Para 12(b) of Doha Ministerial Declaration.

| Table 1: Doha Mandate on Various Implementation Issues provided for in the Decision on Implementation-related Issues and Concerns and the outcome |
|---|---|---|---|---|
| Issue | Para number in the decision | Relevant Clauses / Agreement | WTO body assigned for submitting the report | Mandated deadlines | Outcome |
| Market Access Issues concerning the meaning of the phrase ‘substantial interest’ | 1.2 | Article XIII of the GATT 1994 | Market Access Committee | End of 2002 | End of discussion without any outcome |
| Development of the specific programme to further the implementation of SPS | 3.3 | Article 4 of the Agreement on the Application of Sanitary and Phytosanitary Measures | Committee on Sanitary and Phytosanitary Measures | No deadline | Decision has been taken |
| Recommendation on increase of quota on textiles and clothing by the restraint maintaining countries | 4.4 and 4.5 | Agreement on Textiles & Clothing | Council for Trade in Goods | July 31, 2001 | End of discussion without any outcome |
| Recommendation on Operationalisation of Anti-dumping Duties | 7.2 | Article 15 of the Agreement on Anti-dumping Duties | Committee on Anti-dumping Practices through its working group on Implementation | Mid-November 2002 | End of discussion without any outcome |
| Recommendations of time-frame used in determining the volume of dumped imports | 7.3 | Article 5.8 of the Agreement on Anti-dumping Duties | Committee on Anti-dumping Practices through its working group on Implementation | Mid-November 2002 | Decision has been taken |
| Guidelines for annual review of the implementation and operation of Anti-dumping | 7.4 | Agreement on Anti-dumping | Committee on Anti-dumping Practices | Mid-November 2002 | Decision has been taken |
| Practical means to address concerns of customs administrations on the accuracy of the declared value, including the exchange of information on export values | 8.3 | Agreement on Customs Valuation | Committee on Customs Valuation | End of 2002 | End of discussion without any outcome |
| Completion of Harmonisation work of RoO | 9.1 | Rules of Origin | Committee on RoO | End of 2001 | No specific outcome as of now |
According to the decision of the TNC, the Director General (DG) consulted with relevant bodies with a view to finding out appropriate solutions to these issues. However, these consultations seem endless. Prior to the Cancun Ministerial Conference, the DG reported to the TNC that procedural understanding to undertake consultations on the geographical indications (GI) was reached, while no agreement was reached on the continuation of discussion on other outstanding implementation-related issues, such as balance of payment (BoP), safeguard, market access, customs valuations, TRIPs, TRIMs, and TBT etc.

It needs to be noted that the ‘July Package’ makes special reference to the issue related to the extension of the protection of GI provided for in Article 23 of the TRIPs Agreement to products other than wines and spirits, and mandates the DG to appoint Chairpersons of concerned WTO bodies as his Friends and/or to hold dedicated consultations, if needed. The GC mandates the DG to report by May 2005 to the GC, which will then review progress and take any appropriate action no later than July 2005. The lack of seriousness on the part of the negotiators to take these issues forward is evident from language such as, ‘The Council instructs the Trade Negotiating Committee, negotiating bodies and other WTO bodies concerned to redouble their efforts to find appropriate solutions as a priority’. It is a matter of concern that the ‘July Package’ on implementation-related issues and concerns does not make any reference to the issues that were referred to WTO bodies for expeditious solution by specific deadlines despite the fact that these issues remained unresolved. As mentioned earlier, these issues are seemingly lost and would never be raised in the WTO.

As per the mandate of the ‘July Package’, the DG of the WTO submitted a report to the GC on May 20, 2005. According to the report, there was divergence of views, especially on the issues of relationship between TRIPs Agreement and Convention on Biological

<table>
<thead>
<tr>
<th>Agreement/provisions</th>
<th>Tiret No. in JOB(01)/152/Rev.1</th>
<th>WTO body responsible for submitting the report</th>
</tr>
</thead>
<tbody>
<tr>
<td>GATT 1994</td>
<td>99</td>
<td>Committee on Market Access</td>
</tr>
<tr>
<td>Balance of Payment</td>
<td>1 and partly 3</td>
<td>Committee on BoP</td>
</tr>
<tr>
<td>TRIMs</td>
<td>37-40</td>
<td>Committee on TRIMs</td>
</tr>
<tr>
<td>GATT 1994-Article XVIII</td>
<td>3</td>
<td>Committee on Trade and Development</td>
</tr>
<tr>
<td>Agreement on Customs Valuation Valuation</td>
<td>57-61</td>
<td>Committee on Customs</td>
</tr>
<tr>
<td>Agreement on SPS Measures</td>
<td>Proposal by Brazil</td>
<td>Committee on SPS</td>
</tr>
<tr>
<td>Agreement on TBT</td>
<td>33 and 34</td>
<td>Committee on TBT</td>
</tr>
<tr>
<td>Agreement on Safeguards</td>
<td>84</td>
<td>Committee on Safeguards</td>
</tr>
<tr>
<td>Agreement of TRIPs</td>
<td>87, 88, 91, 93-95, and issues raised by LDCs</td>
<td>Council For TRIPs</td>
</tr>
</tbody>
</table>

Table 2. Outstanding Issues Covered by the Paragraph 12 (b) of Doha Ministerial Declaration
Diversity (CBD), BoP, TRIMs, Customs Valuation, and TBT, and he could not suggest any actions against these areas. However, regarding the issues on market access and safeguard he suggested further consultations. Regarding the GI extension, the DG reported ‘there remain differing views among Members as to whether the issues related to GI extension have been sufficiently clarified and, more importantly, on the desirability of GI extension and its implications’. However, in conclusion, the DG suggested continuing the consultation process on all issues in order to enable the GC to review the progress and take any appropriate action in line with Decision of ‘July Package’. The Chairman of the TNC in his report to the GC requested all sides to make efforts to allow progress to be made in this area.

Agriculture is a livelihood issue in South Asia, and hence, food subsidy is a vital issue. An International Monetary Fund (IMF) study projected that India would gain tremendously from the removal of agricultural subsidies in developed countries, but Bangladesh, Nepal and Sri Lanka would lose because of increased food import bills. Hence, the implementation of S&DT relating to net-food importing countries needs to be addressed on an urgent basis.

South Asian countries should have a common position to ensure that implementation issues are expeditiously settled. It is important for developing countries to bring this subject once again to the central stage as done in Doha. As the proposals are very specific, not much additional efforts would be needed. Moreover, as the results of the negotiations in this area will be a part of the single undertaking, all work must be completed by the deadline set.

4.3 Technical Assistance and Capacity Building

Several developing country Members regard technical assistance and capacity building (TACB) provided by the WTO as the heart of the ‘development’ dimension of the Doha Round.32 Issues in trade-related capacity building and technical assistance are diverse and are getting complicated with new issues in trade, such as TBTs, trade facilitation etc. which are becoming part of the negotiation. Both donors and beneficiary Member countries are still not clear about the scope of the TACB.

**Capacity Building in Negotiation**

Merging the WTO Technical Cooperation Division and the Training Institute has created a new Institute of Training and Technical Cooperation. WTO trade-related capacity building plans were modified over time. Recent monitoring efforts of earlier TACB identified the following problems33:

- The plans focused more on quantity than quality;
- The plans failed to provide long-term capacity building;
- There was a lack of national ownership and short duration of many activities; and
- The plans failed to take into account the needs of beneficiary countries.

These reports suggest that although more awareness was created and information was disseminated, development of real skill and capacity building was lacking. The plans were not designed or implemented as a part of a systematic and coherently developed multi-year technical cooperation projects or programmes. The plans lived and died from
one year to the other. Hence, the cumulative benefits of the current technical assistance were not being realised.

The 2004 and 2005 Technical Assistance and Training Plans (TATP) have tried to address these problems. These were more quality-oriented and aimed at building long-term institutional capacity. Members were to identify and prioritise their requests for assistance, based on a process of needs identification. There has also been increased emphasis on partnership with UN Industrial Development (UNIDO), Economic and Social Commission for Asia and the Pacific (ESCAP), etc and outsourcing. There is a need to move away from the ‘one-off’ seminars and workshops towards building local capabilities in developing countries and provide assistance to meet their diverse sustainable development needs and strategies. This would include negotiating capacity in Geneva, interdepartmental research and negotiating capacity in capitals, and ways to involve civil society in dialogue with governments in order to achieve both a clear identification of interests and proper ownership of the process. Broadening the target audience beyond the government officials, to relevant stakeholders, including universities and research institutes, the private sector, women’s groups, non-governmental organisations (NGOs) and civil society organisations (CSOs) would build the long-term capacity necessary for countries to meet their sustainable development needs.

South Asian countries are yet to benefit from the outreach programme for parliamentarians and civil society included in the 2005 Plan. Moreover, the WTO’s ‘regional’ technical assistance programmes also could facilitate networking and pooling resources through regional and other institutions in South Asia. There is a need to ensure greater coherence of TRTA programmes in relation to a developing country’s overall development strategy.

Technical Assistance for Implementation

The audit of the WTO’s technical cooperation activities for 2002 suggests that the most popular sectoral areas of technical assistance were services (30 percent), followed by SPS/TBT (18 percent), dispute settlement (13 percent) and agricultural issues (11 percent). Hence, donors are pursuing those issues that are of priority to them. The Joint WTO/OECD Report suggests that technical assistance rose for trade policy and regulations, but within it, assistance declined for technical standards (TBT, SPS), and increased for trade facilitation during 2001-03. Decline in assistance for meeting technical standards is a matter of concern due to the growing number and complexity of international standards and recommendations, for testing and traceability, and the more stringent requirements imposed by OECD countries further to recent health and food safety crises. The increase of aid to trade facilitation reflects the response to the need for assistance to enhance custom administrations’ efficiency, in order to reduce transaction costs related to foreign trade operations. TACB for trade facilitation is likely to further increase in the coming years in light of the decision by the WTO GC to commence negotiations on the issue.

Supply-side Capacity Building

Establishment of Global Trust Fund

Following the instruction of the Doha Declaration to develop a plan for ensuring long-term funding, the Global Trust fund was established in December 2001. The WTO
Member countries have pledged CHF30mn (US$22.7mn) to the Doha Development Agenda Global Trust Fund (DDAGTF) that will boost technical assistance and help developing countries to build capacity and participate in the negotiations. This is an important contribution of the developed countries towards addressing the development dimension of the Doha Round, but its success will depend on the nature and quality of technical assistance provided.

Monitoring Capacity Building
A new OECD/WTO database called the Doha Development Agenda Trade-related Technical Assistance and Capacity Building Database was established in May 2002 to monitor the implementation of Doha’s TACB. Although the Doha Declaration gave priority to mainstreaming trade in national plans, technical assistance for trade mainstreaming declined during 2001-03, and increased attention in technical assistance have been given to non-visible costs on account of documentation requirements, procedural delays etc under trade facilitation. These invisible costs are not part of developing countries’ commercial policies. In LDCs, where poverty, hunger and illiteracy are widespread, the LDCs are faced with the dilemma whether to spend scarce resources on developing infrastructure to facilitate trade or on the social sector. Hence, the technical assistance for trade policy and regulation is being ignored by the beneficiary country priority. Assistance to build infrastructure – transport, energy and telecommunications, which is essential and a priority for developing countries’ international trade – remained unchanged at around US$8bn per year between 2000 and 2002.

WTO Technical Cooperation in Collaboration with other Agencies
Most of the funding was from bilateral assistance, as donors like to take ‘credit’ for assistance projects. Hence, donors funding to multilateral trust funds and programmes, such as the DDAGTF, the IF and the JITAP – increased by only 24 percent between 2002 and 2003. These funds rose from US$26mn in 2001 to US$36mn in 2002 and then to US$45mn in 2003.

The importance of a holistic approach to trade development is now widely recognised. If developing countries are to maximise the benefits from trade liberalisation, then domestic policy reforms and trade capacity building must complement market access that is of crucial importance to them. The increasing focus on NTBs such as SPS regulations and other TBTs in multilateral trade negotiations is another challenge. The above analysis shows that donors are increasingly providing assistance to meet the barriers, which are the priorities of the developed countries. Such assistance could have been utilised for priority areas of the LDCs, such as infrastructure.

Monitoring of IF
An LDC unit has been created in February 2003 as part of the WTO’s re-established Development Division. This LDC Unit is the focal point for all LDC issues within the WTO Secretariat and is also responsible for matters related to the management of the IF within the WTO. While the needs of the LDCs are complex and increasing, the capacity to meet them financially as well as in terms of manpower remains limited.

The ‘July Package’ recognises that some progress has been made since the Doha Ministerial to expand TRTA to developing countries, for capacity building, to increase
effective participation in negotiations, to facilitate implementation of WTO rules and to enable them to adjust and diversify their economies. But the most important elements of technical assistance i.e. addressing supply-side constraints, which most of the developing countries, especially the LDCs need badly, is left out in the ‘July Package'. Among the four texts in the annex of the July Framework, trade facilitation is the only text that provides flexibility to developing countries not to implement their part of the commitments in the absence of technical assistance and would not be obliged to undertake investments in infrastructure projects beyond their means. The developing countries need to integrate their trade policy in the national development plan and poverty reduction strategy in order to have a demand-driven technical assistance and capacity building programme. Technical assistance is needed not only to implement WTO obligations, but also to enhance supply-side capacity in order to take advantage of the predictable market access opportunities offered by the WTO.

4.4 Concerns of the Least Developed Countries
In the ‘July Package’, the Members have reaffirmed the commitments made at Doha concerning LDCs and renewed their ‘determination to fulfill these commitments’. Moreover, Members will continue to take ‘due account’ of the concerns of LDCs in the negotiations. Hence, in all negotiations, the concerns of the LDCs need to be addressed at the Hong Kong Ministerial.

Follow-up of LDC work programme
The follow-up suggests some progress in implementing WTO Ministerial Decisions/ Declarations in favour of LDCs:40

(1) Adoption of the Work Programme for LDCs41 adopted by the sub-committee on February 12, 2002, as mandated in Para 42 of the Doha Declaration;

(2) A decision adopted by the Council for TRIPs on June 27, 2002, on the ‘Extension of the Transition Period under Article 66.1 of the TRIPs Agreement for the LDC Members for Certain Obligations with respect to Pharmaceutical Products’ giving effect to paragraph 7 of the Doha Declaration on the TRIPs Agreement and Public Health; Adoption of the draft waiver by the General Council on July 8, 2002, in respect of the obligations of LDC Members under Article 70.9 of the TRIPs Agreement until January 1, 2016; Decision on the “Implementation of Article 66.2 of the TRIPs Agreement” adopted by the Council for TRIPs on February 19, 2003, giving effect to the instructions of the Doha Ministerial Conference in Paragraph 11.2 of the Decision on Implementation Related Issues and Concerns; Decision on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPs Agreement and Public Health; Adopted by the General Council on August 30, 2003; and

(3) Modalities for the Special Treatment for LDC Members in the Negotiations on Trade in Services adopted by the Special Session of the Council for Trade in Services on September 3, 2003.42

On February 12, 2002, the sub-committee on LDCs agreed to a work programme in order to implement the commitments of the Doha Declaration. The objective of the work programme was to enhance market access and technical assistance. On market access, priorities were: (i) work to identify and examine all market access barriers confronting LDCs’ products; (ii) annual review of all market access improvements; (iii) examination of possible additional measures to improve market access for LDCs’ products. Similarly,
on technical assistance, priority was to be given to LDCs. Members are encouraged to significantly increase their contribution to technical assistance programmes for these countries. 43

The progress on core issues of development dimensions for the LDCs is discussed below:

4.4.1 Enhanced Market Access

Market Access for Goods

The initiative to improve market access for LDCs was first taken up in the 1996 Singapore Ministerial Declaration, when WTO Members agreed to a plan of action in favour of LDCs. Among the stated objectives of this initiative, the most important was that of taking positive measures, for example, to provide duty-free market access on an autonomous basis for products originating from LDCs. It was noted in chapter 3 that Ministers committed themselves to the ‘objective of duty-free, quota-free market access for products originating from LDCs’ and to consider ‘additional measures for progressive improvements in market access for LDCs’44. The Doha work programme for LDCs has focused on these commitments. Since the Doha Ministerial Conference, several countries, including Australia, Canada, and Japan, have announced duty-free and quota-free access to essentially all LDC exports, in response to the call by WTO. Till 2004, a total of 28 WTO Members including developed and developing countries have, on an autonomous basis, announced measures to improve market access opportunities for LDCs. Trade preferences granted by developed countries are voluntary and uncertain. They are not WTO obligations. Studies45 have shown that the use of preferences is in general limited (39 percent), but utilisation by LDCs was much higher (60 percent)46. Hence, binding multilateral liberalisation commitments under the WTO would be more secure.

Moreover, duty-free and quota-free access differs from generalised system of preferences (GSP) in some important aspects47:

- The US has implemented the African Growth and Opportunity Act (AGOA) and the Caribbean Basin Initiatives (CBI) providing duty-free and quota-free market access. They include sectors excluded by standard GSP programmes e.g. apparel;
- By 2009, Everything But Arms (EBA) will cover all exports of beneficiary countries (the 49 LDCs); and
- The administrative requirements of these deeper preferential schemes (i.e. duty-free and quota-free market access), tend to be more relaxed regarding the RoO.

Box 7 shows that the ‘July Package’ has been more regressive than the Cancun text on market access for LDCs. Market access needs to be binding and bounded at the Hong Kong Ministerial meeting. South Asian LDCs has been left out from deeper preferential treatment in US. The need for duty-free and quota-free access in US for South Asian LDCs is quite evident from Box 8. Duty-free and quota-free market access for products originating from LDCs in developed country markets should form the first priority of the South Asian countries at the Hong Kong Ministerial meeting.
### Box 7: Comparative Assessment of Cancun text and July Package text on Market Access for Products Originating from LDCs

**Agriculture**

The July text is more regressive than the Cancun text as there is no scope for making it mandatory:

- Developed Members, and developing country Members in a position to do so, *should* provide duty-free and quota-free market access for products originating from LDCs.
- Cancun Text:
- Developed Members *shall* provide duty-free and quota-free market access for products originating from LDCs.

The above suggests that the developed countries were not willing to provide these concessions until the ‘large’ developing countries were also going to do so. A South Asian position could be as follows:

- Developed Members *shall*, and developing country Members in a position to do so, *should* provide duty-free and quota-free market access for products originating from LDCs by December 31, 2005.

**NAMA**

The NAMA text in the July Framework is exactly the same as the one in Cancun, which was rejected by the developing countries. The duty-free and quota free market access for LDCs for non-agricultural products needs to be bounded and enforceable.

- Annex B in July Package calls upon developed country participants and ‘other participants who so decide’, to grant on an autonomous basis duty-free and quota-free market access for non-agricultural products originating from LDCs by a date to be agreed.

A South Asian position could be:

- Developed country participants *shall* and other participants who so decide *should* grant on an autonomous basis duty-free and quota-free market access for non-agricultural products originating from least developed countries by December 31, 2005.

Moreover, the July Package has completely ignored the rules of origin problems faced by the LDCs. These were reflected in the Cancun text as:

- We urge Members to adopt and implement rules of origin, so as to facilitate exports from LDCs.

**Market Access in Services**

The GATS provides for four different modes of supply: (1) cross-border supply; (2) consumption at source; (3) commercial presence and (4) MNPs. Negotiation on the last mode of supply (i.e. Mode 4) is of vital interest to developing and least developed countries.

In the Cancun Text:

- In services, we shall give priority to the sectors and modes of supply of export interest to LDCs, particularly in regard to movement of service providers under Mode 4.

The Service annex C in the July Framework, this emphasis has been neglected:

- With a view to providing effective market access to all Members and in order to ensure a substantive outcome, Members shall strive to ensure a high quality of offers, particularly in sectors and modes of supply of export interest to developing countries, *with special attention* to be given to least developed countries.
- Members note the interest of developing countries, as well as *other Members*, in Mode 4.

*Source: WTO (2004a) and WTO (2003h)*
Moreover, products of export interest to LDCs are subject to high tariffs in developed countries. An analysis of actual duties paid by the developed, developing and least developed countries’ exports to the US, shows that products of LDCs are subject to the highest rates of duty in the US despite the fact that oil imports from LDCs is duty-free in the US and the US has provided duty-free access to African LDCs under AGOA initiatives (Table 3). Hence, providing duty-free and quota-free market access for all products from LDCs would help their effective integration in the MTS, as envisaged in the Doha Ministerial Declaration. Studies have shown that in 2001, Bangladesh paid $331mn as tariff revenue to the US, while it received US$87mn as official development assistance (ODA).48 The products of export interest to LDCs need to be categorised as ‘sensitive products’ for tariff reduction, so that preference margins would be higher.

<table>
<thead>
<tr>
<th>Box 8: Duty-free Market Access in T&amp;C</th>
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<tr>
<td>The US Trade and Development Act 2000, provided duty-free and quota-free access to 34 LDCs’ exports from sub-Saharan African countries and Caribbean Basin Initiative countries. But 14 LDCs of Asia were left out. Hence, the Asian LDCs are currently ‘under preferred’. Except for the US, almost all the developed countries have provided duty-free and quota-free market access to all LDCs. After the Trade and Development Act 2000, the US has been aggressively promoting trade pacts with various regions. These trade pacts have weakened the WTO where 80 percent of the Members are developing countries. In July 2002, Sri Lanka signed a Trade and Investment Framework Agreement (TIFA) with the US with the objective of converting it to a bilateral FTA by mid-2004 before the Multifibre Arrangement (MFA) comes to an end. Now a number of Islamic countries including Bangladesh are offered TIFA. Recently, a bill proposing duty-free and quota-free market access to readymade garments called TRADE Act 2005, including Sri Lanka, Nepal and Bangladesh, is in the US Senate. If duty-free and quota-free market access is to be provided to all products from LDCs under the WTO, then it will be binding for the US to provide same facilities to all LDCs. Studies have noted the potential gain for Bangladesh from duty-free access to developed countries market to be as follows:</td>
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<tr>
<td>If Bangladesh gets duty free and quota free access to the markets of Quad countries (US, EU, Canada, and Japan) its exports revenue would increase by 45 percent. Export of textiles and clothing to Canada and US would rise by more than US$700mn.</td>
</tr>
<tr>
<td>Textile is a labour-intensive sector in Bangladesh, Nepal and Sri Lanka. Moreover, these are female-intensive sectors. The ready-made garment industry accounts for more than 75 percent of the exports in Bangladesh. In Nepal, ready-made garment is one of the major exports and has been secularly declining in the aftermath of the phase out of the WTO Agreement on Textiles and Clothing (ATC). Moreover, the industry has provided formal sector employment for the first time to rural women and has expanded the quality of employment available to them. It has contributed towards empowerment of women in many ways. Any expansion in this sector would expand women’s employment in the formal sector and a decline in this sector would affect women adversely as alternative employment opportunities are not available. Moreover, it has linkages with the development of medium-sized firms and has spillovers into the informal sector. Hence, duty-free and quota-free access to all products of LDCs must be a priority for South Asian countries.</td>
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</table>
Although market access has been provided by almost all developed countries – the US being one exception – to all LDCs, it has been ineffective due to NTBs such as stringent RoO, technical standards, SPS measures, product standards and anti-dumping. These pose challenges for the LDCs to benefit from duty-free and quota-free market access. Moreover, some ‘sensitive’ products are excluded from the preference schemes. For example, market restrictions exist on bananas (2006) rice and sugar (2009) in the EBA scheme in EU; exclusion of T&C in the GSP scheme of US; exclusion of some agricultural and fishery products from the GSP scheme of Japan.

RoO are considered to be the main obstacle to a better utilisation rate of the available trade preferences on industrial products and processed foodstuff. Simple, homogenous, unrestricted RoO can translate into higher utilisation rate. For example, the generalisation of AGOA type RoO to all LDC GSP schemes could substantially increase the utilisation of those schemes. The EU, in particular, would significantly enhance the benefits that Asian LDCs derive from its EBA scheme by relaxing its RoO. The successful reform of the Canadian GSP for LDC programme shows that positive results of reforms can be immediate (see Box 9).

### Box 9: Preference as an Export Promotion and Diversification Tool: The Case of Canada

The Canadian example shows that a generous reform of preference schemes can simultaneously increase the number of countries actually benefiting from the scheme, increase the amount of imports from countries that were already using the scheme and increase the range of products imported from those countries. Canadian model not only demands a lower value addition (25 percent), but also allows global accumulation. Exports from a selected sample of LDCs have substantially increased after the implementation of the Canadian reform. The exports value index for trade between Canada and Bangladesh (with a base=100 in 1998) rose from 112.5 in 2002 to 247.5 in 2003, before further increasing to 370.8 (see annex table 3). Hence, the Canadian reform has contributed to an increase in the number of clothing items imported from Bangladesh. The new RoO allowed an extensive use of the preferences granted. As shown in Annex Table 4, when the reform was announced in 2002 for 1 January 2003, importers’ expectations led to a first increase in the number of imported items, from 137 in 2001 to 158 as of 2002, followed by a jump to 186 and 197, respectively, in 2003 and 2004. Only highly flexible and uniform RoO seem to allow LDC producers to reap the benefits of economies of scope. Such rules make sure preferences can be easily utilised for any item produced and exported within a group of products.

**Source:** WTO (2005e)
Overcoming NTBs to trade and complying with product standards constitute a more formidable challenging market access barrier than tariff barriers. NTBs may indeed seriously impair LDCs’ benefits from preferential market access. Poor countries are often denied market access when they fail to comply with a developed country’s SPS or TBT requirements or both. This issue in relation to export of shrimp from Bangladesh is discussed in Box 10. EU imposed a ban on Nepalese tea because of traces of nicotine found in tea. Building the capacity of the producers on good agricultural practice (GAP) in order to meet the quality imperatives of the developed countries is needed. Another example of Nepalese honey being banned in Norway on the pretext of lack of pesticide control programme explains two things. First, Nepal’s inabilities to put in place such a mechanism, despite the felt need. Second, the protectionist tendency in the importing country, which presumes that Nepalese honey, contains pesticide without actually conducting a physical test.

Box 10: Negative Effect of SPS on shrimp exports from Bangladesh

An example of the significant loss that may arise due to import restrictions and bans is provided by Bangladesh’s shrimp industry. Shrimps are one of the most important primary commodity exports of Bangladesh, and the shrimp industry is an important employer in the country. A study by the Consumer Unity and Trust Society (CUTS) suggests that about 1.2 million people are directly employed in the shrimp industry. Women are largely employed in the processing plants. When the EU banned shrimp imports from Bangladesh between August and December of 1997, the shrimp exports of Bangladesh to the EU dropped from US$65.1mn to zero, but at the same time the shrimp exports of Bangladesh to the US and Japan, who have similar standards, increased, largely compensating for the loss (Table 4). Hence, there is a need for downward harmonisation of standards. Exports to the US and Japan also declined after 1997 and once compliance was ensured exports picked up both in the EU and the US.

The shrimp entrepreneurs undertook substantial investments to ensure Hazard Analysis Critical Control Points (HACCP) compliance and government support was provided in terms of special credit programmes. Cato and Lima dos Santos (1998) estimated that the total cost of upgrading facilities and equipment, training of staff and workers to achieve acceptable sanitary and technical standards was about US$18mn, while the annual cost of maintaining the HACCP compliance was estimated to be US$2.4mn.

<table>
<thead>
<tr>
<th>Import region</th>
<th>Imports without ban</th>
<th>Import with bans</th>
<th>Net effect</th>
</tr>
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<tbody>
<tr>
<td>United States</td>
<td>73.5</td>
<td>102.2</td>
<td>28.7</td>
</tr>
<tr>
<td>European Union</td>
<td>65.1</td>
<td>0.0</td>
<td>-65.1</td>
</tr>
<tr>
<td>Japan</td>
<td>22.7</td>
<td>26.1</td>
<td>3.4</td>
</tr>
<tr>
<td>All others</td>
<td>7.5</td>
<td>25.8</td>
<td>18.3</td>
</tr>
<tr>
<td>Total</td>
<td>168.8</td>
<td>154.1</td>
<td>-14.7</td>
</tr>
</tbody>
</table>

Market Access for Services

Special priority to LDCs should be granted in service negotiation at a sectoral level. An estimate\textsuperscript{51} suggests that the income gains to developing countries from temporary access to service providers, which is equal to five percent of OECD population, are around US$300bn. This is greater than the gains from abolition of trade barriers in goods. Hence, at the beginning of the negotiations on the offers/requests in sectoral services, the LDCs should be asked to indicate the sectors and modes of supply that represent a priority in their development policies, so that the WTO Members can take these priorities into account in the negotiations.

Box 11: Most Common Restrictions on Mode 4

- Entry restriction for certain sectors and categories of personnel;
- Restrictions on the duration of stay of natural persons;
- Pre-employment conditions and other related requirements;
- Economic needs, labour market and management needs tests;
- Quantitative restrictions by numerical quotas for persons who can enter, specifications on the proportion of total employment that can be met by foreigners, specifications on the proportion of total wages;
- Requirements for technology and skill transfer (training local staff);
- Discriminatory tax treatment;
- Requirement of government approval;
- Requirement of work permits, residency and citizenship in certain sectors;
- Recognition of professional qualifications by the importing country; and
- Restrictions via minimum investment requirements.

*Source: South Centre 2004 cited in SAWTEE 2004c*

Proposed addition under Article IV.3, after the first sentence has been suggested by the LDCs\textsuperscript{52}:

> “In sectors of their export interest, multilaterally agreed criteria for giving priority to the least-developed country Members shall be established, and when developing further disciplines and general obligations under the agreement”.

For the LDCs, the market share in trade in services has been about 0.42 percent through the 1990s. Mode 4 has been the interest of the LDCs. Efforts are needed to make substantial market access commitments in Mode 4 and to remove the restrictions mentioned in Box 11. Moreover, technical assistance is needed to enhance competency in sectors in which market access opportunities are provided. The issue of movement of natural persons under GATS was addressed in the modalities for special treatment given to LDCs in service negotiations adopted in Geneva on September 3, 2003. It was agreed that WTO Members would consider requests of LDCs on the movement of natural persons. LDC modalities refer to market opening in Mode 4, but implementation of the provision is far from satisfactory. During the Special Session of the Service Council there was little progress. Revised offers by the US and the EU have not incorporated
Mode 4. LDCs are asking for adequate and targeted technical assistance for assessment and strengthening S&DT proposals to address supply-side constraints. Moreover, restriction on Mode 4 should be removed.

4.1.2 Flexibility in Rules

Accession of LDCs in WTO

Among the South Asian LDCs, Bangladesh and Maldives are founding Members of the WTO while Nepal became a Member on April 23, 2004. Bhutan is in the accession process and is likely to become a Member in a few years time. The problems faced by Nepal during accessions are elaborated in Box 12. The accession schedules had been termed as WTO Plus and hence have discriminated against new Members. Nepal had foregone most of its rights to S&DT during the process of its accession. Moreover, S&DT relating to transitional periods remain merely theoretical for Nepal because most of them have either expired or are in the process of expiring. WTO Members should refrain from placing excessive demands on applicants from LDCs and there is a need for a transparent, streamlined and accelerated accession process in keeping with WTO rules and disciplines.

Box 11: LDCs’ Accession to the WTO: Learning from the Case of Nepal

Nepal and Cambodia were offered Membership of the WTO in the fifth Ministerial held in Cancun in September 2003. They are the only two LDCs that have been offered WTO Membership through the accession process. The accession process of the WTO is onerous for the LDCs that lack the human resources and technical capabilities required by the process. Realising this difficulty, Member countries have agreed to facilitate and accelerate the LDCs’ accession process as mentioned in Paragraph 42 of the Doha Declaration. The accession process is lengthy and taxing for an LDC like Nepal. The documentation required and bilateral negotiations are beyond the human, technical and institutional capabilities of these countries.

Market Access and Domestic Support

- Nepal faced major problem in the area of tariff binding, in particular of agricultural commodities. Nepal was forced to bind its average tariff at 42 percent on the agricultural sector.
- Altogether Nepal has opened up 70 services sub-sectors, on the areas of services too Nepal was asked to undertake commitment on:
  - Audio-visual, distribution, retail and wholesale services.
  - Up to 80 percent foreign equity participation for which Nepal has made commitments.

Special and Differential Treatment

According to the TRIPs Agreement, LDCs are provided a transition period up to January 1, 2007 for the implementation of the Agreement. However, Nepal was asked to implement the non-discrimination provisions (most favoured nation and national treatment) contained in the TRIPs Agreement right from the date of accession. Moreover, the developed countries did not make any reference to Declaration on

Contd...

Other Issues

- Nepal will have to explore the possibility of joining various World Intellectual Property Organisations (WIPO) conventions including the Union for the Protection of New Varieties of Plants (UPOV) at a future date, taking into account its national interests.

- Nepal has to bind other duties and charges (ODCs) at zero and make a commitment to phase them out over a two- to 10-year period.

Given the importance of the agricultural sector in the economies of LDCs, particularly its role in human development, food security and rural development, LDCs should not be required to make commitments on subsidies and tariffs. LDCs should also have access to simplified safeguard mechanism.

Source: Adhikari and Dahal (undated)

4.1.3 Technical Assistance and Capacity Building

In the ‘July Package’, the GC encourages the improved coordination with other agencies, including under the IF for the LDCs and the JITAP. The IF was launched in October 1997 at the High-level Meeting on LDCs’ Trade Development organised by the WTO in recognition of the supply-side constraints facing LDCs. The IF brings together six core agencies: the International Trade Centre (ITC), the IMF, UNDP, UNCTAD, the World Bank (WB) and the WTO, in an effort to deliver complementary trade-related assistance to LDCs. Till 2000, there was hardly any progress. An IF Pilot Scheme was adopted by the sub-committee on LDCs on February 12, 2001.

The IF has two windows: Window I is a general fund for un-earmarked contributions to the diagnostic studies and mainstreaming and Window II for contributions allocated to specific and clearly identifiable programmes for capacity building. All LDCs who have undertaken a Diagnostic for a Trade Integration Strategy (DTIS) in the pilot scheme of the IF (so far 1454 countries have conducted DTIS) may access Window II funding. Physical infrastructure projects in the DTIS matrices are excluded from funding under Window II. Among the South Asian LDCs, Bangladesh was included in the old IF, while Nepal has undertaken a DTIS. As of March 2004, Window I had total pledges amounting to US$12.5mn and disbursement amounting to US$10.8mn. Window II had a total pledge of US$8.6mn and total disbursements of US$5.5mn. It was noted that the IF has placed a great deal of emphasis on diagnostic activities, rather than on outcomes. Moreover, as consultants prepare these DTIS, there is no country ownership. Hence, the UNCTAD 2004 report has recommended integrating trade into development strategies and poverty reduction strategies. Developing production and trade capacity of the LDCs will require not only technical assistance but also greatly increased levels of sustainable international financial assistance.
Due to the low level of economic development, many LDCs cannot avail of the trade opportunities because of supply-side constraints. Major constraints in availing of the opportunities are low capacity to meet the product quality standards, small range of export products, inadequately trained manpower to handle trade policy, and poor transport, communications and other basic infrastructure services. It is obvious that unless the developing countries, especially the LDCs, remove these bottlenecks, they cannot share the benefits of global trade. There are numerous provisions in the WTO Agreement, which address these issues. But they need to be implemented fully so that LDCs can reap the benefits and restore their confidence in the WTO System.

The above discussion suggests that despite the openness, LDCs have not been able to reap the benefits of liberalisation, but are also being marginalised from the international economic scene. Their share in international trade has secularly declined. Efforts made so far to integrate them into the MTS have largely failed. These can be attributed to the following factors:

**Ineffective S&DT Provisions:** S&DT provisions have become a mere adjustment tool rather than development tool. The fundamental flaw in providing lower levels of commitment and higher transition periods is the implicit assumption that LDCs not only can implement the commitments, but are also able to operate in a competitive market after the completion of the transition periods.

**Limited Utility of Trade Preferences:** Trade preferences granted by the developed countries have not been helpful because of the stringent RoO requirements and prevalence of disproportionately higher NTBs. For example, in 2002, 40 percent of LDC exports were subject to NTBs. In contrast, for other developing and transition economies and developed countries, the figure was only 15 percent.\textsuperscript{57}

**Unhelpful Technical Assistance:** Technical assistance and capacity building efforts have been at best limited. They have tended to focus more on the software part (studies, training, and exposure visits) rather than the hardware part (improving trade-related infrastructure). For example, the Window II of IF programme has allocated a budget of US$1mn for each LDC, which is extremely low to address their supply-side bottlenecks.

### 4.5 Development Dimension in the Four Agreements of ‘July Package’

On the whole, the ‘July Package’ falls short of addressing issues/agreements specific to S&DT. The use of rhetoric language notwithstanding, in agriculture developing countries have been provided with three major flexibilities: (1) They will have the flexibility to designate an appropriate number of products as Special Products, based on criteria of food security, livelihood security and rural development needs. However, more vaguely, the ‘July Package’ states that these products will be eligible for ‘more flexible treatment’, the meaning of the latter phrase not being clear; (2) Special safeguard provisions have so far been used mostly by the developed countries and selected developing countries (altogether 39 countries) to protect their agricultural sector from possible import surge. However, for the first time, the ‘July Package’ paves the way for establishing a special safeguard mechanism (SSM) to be used by developing country Members only. Though the modalities for implementation of the mechanism are yet to be devised, this is likely to provide a cushion for the developing countries. (3) Developing countries will have
lower reduction coefficients and longer implementation periods on the domestic support pillar of agricultural negotiations. Similarly, on export subsidies, developing countries will benefit from longer implementation periods for the phasing out of all forms of export subsidies. On market access, it is envisaged that proportionality will be achieved by requiring lesser tariff reduction commitments or tariff quota expansion commitments from developing country Members.

Though the LDCs are not required to participate in any reduction commitment, the non-binding language relating to duty-free and quota-free access have further weakened their bargaining position in their efforts to obtain such facilities from the developed countries. Moreover, the commitments are not bounded.

On NAMA, again rhetoric apart, the ‘July Package’ offers two major S&DT. (1) There is a possibility for the developing countries to make use of ‘less than full reciprocity in reduction commitment’ as the touchstone for negotiations and (2) developing countries are granted longer implementation periods and LDCs are exempted from tariff reduction commitment altogether. However, LDCs have been asked to substantially increase their binding coverage. Moreover, developing countries are allowed to keep five percent of their tariffs unbound, provided they do not exceed five percent of total import value. In addition, they would be allowed to apply less than formula cuts to up to ten percent of the tariff lines, provided they do not exceed ten percent of the total value of imports.

Services negotiations have been treated as a different ballgame altogether, as if it did not relate to market access. Though developing countries have realised the benefits of liberalising services trade, they are convinced that due to the level of their economic development, a majority of them would benefit from the liberalisation of the 4th mode of supply by the developed countries. Liberalisation of other modes will not benefit them, at least in the short- to medium-term. However, visa restrictions (immigration laws) and security issues remain two main political barriers to Mode 4 liberalisation in the developed countries. Moreover, developed countries tend to liberalise Mode 4 linking it to Mode 3, which means that if the developing countries are capable of establishing business presence in the developed countries (which is not very likely in the present scenario), they will be allowed to bring in their own personnel (so called ‘intra-corporate transferees’) for the delivery of services. Though the WTO does not mention anywhere that they cannot be linked, such linking has rendered apparent market access opportunities meaningless.

Developing countries were hoping that some breakthrough on the opening up of this mode of supply would occur. But the ‘July Package’ has shattered their hopes. In the ‘July Package’, Members only note the interest of developing countries, as well as of other Members, in Mode 4. Similarly, the ‘July Package’ notes that targeted technical assistance should be provided with a view to enabling developing countries to participate effectively in the negotiations. Within the WTO system, where the developed countries have a propensity to interpret each and every provision of the agreements in their favour, ‘noting the interest of’ or ‘should be provided’ would have no value.

Among the issues agreed for negotiations by the ‘July Package’, the trade facilitation text is the only text which contains relatively strongly worded technical assistance
language. This text provides the leeway to the developing countries, not to implement their part of the commitments in the absence of technical assistance. On agriculture, S&DT provisions are mostly related to longer transition periods and lower levels of reduction coefficients. S&DT language, as in the past, is of a non-binding best-endavour nature.62

4.6 Debate on Development Issues
The above discussion suggests that there are five major areas of debate on development issues: agreement-specific versus crosscutting issues, definition of developing countries, monitoring mechanism, scope of technical assistance, and balanced rules. In order to come to a clear decision, the following debate on development issues needs to be resolved. The South Asian countries need to support the position of the developing countries on these issues in the Hong Kong Ministerial meeting.

4.6.1 Agreement Specific versus Crosscutting Issues
It was noted earlier that the Doha negotiations on making S&DT provisions stronger as well as ‘more precise, effective, and operational’ have not progressed significantly in the round thus far. There is disagreement over which should come first: decisions over crosscutting issues or on provisions within specific agreements.63 Developing countries feel that the current work programme should consider only agreement-specific proposals. On the other hand, the developed countries feel that there should be detailed discussions on the broader ‘principles and objectives’ of S&DT. Hence, a split has emerged between the two groups: those who want to deal with the 88 agreement-specific proposals for S&DT enhancement, led by the African Group of developing countries; and those who want to first address controversial ‘crosscutting’ issues including the principles and objectives of S&DT and the monitoring mechanism. It should be noted that the ‘July Package’ has clearly stated to come with ‘clear recommendations’ by July 30, 2005 for agreement-specific proposals. Hence, the discussion should be confined to agreement-specific proposals only.

4.6.2 Definition of Developing Countries and Small Economies
The LDCs are defined according to UN criteria. But at present, there is no definition of developing countries. One of the main stumbling blocks in the current debate is the question of which country will be eligible for S&DT. The major bone of contention among the developed countries has been that there is a need to create a distinction between advanced developing countries (like Brazil, China, India, South Africa) and relatively less advanced developing countries (Sri Lanka, Costa Rica, Nicaragua, and several small island developing countries) while providing S&DT. They have also agreed that LDCs are a separate category of Members, and, hence, they deserve S&DT. However, advanced developing countries contend that they also have huge sections of their population languishing in poverty; hence, any such division will mean that those poor people will not have the same trade opportunities as their counterparts in other developing countries should such a distinction be created. They are also of the view that this is a ploy of the developed countries to divide the developing countries and create further disunity among them to suit the formers’ interests. An amicable settlement of this debate is desirable, because it will only lead to delay in resolving S&DT issues. Moreover, small economies face specific challenges in their participation in world trade. But the
problem is that there is no definition of what is a ‘small economy’. Some Members want a clear definition, while others do not want to embark on such an exercise.

### 4.6.3 Monitoring Mechanism

The only proposal that was accepted by the July 31, 2002 report was for establishing a monitoring mechanism. However, the developing and developed countries differed on the role of such a mechanism. The developed countries wanted such a mechanism to monitor the effectiveness of the S&DT mandates in integrating Members into the MTS. On the other hand, the developing and least developed countries felt that the monitoring mechanism needs to monitor the effective implementation of S&DT provisions; the WTO Committees should keep S&DT as a standing or regular item on their agenda; and that the GC could consider on an annual basis in a special session the mechanism’s report on the implementation and utilisation of S&DT provisions. Moreover, there were divergences of opinion on the institutional structure of the mechanism and the timing for its coming into force.

### 4.6.4 Scope of Technical Assistance

Disagreement persists among Members on what WTO technical assistance should deliver. The developed countries want to restrict it to assisting in negotiations, and leave broader development aid for development organisations like the WB. The developed countries often argue that the Secretariat reduces trade-related technical assistance over time and becomes coordinator, rather than a deliverer, of such assistance. In contrast, the developing countries generally insist that technical cooperation and capacity building should be considered as a fundamental aspect of the activities of WTO. Now that technical assistance has been institutionalised within the WTO, it may be politically difficult for the donors to curtail assistance.

### 4.6.5 Priority in Balanced Rule

The earlier discussion suggests that the developed countries emphasise transitional time periods in balanced rules, while the developing countries emphasise safeguards and flexibility in balanced rules. The LDCs find it very difficult to implement provisions within the transitional periods and they want exemptions from having transitional time periods as long as they remain LDCs. Hence, from a South Asian perspective balanced rules will refer to flexibility in WTO rules.

Amidst all these challenges in the WTO, the developing countries are in a weak and disadvantageous position. Studies have identified the weaknesses as: (i) the developing countries have been getting less than equal treatment in several areas, (ii) they have been making significant concessions to major developed countries without getting much in return from them, (iii) several important provisions of S&DT of developing countries have not been properly implemented, (iv) the subjects and areas of interest to the developing countries have been consistently ignored and not attended to, (v) in the working of the dispute settlement process, important interpretations are evolving which have the potential of constraining their production and export prospects, (vi) big loopholes and traps have been left in some agreements which could have possible adverse impacts on the developing countries, etc. All these need to be examined, but the capacity of the developing countries is limited. Hence, developing a forum and networking among institutes is needed.
5. Perspective on Negotiating Strategy of South Asia

As South Asia is a diverse region, the negotiating position for the South Asian countries would be different for the LDCs and the developing countries. These are discussed below.

5.1 Negotiating Position of the South Asian LDCs
The LDCs’ position in the South Asian region is reflected in the following:

*The primary principle of the Doha Round must be to ensure that the agreements promote development in poor countries. To make this operational, the WTO must.... Identify pro-development proposals and promote them to the top of the agenda*.

In preparation for the Fifth Ministerial Conference, LDC Trade Ministers have adopted the Dhaka Declaration setting out the LDCs’ negotiating agenda and priorities for Cancun and beyond. LDCs have recently adopted a common negotiating position in the Livingstone Declaration on the Doha Round talks ahead of the global trade body’s December Ministerial Conference in Hong Kong. The perspectives of these declarations are discussed below.

5.1.1 Dhaka Declaration
*The Dhaka Declaration includes proposals on simplifications and flexibility in RoO and standard requirements, moratoriums in the use of contingent trade remedies on LDC exports, and more secured and predictable preferential access. In the negotiations on trade in services, LDCs have sought further market access in modes and sectors that are of export interest to them. The Cancun text has referred to the Dhaka Declaration, but the July Framework failed to recognise its importance.*

The main issues emphasised by the LDCs, which were stated in Dhaka Declaration, were:

- binding commitments on duty-free and quota free market access for products originating from the LDCs with realistic, flexible and simplified RoO in order to raise LDCs market share in world trade;
- access to developed countries’ markets for temporary movement of less skilled persons under Mode 4 of GATS, based on recognising professional qualifications, simplifying visa procedures without asking for an economic needs test (ENT);
- flexibility in undertaking commitments;
- exemption from anti-dumping, countervailing duties and safeguard measures;
• appropriate compensatory mechanism to address the erosion of preference margins due to lowering of tariffs;
• implementation of paragraph 6 of the Doha Declaration on TRIPs and Public Health;
• technical assistance to support diversification of production and exports bases and capacity building in making trade policy; and
• resolving all issues related to S&DT.

5.1.2 Livingstone Declaration

In the Livingstone Declaration, the ministers have expressed concerns over the failures to meet deadlines, lack of attention to address issues of interest to LDCs and continuing onerous demands put by some WTO Members from the acceding countries. The Declaration adopted at this meeting came up with the following issue-specific proposals to be agreed upon by the relevant WTO bodies and the Sixth Ministerial Conference.

A. Enhanced Market Access

As in the Dhaka Declaration, the first priority of the LDCs is duty-free and quota-free market access. Moreover, the Livingstone Declaration has emphasised the flexibility as well as the technical assistance for capacity building. But the Declaration has given low priority to the RoO and market access in services, especially Mode 4. Extracts from the Declaration, which are priorities for the South Asian LDCs, are given below:

Duty-free and Quota-free Market Access
• Binding commitments on duty-free and quota-free market access for all products from LDCs to be granted and implemented, on a secure, long-term and predictable basis, with no restrictive measures introduced;
• Strengthening the existing preferential schemes; and
• Incorporation of provisions to address the erosion of preferences.

Issues Related to Non-tariff Barriers
• A moratorium on safeguard measures and anti-dumping actions against LDCs so as to facilitate exports from LDCs;
• Incorporation of provisions in the modalities on:
  • realistic, flexible and simplified RoO;
  • certification and inspection requirements; and
  • technical and safety standards.

Issues Related to Services
• Full implementation of the Modalities for the Special Treatment for LDCs in the negotiations on trade in services;
• Full market access and national treatment to LDCs in the sectors and modes of supply of export interest to them, including less skilled and non-professional services providers under Mode 4 on temporary and contractual basis.
• Adequate targeted technical and financial assistance to LDCs, including to carry out sectoral assessments and take part in the request/offer process in a beneficial and meaningful way;
• Developing and applying domestic regulation disciplines including:
  • Recognition of qualifications;
o Simplification of administrative practices and visa requirements; and
o Without asking for ENT.

- Ensuring that the Special Modalities for LDCs and Guidelines and Procedures for the negotiations in services adopted by the Council for Trade in Services in 2001 and 2003, respectively, continue to remain the basis for the negotiations.

### B. Flexibility in Rules

The full implementation of the provisions of S&DT, to make them more precise, effective and operational, and adoption of new special and differential measures to take into account problems encountered by LDCs and address meaningfully the special and differential proposals of LDCs;

**Issues Related to Tariff and Subsidy Reduction**

- Complete exemption for LDCs from any reduction commitments.
- Flexibility for LDCs to determine the levels of binding commitments of their tariff lines consistent with their trade, development and financial needs.

**TRIPs**

The need to urgently amend the TRIPs Agreement to incorporate the August 30, 2003 Decision on Implementation of Para 6 of the Declaration of TRIPs and Public Health as a permanent solution to the problems of the LDCs with insufficient or no manufacturing capacity.

**Concerns of the Net Food Importing Countries**

- Establish a SSM to respond to the needs of the LDCs in order to address import surge and price decline for safeguarding food and livelihood security and rural development;
- Full Implementation of the commitments made in the Marrakesh Declaration and Ministerial Decisions in favour of LDCs and the Ministerial Decisions on Measures concerning the Possible Negative Effects of the Reform Programme on LDCs and Net-Food Importing Developing Countries (NFIDCs); and
- Ensure Food aid is available at all time to meet the needs of the LDCs and NFIDCs.

**Policy Coherence**

- The urgent need to operationalise the objective of coherence mandate between the WTO and International Financial Institutions (IMF, WB), in line with the rights and flexibility that LDCs have obtained under the WTO, since these are aimed at achieving and supporting LDC development objectives.

**Trade Facilitation**

- Operationalising the flexibility agreed in the modalities for negotiations on trade facilitation which stipulates that LDC Members will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.

**Landlocked and Small Economies**

- Their needs to be taken into consideration and adequate financial and technical assistance and capacity building programmes on a sustained basis.
Accession
- Full implementation of the guidelines for LDCs’ accessions and ensure the full application of the S&DT provisions, including the IF; and
- The provision of adequate financial and technical assistance and capacity building programmes on a sustained basis for newly acceded LDCs to enable them adhere to their commitments in the WTO as well as to expedite their integration into the MTS.

C. Technical Assistance and Capacity Building

Technical Assistance for Implementation
- Binding commitments on targeted and substantive technical assistance programmes in favour of LDCs to enhance their capacity, to meet SPS measures, standard requirements, RoO and other non-tariff measures in the importing countries;
- Full implementation of the guidelines for LDCs;
- The need for all development partners to assist LDCs in attaining the millennium development goals (MDGs), by making concrete efforts to achieve the targets on ODA with respect to LDCs as contained in the Brussels Programme of Action and the Monterrey Consensus, in particular to address the trade concerns of LDCs; and
- Full implementation of the modalities of negotiations on trade facilitation that ensure adequate financial and technical assistance and capacity building including support for infrastructure development for LDCs, through coordinated and sustained flow of funding that also address cost implications of proposed measures affecting LDCs.

Technical Assistance to Enhance Supply-side Capacity
- Increased resources and an effective delivery mechanism for trade capacity building to address the inherent supply-side capacity constraints faced by LDCs with a view to enabling them to take advantage of increased market access opportunities;
- Strengthening the effectiveness of the IF by a significant resource increase, including through other initiatives, with a view to building up supply-side capacity, technological and physical infrastructure that would support diversification of LDCs’ production and export base; and
- The need for ‘Aid for Trade’ as an additional, substantial and predictable financial mechanism to strengthen supply-side and infrastructure capacity, diversification of trade in LDCs and address adjustment challenges and costs for the effective integration of LDCs into the international trading system.

5.2 Negotiating Position of the South Asian Developing Countries
The South Asian Developing countries’ negotiating position addresses agriculture as the main development dimension in negotiations, followed by services and trade facilitation. Although there has been some progress in the ‘July Package’, as reduction of export subsidies has been agreed upon and a separate discussion on cotton is being undertaken, issues such as domestic support, market access and modalities for special products and a SSM remain to be resolved. Since the ‘July Package’, there has been some progress in negotiations in agriculture. A tiered approach will be used to reduce tariffs with (1) deeper cuts in higher tariffs and (2) providing flexibility for sensitive products. The formula for conversion of specific tariffs to ad valorem equivalents has been agreed. The provisions for S&DT treatment for developing countries also need to be spelt out in terms of concrete obligations taking into account their experience in
implementation of the AoA, the differing levels of economic development, the role of agriculture in economies with large rural populations and the need to preserve food and livelihood security considering the vulnerability of their agricultural sector. The negotiating positions of the South Asian developing countries are discussed below.

5.2.1 Food Security
A number of suitable measures in the areas of market access, domestic support and export subsidies would necessarily have to be addressed in a coordinated manner so as to enable the developing countries to take care of their food security and livelihood concerns. For most developing countries, the need is to raise agricultural productivity and increase production, particularly of basic foodstuffs. It is critically important that agriculture remains a viable source of livelihood to the large percentage of the population dependent on it. The food needs and supply gaps in developing countries are developmental problems and thus all their policies for agricultural development aim at harnessing the potential for increasing productivity and production in the agricultural sector. Hence, large agrarian economies like India need to address food security up-front in the ongoing negotiations on agriculture.

- All existing provisions of Annex-2 of AoA, except Paras 5, 6 & 7, should be continued, being an integral part of the food security measures required to be taken by developing countries;
- Appropriate levels of tariff bindings to be allowed to be maintained by developing countries as a special and differential measure, keeping in mind their developmental needs and high distortions prevalent in the international markets so as to protect the livelihood of their very large percentage of population dependent on agriculture;
- Low tariff bindings in developing countries that could not be rationalised in the earlier negotiations should be allowed to be raised to the ceiling bindings for similar product categories committed during the UR; and
- A separate safeguard mechanism on the lines of the special safeguard provisions (Article 5 of AoA), including a provision for imposition of quantitative restrictions under specified circumstances, should be made available to all developing countries.

5.2.2 Market Access
The share of exports from developing countries, which constitute over three-fourths of the WTO Membership, continues to remain around 30 percent of the world trade in agriculture. This is less than what it was 25-30 years ago. The anticipated increase in exports from developing to developed countries, thus, has not materialised. An effective safeguard mechanism for preventing a surge in imports becomes absolutely essential for preserving the livelihood of farmers.
- As a special and differential measure, the developing country Members should be allowed to maintain appropriate levels of tariff bindings keeping in mind their developmental needs and the high distortions prevalent in the international markets. The appropriate levels of tariff bindings will have to be necessarily related to trade distortions in all three areas of market access, domestic support and export competition being practiced by the developed countries.
- As discussed above, a separate safeguard mechanism on the lines of the special safeguard provisions (Article 5 of AoA) should be made available to all developing countries.
5.2.3 Export Competition

The principal commodities, which have high incidence of export subsidies, include wheat, coarse grains, oilseeds, vegetable oil, sugar, dairy products and fruits and vegetables, also happen to be products of export interest to many developing countries.

Article 16 of the AoA refers to the Ministerial Decision on Measures Concerning Possible Negative Effects of the Reform Programme on Least Developed and Net Food Importing Countries thereby making it an integral part of Agreement. The concept of food aid, a prominent form of external assistance, is by nature and intention specifically designed to enhance food security. It refers to some external resource transfer, normally in kind of food commodities, which provides food directly to beneficiaries in the recipient country or to the government in support of its food security or other developmental objectives. The ongoing negotiations should immediately address this issue to bring about greater transparency in the provision of food aid, which should be offered regardless of the world market prices. The recent GC decision directing the Committee on Agriculture to follow-up on the Ministerial Decision is a first step in this direction, which, however, needs to be complemented by the entire Membership by suggesting suitable guidelines for food aid as distinct from export subsidies.

Another significant dimension of the current provisions on disciplining export subsidies under AoA is that countries which notified the use of export subsidies in their original schedules could continue to use them, albeit in a restrained manner, while the countries which did not notify the use of subsidies in their original schedules are not permitted to introduce them thereafter (Article 3.3). Besides, AoA deprives the developing country Members of their right to provide export subsidies, which are otherwise permitted under Article 27, read with Annex VII of the ASCM. There is thus every need to restore the rights negotiated by the developing countries under the ASCM.

Taking into account the needs and special conditions of developing countries:

- The existing S&DT for developing countries under Article 9.4 of the AoA should continue; and
- Special dispensation for developing countries provided under Article 27 read with Annex VII of the ASCM should prevail over Article 8 of AoA.

5.2.4 Domestic Support

The long-term objective of the AoA to establish a fair and market-oriented agricultural trading system was sought to be achieved ‘through the establishment of strengthened and more operationally effective GATT rules and disciplines’. One such set of disciplines comprised the domestic support reduction commitments, which were undertaken under the AoA by Member countries with an aim to correct price distortions and allow market forces to determine the level and composition of agricultural production.

- Flexibility to be given to developing countries in the manner of providing subsidies to key farm inputs;
- In addition to the provisions contained in Article 6.2 of AoA, relating to agricultural investment and input subsidies, product-specific support given to low income and
resource-poor farmers should also be excluded for aggregate measurement of support (AMS) calculations; and

- After the abolition of the peace clause (Article 13 of AoA), as a special and differential provision, measures under Annex 2 (Green Box) and other domestic support measures conforming to Article 6 of AoA shall be exempt from imposition of countervailing duties under Article XVI of GATT 1994 and shall also be exempt from actions based on non-violation nullification or impairment of the benefits of tariff concessions under Para 1 (b) of Article XXIII of GATT 1994.

5.2.5 Services

- Full market access and national treatment in the sectors and modes of supply of export interest to developing countries, including Mode 4; and
- Developing and applying domestic regulation disciplines, including recognition of qualifications, simplification of administrative practices and visa requirements and non-application of ENT.

5.2.6 Trade Facilitation

- Flexibility to make commitments consistent with their administrative and institutional capabilities.
6. Development Dimension in Bangladesh: Stakeholder Perception

While studying the real scenario, all the stakeholders including the policy-makers, trade bodies, development and trade partners, academia, trade unions, and women’s group were consulted to record and secure expression of their views in order to understand the real bottlenecks of the trade sector in the economy and the region in the context of development dimension in July Framework and Doha Agreement. The researchers conducted face-to-face interviews during April-May 2005. In the interviews, the topics covered were market access, flexibility of rules and technical assistance etc. Although it was not a representative sample, it provided a good understanding of the diverse issues on development dimension.

The stakeholders foresaw great challenges ahead if the rich countries are to deliver against their promises in the Doha Declaration to put development at the centre of global trade reform. Although interests and priorities differ from country to country, improved access to market in agriculture, manufacturing and services would be most beneficial. Liberalised market access has the greatest potential payoff in terms of development and poverty reduction than any other issues on the DDA. But improved market access will not be enough. Promoting trade and development of low-income countries would also require enhanced trade-related capacity. Much more should be done to integrate trade priorities into national development plan and investment allocation decisions. Moreover, the trade negotiating capacity also needs to be enhanced, so that they can be more actively involved to design rules that promote development.

6.1 Effective Market Access
6.1.1 Market Access for Goods
(a) Deeper Trade Preferences for LDCs
Recent initiatives by developed countries to extend duty-free and quota-free market access for the LDCs could, if fully implemented, make preferences more effective. The ‘July Package’ incorporates a provision that developed countries and developing countries that are in a position to do so, should provide duty-free and quota-free access to all goods originating from LDCs within a time to be specified. The stakeholders viewed it to be a weak provision, and want it to be strengthened to make it binding and bounded. This would realise a commitment made in the Doha Ministerial Declaration to grant improved trade terms to the LDCs. The ready-made garment (RMG) industry is not only important for the poor, but has also created a social space for women in Bangladesh, Nepal and Sri Lanka. Hence, the industry must be sustained.
(b) Removing Market Distortions
The LDCs have to protect their market share.
- The most important need for the South Asian LDCs and the small economies is duty-free and quota-free market access to the US. South Asian LDCs and small economies are important exporters of clothing to the US. The stakeholders felt that it is essential that the duty-free and quota-free market access to multilateral trading is made mandatory and binding so that it will facilitate the passing of the Trade Bill in the US.
- Market distortion has also been created by an increase in imports from China. There is a cap on China to limit the increase of its exports by 7.5 percent till 2008. RMG exports from Bangladesh has benefited from this safeguard. Although South Asian LDCs and small economies would gain if safeguard measures against China were taken in the US and the EU as these product are important items of their exports, these measures are against the spirit of the WTO.

(c) Removing Barriers to Market Access

- **Rules of Origin**
It will not be sufficient to provide better market access without making changes in the rules that govern such arrangements. These RoO need to be changed in two ways: they should be simplified by removing bureaucratic procedures and relaxed. The relaxation of the rules would allow the LDCs to source inputs from anywhere in the world without harming their duty-free status. Different countries have different RoO. There has been a shift from rules depending on processes to those based on value addition.
  - The new EU GSP scheme will start from January 2006 on value-added criteria. In Bangladesh, the textile and the RMG industry are divided on the issue of the South Asian Association for Regional Cooperation (SAARC). The textile entrepreneurs are of the view that with an increase in regional accumulation, the local textile industry will suffer. The textile entrepreneurs argue that from October 16, 1997 to December 31, 1998, the EU allowed only one stage of SAARC and African, Caribbean and Pacific (ACP) accumulation, but only 30 percent GSP was utilised in woven. But in case of knitwear and sweaters, the EU GSP, which provided derogation to two stages, has promoted backward linkages and industrialisation in Bangladesh textile. Hence, SAARC accumulation may take place for cloth in woven to meet the value addition criteria.
  - So far, Canada provides the most relaxed RoO. The increase in exports to Canada from Bangladesh is mostly due to the relaxed RoO.

- **Non-Tariff Barriers**
Various types of NTBs exist that restrict the developing and least developed countries from market access. These include restrictive import policy regimes, environmental standards, eco-labelling, testing laboratories for dyes, certification measures set at unrealistic levels, export subsidies, barriers on movement of services, and anti-dumping and countervailing measures.

**Sanitary and Phytosanitary Measures**
Non-tariff measures such as the requirement to meet health standards are also barriers to access markets. The stakeholders opined that while standards required to protect human, animal and plant health are justified, the use of the same to protect domestic
markets is against the interest of South Asian LDCs. Earlier analysis showed that the shrimp industry in Bangladesh had to face this barrier in July 1995. Evidence showed that if one firm does not follow the standard, then the whole industry tends to lose the market.

Moreover, the testing standards are not the same in developed countries. For example, the EU has a different standard than that of the US. There should be a minimum standard, such as the one followed by the US. Moreover, global SPS standards, such as CODEX ALIMENTARIUS and FAO can be used. There was a felt need to harmonise SPS standards. Another problem is that the developed countries sometimes prohibit developing countries from using certain chemicals, although they are the producers of those chemicals. It was suggested that such restrictions should be avoided.

**Non-acceptance of Certification**
Bangladesh faces mainly NTBs in the Indian market. The standard certification of the Bangladesh Standard Testing Institute (BSTI) is not accepted in India, although it is accepted in the EU. For example, cement needs to be tested in Delhi and it takes three weeks for testing and by that time the product quality deteriorates. Sometimes, South Asian Free Trade Agreement (SAFTA) certification from the Export Promotion Bureau is not accepted and re-certification is needed or the certificate is rejected as false and custom officials have to intervene. Mutual recognition of the standards is needed in South Asia.

**Domestic Regulation**
The stakeholders suggested that sometimes domestic regulation could also act as a NTB. The US cotton price is lower, but its quality is better, however, under a Statutory Regulatory Order (SRO) standard of the Ministry of Agriculture in Bangladesh, for this cotton, fumigation is needed. This involves an unnecessary cost and five to seven days demurrage has to be paid. Removing this would reduce the clearance time from eight days to six hours. In this case, the US could provide a certificate that it is germ free. Another example is that in order to reduce congestion at the port, cotton weighing is to be done outside the port from May 1, 2005. This is in violation of the International Cotton Council and also additional cost will be incurred. Weighing should be at the port of discharge and in front of a third party, otherwise this will lead to trade dispute.

**Social Compliance**
The stakeholders suggested that compliance with social standards such as International Labour Organisation (ILO) core labour standards, working conditions etc. should be ensured. They observed that labour rights are low in South Asian countries. There is an increasing trend in social compliance by firms due to buyers’ pressure in the RMG industry. However, the lack of collective bargaining provides a negative image for Bangladesh. Due to the old, outdated segregated gender and class society, collective bargaining has not worked in Bangladesh. Moreover, trade unions are politicised in Bangladesh and, hence, some form of workers’ association is a better option for pursuing workers rights. Social issues need to be addressed for national interest, but not as a part of negotiations. The consumers’ voices are strong in developed countries and so social issues have become important in global trade. The implementation of National Factory Act is enough for compliance with ILO core labour standards. Some stakeholders opined
that social compliance could be used as a marketing tool for competition. The EU’s commitment to supporting and promoting Corporate Social Responsibility among European companies is a move in the right direction.

(d) Effective Measures for Livelihood Issues Related to Phasing out of MFA

Although the phasing out of MFA was known since 1995, there have been no effective measures in place in Bangladesh to deal with the livelihood issues of the workers who are likely to lose jobs. So far, the Ministry of Commerce has initiated a post-MFA Action Programme (PMAP) but still it has not been implemented, as donors have not committed adequate funds yet. Although employment has not declined as yet, these measures should be in place.

(e) Ensure Fair Price

The entrepreneurs of the RMG industry noted that the Cutting and Making (CM) prices are falling and the costs of compliance are rising. So the stakeholders feared that as profits are decreasing, and costs are rising, it is likely that wages would be adversely affected. The exporters noted that there has been a fall in prices to the extent of 30 percent in woven and 20 percent in knitwear. For the EU, Bangladesh was producing non-quota items. About six months back, for basic T-shirts the prices were US$12 per dozen, but now the price has declined to US$8 per dozen. Although there has been an increase in export growth, the growth in value of exports has been slow due to the declining prices. Hence, a fair price needs to be ensured for T&C.

(f) Erosion of Preferences

As liberalisation proceeds, many LDCs are facing erosion of their preferences. This problem is faced in countries currently enjoying duty-free and quota-free market access in T&C. Countries facing these difficulties should be compensated and assisted. The EU as the key architect of the preference system should take the lead in generating solutions and this could be an essential element of a successful trade round.

(g) Exemption from Anti-dumping and Countervailing Measures

There should be moratorium on anti-dumping and countervailing measures against products from LDCs. In Bangladesh, as the entrepreneurs are first generation business people, they are reluctant to invest in market promotion. So far, only one firm in Bangladesh has invested in an anti-dumping case against India for export of batteries.

(h) Increasing Competitiveness

There was a consensus that the three main ways to increase competitiveness in Bangladesh would be to increase productivity and technology, to diversify markets and to increase availability of electricity. Moreover, the entrepreneurs opined that social compliance and decline in prices are considered to be the most important factors for being competitive, and these are likely to be considered as standards in global trade within the next two years.

6.1.2 Market Access for Services

In services, so far Bangladesh has opened only telecom and five-star hotels. Revised offers were to be made by May 31, 2005 under the ‘July Package’. There is no formal exemption of LDCs from submitting the offers. But it is generally understood that LDCs
would submit their offers according to the timing they chose. Bangladesh has received requests from nine Members of the WTO for opening business, finance, insurance, telecommunication, construction, architecture, audio-visual, maritime, environment etc. Some stakeholders argue that in Bangladesh, foreign direct investment (FDI) should be encouraged in banking; telecommunications, manufacturing, IT, industrial machinery, and automobile spare parts. These will help solve livelihood concerns, as employment will increase. Others are of the view that a comprehensive assessment is needed for identifying the strengths and weaknesses of the domestic services sector. Moreover, an appropriate regulatory framework is also essential prior to opening sectors. Bangladesh is yet to undertake such an assessment and establish such a framework.

South Asian LDCs’ interest in the services negotiations is on the movement of natural persons under Mode 4, relating to export of unskilled and semi-skilled labour. The LDCs’ modalities adopted in the Services Council call upon the Membership to make offers in the services of interest to LDCs. So far, no submission has been able to satisfy this aspect of the modalities. Hence, South Asian LDCs should not undertake commitment in any sector, unless their offensive interests are met.

6.2 Flexibility in Rules
In South Asian countries, agriculture and T&C play an important role in providing employment. Hence, the rules governing agriculture and NAMA as well as the use of subsidies are vital development issues. From a development perspective, developing countries must be given enough flexibility to undertake commitments so that they can focus on their development priorities. Such flexibility is specially required for the rules where the cost of implementation is too high. As discussed earlier, flexibility in undertaking commitments is also required for them to pursue national development goals commensurate with their economic needs.

6.2.1 Subsidy Reduction Commitment
Agriculture

Domestic Support
Besides the trade officials, few stakeholders had a clear idea about domestic subsidies. The trade officials referred to Article 6.2 in the Agreement on Agriculture, which refers to domestic support. This provision allows subsidies to be provided to resource-poor farmers for inputs and product diversification. The exemption needs to be carefully studied. If this is included in *de minimis*, then developing countries can provide subsidies to the farmers. The *de minimis* is 10 percent of the AMS for developing countries, including the LDCs. Agriculture subsidies in Bangladesh is much below the *de minimis* level. It accounted for 0.48 percent in 2002/03 and 0.51 percent in 2003/04. The problem is that LDCs do not have the capacity to provide subsidies. As LDCs provide insignificant amounts of domestic support, the reference to ‘no reduction commitment’ in the ‘July Package’ has little practical relevance to LDCs, including Bangladesh, but it must be retained.
Export Subsidy
A number of stakeholders had no clear idea about the provision of export subsidies. The trade officials noted that Article 9 of AoA refers to export subsidies. It required notification within 90 days upon joining WTO. Among the SAARC and Association of South East Asian Nations (ASEAN) countries, only Indonesia has notified. Unless notification is given, export subsidies cannot be provided. Article 9.4 provides exception to 9.1d and 9.1e. They noted that Art. 9.1d allows provision of subsidies to reduce cost of marketing exports of agricultural products, including handling, upgrading and other processing costs, and the costs of international transport and freight. Moreover, article 9.1e refers to internal transport and freight charges on export shipments, provided or mandated by government, on terms more favourable than for domestic shipment. So subsidies for marketing cost, including handling and freight charges was allowed during a 10-year implementation period for developing countries. Article 9.4 should be continued for developing countries. Moreover, it was noted that the provision in Article 15.2 allows LDCs the exemption from undertaking reduction commitments. This provision should be continued as long as the country remains an LDC. But the provision of notification was considered as a barrier in benefiting from Article 15.2 and LDCs should be waived from this notification.

The trade officials argued that inter-ministerial linkages are weak in Bangladesh. For example, the Bangladesh Bank and Ministry of Agriculture should have known that cash incentives could not be provided in agricultural exports. The trade negotiators were of the view that the cash incentives should be replaced by subsidies for transport handling. Most stakeholders suggested that an in-depth study is needed for subsidies.

NAMA
Export Subsidy
Similar to agriculture, some stakeholders did not have a clear idea about export subsidies in NAMA for developing countries. The trade negotiators noted that the ASCM provides for (i) actionable measures (ii) prohibitive measures and (iii) non-actionable measures. Prohibitive measures are subsidies based on export performance (including financial cash incentives). Article 27 exempts LDCs from prohibitive subsidies. Moreover, about 20 developing countries, including India and Pakistan and small vulnerable economies like Sri Lanka, whose per capita income has not reached US$1000 per annum also enjoys such exemptions.

Bangladesh provides cash incentives for exports in some sectors. This can be retained under WTO rules. But most stakeholders had the wrong perception that cash incentives are against WTO rules in NAMA and so the government should withdraw subsidies. Due to pressure from the WB, the cash incentives in textile have been reduced and will be phased out. The textile owners felt that to be consistent with WTO rules, such incentives should be increased in order to encourage investment in textiles.

6.2.2 Tariff Reduction Commitments
The developing countries have flexibility in formula, longer transition periods and choice of sensitive products. There should be a list of sensitive products. These need to be protected without any time limit. The LDCs have been exempted from tariff reduction
commitments in the ‘July Package’. But as the developed countries reduce their tariffs those LDCs who are enjoying preferential tariffs will face erosion of their preferences. Some trade experts were of the view that LDCs would not benefit from a reduction in tariffs by developed countries for all products. The proposal for accelerated elimination of tariffs from some sectors of industrial goods may have a negative impact on Bangladesh exports. Initially, seven such sectors were introduced, which included T&C, fish and fish products, leather and leather goods. These are main exports of Bangladesh, and, hence, accelerated reduction of tariffs in these sectors will lead to loss of preferences. As these are labour-intensive and female-intensive products, they can be treated as ‘sensitive products’ by the developed and developing countries. Earlier analysis suggested that when LDCs were provided GSP, these ‘sensitive products’ were usually excluded. But duty-free and quota-free access has allowed LDCs to export these products. So, selective reduction in tariffs in labour-intensive products would lead to lower erosion of LDCs’ preferences. Hence, Bangladesh should be opposed to the sectoral approach in NAMA.

6.2.3 Notification Obligation
Although the officials from trade ministries are making their best efforts to see that the notifications are issued on time, they face several problems. They are not always receiving the cooperation needed for this purpose from other ministries and, in the case of some of the notifications, the information to be collected is complex. It was suggested that the possibility of extending to LDCs ‘special & differential treatment’ in complying with them should be examined in terms of longer frequency and exemptions in some cases.

6.2.4 Donor Compliance with WTO flexibility
The lack of coherence between WTO and international financial institutions has in effect prevented LDCs from making use of some S&DT. For example, Article 15.2 of AoA makes specific reference to S&DT treatment for LDCs. This provision exempts LDCs from reduction commitments, and is mandatory by nature, and has been implemented accordingly. But conditionalities that LDCs face vis-à-vis programmes under the Bretton Woods institutions constrain LDCs to adjust their domestic policies in order to effectively take account of their development needs, including food security and rural development. Almost all LDCs have undertaken liberalisation measures through reductions in tariffs and removal of other barriers to trade, such as quantitative restrictions, during the last two decades. In most cases, however, they have taken such measures in the context of structural adjustment programmes or conditionalities. The resulting onslaughts of imports are, however, vivid in a number of countries, displacing domestic production both in industrial and agricultural sectors and discouraging investment for technological upgrading by the affected industries as well as investment for the development of new industries. In this situation, in order to promote development of the existing industries as well as for encouraging investment in new industries, these countries may have to provide for increased levels of protection in selected sectors of production for temporary periods, by taking advantage of the flexibility provided by Article XVIII:C for initiating safeguard action against development purposes.

Like many LDCs, Bangladesh has also autonomously liberalised tariffs, which have been reduced to 25 percent, and there are three slabs. To some extent this has reduced revenue for the government. Most stakeholders felt that Bangladesh has liberalised too
fast and too far and this has affected the consumer goods, light engineering and electronics industries. These sectors are paying higher duties for their raw materials and have lower levels of protection for their finished goods. Employment has been affected in these industries as well. Many LDCs had already suffered from deindustrialisation as a result of opening up their markets, and should be allowed to raise tariffs as a compensatory measure.

Agriculture products in Bangladesh were bound at a ceiling of 200 percent, except for 13 items. The average applied tariff rate on agriculture products was 23.92 percent in 2003. The higher ceiling of 200 percent on agriculture product will give Bangladesh the flexibility to impose higher tariffs in case of an import surge of agricultural products leading to crowding out of local products. A SSM is needed for LDCs and the ‘July Package’ has such a provision.

Under NAMA, LDCs are not required to undertake reduction commitments on tariffs, nor do they have to undertake the elimination of accelerated reduction of tariffs in some sectors. This provision will enable the LDCs to protect their domestic industries. But the LDCs may be required to substantially increase their binding commitments of tariffs. Since Bangladesh has only three percent binding coverage, there may be pressure to increase it to a certain extent.

6.2.5 Issues Related to Net-Food Importing Countries

There was some difference of opinion among the stakeholders whether withdrawal of domestic support and reduction in tariffs will affect net-food-importing countries adversely. Most were of the view that withdrawal of subsidies in agriculture in developed and developing countries would raise the price of agricultural commodities. If food prices rise, then import costs will increase. This will have a livelihood impact. Food consumption is a major component of household expenditure. Consumers will be affected as price of food will rise and as 40 percent of the population live below the poverty line, this will affect the poor adversely. As increase in prices will not lead to increase in wages to the same extent, farmers will not receive the full benefit of the price increase. Better-off surplus farmers and self-sufficient farmers will gain at the cost of wage labourers. But incentives should be provided to the farmers to take advantage of the global market. Subsidies should be provided to build capacity and cooperative farming should be encouraged. The role of women in processing and storing grains needs to be supported. Moreover, technologies should be upgraded. In the ‘July Package’ there is a provision to establish disciplines on ‘Food Aid’ that are not in conformity with operationally effective disciplines. Such disciplines could be established both under the humanitarian and development food aid. The issue of possible negative effects of the reform programme on least-developed and net-food importing developing countries needs to be effectively addressed at the Hong Kong Ministerial meeting. The trade negotiators were of the view that the Marrakesh Decision provides for BoP support if there is a surge in import prices due to the withdrawal of subsidies, and there are options for food aid and financial assistance.

6.2.6 TRIPs Agreement

The issue of patent and access to medicine is of vital importance to developing and least developed countries of South Asia. The Doha Declaration on TRIPs and Public Health
should be reaffirmed at the Hong Kong Ministerial and Members should support LDCs’ exemption from commitments in such IPR rules. Moreover ‘TRIPs plus’ RTAs should be abandoned. The LDCs have been provided a waiver till January 2006. This waiver has been extended till January 2016 in case of pharmaceuticals. This waiver should be extended to LDCs as long as they remain LDCs. The LDCs are producers of generic medicines and national patent laws should take advantage of the flexibility in the TRIPs agreement, so that they can produce affordable versions of new-patented drugs and export them. This would enable LDCs, who do not have drug-manufacturing capacity, to import generic versions of patented medicines and help in poor people’s access to affordable medicines. No provision in TRIPs should prevent governments from taking measures to protect public health and nutrition and ensure affordable access to essential medicines. Under article 23 of the TRIPs Agreement, the additional protection available to wines and spirits is not applicable to the region-specific products of developing countries. South Asian countries would benefit if such protection were provided to ‘Basmati rice’.

6.2.7 Trade Facilitation
The stakeholders noted that the ‘July Package’ has adequate flexibility for the LDCs. The LDCs will only be required to undertake commitments to the extent consistent with their individual needs and capabilities.

6.3 Enhanced Trade Related Capacity Building
The stakeholders noted that capacity gaps of the developing countries need to be addressed in a number of areas, such as the negotiating capacity, capacity for implementation and capacity for supply-side responses. Of these, the priorities of the developing countries are to build capacity for supply-side responses. Moreover, technical assistance should be demand-driven rather than donor-driven.

6.3.1 Capacity Building for Negotiation
The trade officials noted that the Technical Assistance and Training plan of the WTO should be need-based and should reflect the priority of the beneficiary countries. The training programmes should focus on quality aspects rather than on quantity, providing the required interest to the developing and least developed countries.

Strengthening Capacity of Trade Negotiators in the Capital

Training of Officials of WTO Cell and Tariff Commission
In Bangladesh, the WTO cell in the Ministry of Commerce and the Tariff Commission are involved in the process of negotiations. These institutions need to be strengthened, both in terms of human resources as well as with equipment and expertise. There is a need to have expert professionals at these institutions for negotiating WTO issues, bilateral negotiations and RTAs. The government lacks adequate and able negotiating staffs, and, hence, has to attend negotiations without doing any preparation. The WTO training in Geneva has been found to be inadequate for government officials, as the training focused on standards relevant for developed countries. There is a need to understand the legal, financial, and social impacts, and the power balance of the negotiations. For the government to be a facilitator, manpower and finances for research and logistics are needed. Training needs to be supplemented by on-the-job training in
Geneva. There should be a follow-up training programme on communication for negotiations. Capacity building for negotiations should have a long-term (10-20 years) perspective.

**Retaining Trained Officials**

Like other South Asian countries, Bangladesh also faces the problem that officials are often transferred, and, hence, there is no continuity in dealing with trade issues. Of those who have been trained, only a few are working in trade-related ministries. During the last six months, the Secretary of Ministry of Commerce, the Chairman of the Tariff Commission and the Economic Minister at Geneva have been changed. The individuals get transferred after three to five years. However, to bring continuity in the process, they should be retained for a considerable period of time, say, 15-20 years.

**Incentives for Trade Officials**

It is widely accepted by the stakeholders that the negotiating capacity on trade in Bangladesh exists at the WTO Cell and Tariff Commission. But there are no incentives for these trade officials. Hence, an incentive structure needs to be established through highly paid contract jobs. In addition, there is a need to build institutional capacity. The stakeholders were of the view that the political authorities lack understanding that the right person needs to be placed in the right position for trade negotiations and they need to stay for a longer period.

**Strengthening Capacity at Geneva**

The Economic Minister and Ambassador at Geneva have to attend several negotiations and, hence, the office needs to expand to include at least 7-8 officials. The linkage between capital and Geneva is accomplished through fax and e-mails only. It was noted by the stakeholders that the Ambassador and the Economic Minister must be from trade-related ministries. Government officials from the capital need to participate in negotiations at Geneva. To carry on the high profile responsibility, training needs to be provided through on-the-job training. Intensive participation from the capital is needed in WTO meetings.

**Increased Awareness and Understanding of WTO rules**

**WTO Training at Home**

The training at Geneva needs to be tailored towards the need of the developing countries. Most of the training is related to how to fulfil the obligations and not on how to establish the rights of the developing countries. Hence, training schemes should be home-grown in order to enhance awareness on WTO rules as well as on bilateral trade. Within the government, there is a need for a trade policy institute. Trade support services are urgently needed from the Bangladesh Foreign Trade Institute (BFTI), but due to lack of funding and appropriate manpower, BFTI is almost non-functional. It was felt that management is the main problem. Public-private partnership is needed to address these problems faced by the business groups. Training on trade and negotiations should be provided in such a way that a large number of participants could be trained in this discipline. These need to be followed by country-specific hands-on exercises e.g. on anti-dumping, services sector etc.
University Needs to Provide Courses
At present universities do not offer courses in international trade and WTO. To overcome the lacunae, training on basic trade-related issues needs to be provided by universities, which can introduce diploma courses in these disciplines. But the problem is that WTO is an ongoing process and university teachers do not follow negotiations, which can be solved through mutual interaction between the academics and the trade negotiators. Moreover, some stakeholders were of the opinion that the writing in the media by the academics and international NGOs serve the interest of the developed or developing countries and not that of the LDCs. Training courses, therefore, need to be developed in collaboration with the Ministry of Commerce and research institutes in order to educate the civil society on WTO issues.

Funding for Appropriate Research
There is very little capacity to understand WTO issues outside the Ministry of Commerce. There is lack of understanding on the negotiating process outside the Ministry of Commerce. Few research institutions work on trade issues and none had specialised on a specific agreement. Hence, legal expertise has not developed much on any of these issues. There is inadequate research to inform the negotiators. The consultants so far have not been productive, as the reports are not produced to meet the demand of the Ministry. The technical assistance for capacity building usually supports officials training in Geneva, equipment and studies. The research agendas are set by the donors to meet their interests. Moreover, the outputs of these researchers do not reach the Ministry on time. Most of the research on WTO issues is project-based and not continued. A research fund should be provided to the Tariff Commission and WTO Cell at the Ministry of Commerce, with full autonomy to develop their own research agendas. The link between government and civil society can be established through the think tanks. The WTO cell could become a research institute with committed people and a good incentive structure. Moreover, chambers, business houses, other ministries and research institutes need to have a WTO cell for continuous research.

Process of Integrating Civil Society in Negotiation
Inclusion of Civil Society Representatives in Committees
Linkages need to be established for raising awareness about the NGOs and the private sector. The advisory committee includes representation from government officials, research organisations and trade bodies. There should be a mechanism to include representation from trade unions, NGOs, workers, farmers and women’s groups in the working groups and make the working groups functional. The process of negotiations should be linked with the civil society. Moreover, farmers also need to be consulted, who need capacity building for market linkages, skill training and management training. Farmers need awareness about the WTO as well. The Ministry of Finance needs to play an active role for seeking ‘Aid for Trade’.

Establishing Inter-Ministerial Coordination
There is a need for strong inter-ministerial coordination. For example, the Committee on Balance of Payment Restriction should know within four months any new restrictions that are imposed. These must be justified and should show that it does not hamper business. The justification could be ‘poverty’ or ‘foreign exchange problems’. All
relevant ministries need to be aware of not only the obligations, but also of how to benefit from WTO provisions. For example, for:

- TRIPs – the Ministry of Industries should have known about patents
- Copyright – the Ministry of Culture
- Mode 4 – the Ministry of Expatriate and Welfare
- Phasing out of quotas – consultation with business people how to face the challenge

**Formation of Forum of the Expertise**

The stakeholders felt that there is a need to assess and develop the pool of expertise that exists in order to handle trade-related issues for the next 20 years in Bangladesh. There must be an urge from all the sectors to cooperate. The Government has to bring together the business sector, bureaucrats and researchers. A trade forum needs to be in place and the social framework needs to be changed. There are few experts on WTO issues and so training for trainers could be arranged with the help of WTO officials. There is a need to build capacity for trade negotiations. UNCTAD needs to be present in South Asian LDCs in a bigger way.

### 6.3.2 Capacity Building for Implementation

#### Technical Assistance for Meeting Standards

There was a consensus that the HACCP standard will be important to be competitive in exports of agriculture products. For SPS standardisation in agriculture, support is needed for meeting HACCP, and technical assistance is needed for meeting TBTs. But the problem is that these are buyers’ standards and WTO can deal with the Government only. The stakeholders strongly felt that mutual recognition of technical regulation standard is needed and national certification should be recognised.

The standard-testing institutes should be upgraded in Bangladesh. Technical assistance is needed for strengthening and modernising the Bangladesh Standard Testing Institute, Laboratories at the Department of Fisheries, Department of Agriculture Extension certification, laboratories for leather testing and for restructuring the Bangladesh Council for Scientific and Industrial Research (BSCIR). For diversifying agro-based industries, joint ventures should be encouraged. In fisheries, capacity building is needed for technical support, disease-free ponds, feed subsidies etc. These can be provided through farmers’ cooperatives.

#### Technical Assistance for Legal Expertise on WTO Laws

There is a need to know what adjustments and changes in domestic rules are needed to comply with WTO regulations. Technical assistance is needed to understand tax policy rules and regulation changes, changes in customs procedures etc.

#### Technical Assistance for Trade Facilitation

For the LDCs, the most important component of capacity building in the ‘July Package’ is trade facilitation. It includes all aspects of import and export processes, such as transportation system to the port of entry, port facilities, customs procedures etc. The trade facilitation text is the only text that contains relatively strong language on technical assistance. If such assistance is not available, then the LDCs will not be required to implement the commitments emanating from the negotiations.
Coherence of Trade Policy and Development Policy
The development dimension is recognised as an integral part of the general WTO mandate to foster economic growth. The stakeholders noted that the importance that the Declaration attaches to placing the developing countries’ needs and interests at the heart of the work programme, offers an opportunity to achieve grater coherence of trade policy and development policy. As an example, the EBA initiatives adopted by the EU have modified the EU’s trade policy to contribute to development policy.

Dispute Settlement
Developing countries are forced at a great expense and considerable difficulty to take issues to the dispute settlement mechanism. They lack resources and skills and legal expertise in these areas. Hence, they need funding as well as legal expertise support from the WTO in raising and solving dispute settlement issues.

6.3.3 Capacity Building for Meeting Supply Constraints
There is no doubt that trade liberalisation and rule-making in the WTO increases trading opportunities for all countries. However, given some of the low levels of economic development, many countries, especially the LDCs, cannot avail of these opportunities because of supply-side constraints. Major constraints in availing of the opportunities provided by the WTO are: low capacity to meet the product quality standards, small range of export products, inadequate trained manpower to handle trade policy, and poor transport, communications, and other basic infrastructure services. It is obvious that unless the developing countries, especially the LDCs, remove these bottlenecks they cannot share the benefits of the WTO. However, they have resource-constraints to address their supply-side constraints. There are numerous provisions in the WTO Agreement, which address these issues. But they need to be implemented fully so that developing countries, especially the LDCs, can reap the benefits and restore their confidence in the WTO System.

Although supply capacity is the main constraint in capacity building faced by the developing countries, unfortunately it is considered to be concerns of WB/IMF and not of WTO. So far, LDCs have not benefited much from IF. There have been no integrated efforts for capacity building of the LDCs. In order to reduce supply-side constraints, investment is needed in physical infrastructure and regulatory environment. These would increase the competitiveness and, hence, would lead to a level playing field in multilateral negotiations. Technical assistance for trade facilitation should include port development and expansion of electricity, which are critical constraints for trade, particularly in Bangladesh. The WTO emphasises that trade needs to be integrated in the overall national development plan and poverty reduction strategy. As this is a national document, the country should decide what should be its national trade priorities. Whether supply-side constraints should be addressed in WTO is a matter of debate and developing countries need to pursue this issue at the Hong Kong Ministerial. The IF needs to work for LDCs’ interests and should include technical assistance for physical infrastructure for effective integration into the global trading system.
7. Concluding Remarks: South Asian Perspective on Development Dimension

In order to successfully conclude the new round of negotiations, the industrial countries have to deliver on their commitments, such as improving market access for goods of export interest to the developing and least developed countries and increasing their trade-related technical assistance. There is a need to remove the barriers faced by exports of goods and services of developing and least developed countries if they are to alleviate poverty and integrate themselves into the global economy. Increased trade-related technical assistance and improved market access would not automatically result in growing export volumes for the developing countries, including LDCs. Supply-side constraints have prevented them from increasing and diversifying their exports. Strengthening and diversifying the productive capacities of these countries is needed. To operationalise the development agenda, there is a need to have capacity building, which will go beyond addressing the normal WTO obligations. Adequate resources in the form of financial and technology transfer need to be in place to address the supply-side constraints. Problems related to market access and capacity building are the major obstacles to growth in developing and least developed countries.

The conflicting interest of the developed and developing countries must be reconciled, and a fair compromise needs to be worked out in the forthcoming negotiations. Hence, there must be a clear commitment and political will on the part of the industrial countries to make the new round a ‘development round’ by taking the developing countries’ development dimension – i.e. enhanced market access, flexibility in rules and technical assistance and capacity building – fully into account. There is a need to place poverty concerns at the centre of the negotiations. In this context, the civil society has a decisive role to play. The modalities for negotiations in agriculture and NAMA need to be accepted by December 2005. The recently concluded meeting of the LDCs’ trade ministers held in Livingstone, Zambia saw a strong plea being made to rich countries to grant immediate, non-reciprocal and binding commitments on duty-free and quota-free market access for all products from LDCs. Though this may not be a sufficient condition to address the trade- and development-related problems of the LDCs, it is definitely a necessary step. The RoO requirement needs to be relaxed in ways that would improve LDCs’ ability to take advantage of open market access.

However, it is encouraging to note that on Development Dimension the July 2005 report of the Chairman of the TNC to the GC noted that:

“We need to ensure that progress is made on all the remaining Agreement-specific proposals, especially the LDC proposals, and that in that context to effectively address the issues of increased flexibility, market access and capacity building for developing
and least-developed countries, as is being sought in the majority of the proposals. In particular, we need to provide LDCs with predictability and security in market access for their products°°.

On the issues of development dimensions, South Asian countries need to have a common position to ensure that these are settled before the Hong Kong Ministerial meeting. All South Asian countries are of the view that development dimension has to be brought back to the centre stage of WTO activities, as was intended by the Doha Round negotiators. As the DDA is a single undertaking, nothing can be taken as agreed unless there is agreement on all issues. Hence, in the coming negotiations, this area is all the more important. The responsibility lies on the negotiators to include development dimension in the negotiations and make it meaningful and development-oriented. The key to sustained economic growth lies in unlocking the potentials of developing and least developed countries.
Endnotes

1 Chowdhury (undated), Jha (2000)
2 Chowdhury (undated)
3 WTO (2000)
4 See Annex 5
5 Das (undated)
6 SAWTEE (2004 a)
7 These are the United States, European Union, Australia, Brazil and India. The shift from Quad politics to the FIP has important consequences for Canada, which had been in the inner circle of power in WTO negotiations.
8 WTO (2005f)
9 WTO (2001a)
10 WTO (2004a)
11 In 1979, the GATT Council adopted the Decision of the Contracting Parties on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries.
12 WTO (2001b).
13 In the case of Article 10.2 of the SPS agreement, the transition time-period in question relates to longer time-frames for compliance to be accorded to products of interest to developing countries with SPS measures introduced by Members.
14 WTO(2001c)
15 These are paragraphs 2,3,9,15,16,21-22,24-25,26,27,28,32-33,36,38-39,42-43,44 and 50
17 ICTSD, Vol.2 No 13 of 13, August 2003
18 WTO (2005g)
19 WTO (2005b)
20 The last formal meeting prior to this was held on December 7, 2004.
21 WTO (2005g)
22 WTO (2005g)
23 This information and annex 2 on the negotiation is based on e-mail correspondence with WTO.
24 WTO 2005h
25 There are 215 notification obligations for WTO Members
26 Khor (2000)
27 UNCTAD (1998)
28 Finger and Schuler 1999 cited in SAWTEE 2004c
29 MOICS/HMGN 2003 cited in SAWTEE 2004c
30 ICTSD, Vol. 3 No. 1 of 13, December 2004
31 Das (undated)
32 ICTSD, vol. 3, No.12 of 13, December 2004
33 WTO (2003g), WTO (2004h)
34 Chowdhury (undated)
35 WTO (2003G)
36 ICTSD, Vol 2, No. 12 of 13 August 2003
37 WTO (2004f).
38 WTO (2004a).
39 WTO(2001a)
40 WTO (2003a) and WTO (2004d)
There were altogether 365 questions, 24 on economy, economic policies and foreign trade, 178 on the framework for making and enforcing policies affecting foreign trade in goods and services, 114 on trade-related intellectual property rights regime and 48 on trade-related service regime. Nepal responded to these queries in 1999 and 2000.

These countries are Burundi, Cambodia, Djibouti, Ethiopia, Guinea, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Senegal and Yemen. WTO (2005e)

In the WTO context, as per the GATS there are four modes of supply. Mode 1 relates to cross border supply, mode 2 relates to consumption abroad, mode 3 relates to commercial presence, and mode 4 relates to movement of natural person.

For example, the S&DT text on Export Competition mentions: ‘S&DT will be granted to developing countries, and disciplines on export support will be developed with consideration of the impacts on least-developed and net food-importing developing countries’.

Information obtained from Badrul Hasan, ex-Economic Minister at Geneva

WTO (2002a)
WTO (2003f)
WTO (2003b)
Paragraph 42 of WTO (2001a)
World Bank (2003)
World Bank (2003)
Oxfam (2004)
WTO (2005e)
Winters (2000)
WTO (2002c)

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World Bank (2003)
Oxfam (2004)
WTO (2005e)
Winters (2000)
WTO (2002c)
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WTO (2002b) Sub-Committee on Least-Developed Countries - WTO Work Programme for the Least Developed Countries (LDCs) Adopted by the Sub-Committee on Least-Developed Co...ld Countries - 12 February 2002, WT/COMTD/LDC/11.


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WTO (2005b) Committee on Trade and Development - Special Session - Special Session of the Committee on Trade and Development - Report by the Chairman, Mr. Faizel Ismail[...]e Trade Negotiations Committee., Feb 14 2005, TN/CTD/11

WTO (2005c) Committee on Trade and Development - Nineteenth Special Session - Note on the Meeting of 8 February 2005, 21 March 2005, TN/CTD/M/19


WTO (2005g) Committee on Trade and Development - Special Session - Report by the Chairman, Mr. Faizel Ismail (South Africa), to the General Council, 29 July 2005, TN/CTD/13

WTO (2005h) Trade Negotiations Committee - Report by the Chairman of the Trade Negotiations Committee to the General Council, 28 July 2005, TN/C/5
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<th>(i) Provisions aimed at increasing the trade opportunities of developing country Members</th>
<th>(ii) Provisions that require WTO Members to safeguard the interests of developing country Members</th>
<th>(iii) Flexibility of commitments, action, and use of policy instruments</th>
<th>(iv) Transitional time periods</th>
<th>(v) Technical assistance</th>
<th>(vi) Provisions relating to measures to assist least-developed country Members</th>
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<td>14</td>
<td>24</td>
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Source: WTO (2001b)
Annex 2
SPECIAL AND DIFFERENTIAL TREATMENT

Remaining LDC Agreement-specific Proposals

Understanding in Respect of Waivers of Obligations under the GATT 1994 (2 proposals)

23) Proposal by the LDCs - TN/CTD/W/4/Add.1
“The Understanding in Respect of Waivers of Obligations under the GATT 1994 should be clarified to provide that request for waivers from least-developed countries of their obligation under the GATT 1994 and other multilateral agreements shall be considered sympathetically and waivers granted expeditiously.”

22) Proposal by the African Group - TN/CTD/W/3/Rev.2
“It is understood that waiver of obligations in accordance with Article IX of the WTO Agreement shall be for the benefit of, Members seeking the waiver, or those that the waiver is sought for. Other Members shall not prejudice the benefits under waivers sought in favour of developing or least-developed country Members.”

Last language considered:
(22-23) WTO Agreement – Article IX and Understanding in respect of Waivers of Obligations under the GATT 1994
“The General Council agrees that requests for waivers by developing and in particular least-developed country Members under Article IX of the WTO Agreement and the Understanding in respect of Waivers of Obligations under the GATT 1994 shall be given special consideration with a view to taking an expeditious decision.”

(Paraguay) Understanding in Respect of Waivers of Obligations under the GATT 1994
The General Council agrees that requests for waivers under Article IX of the WTO shall be granted in such a way as not to prejudice the interests of other developing country Members and that they should not be applied in cases where the legitimate interests of other developing country Members are not adequately protected.

Last language considered:
(Paraguay) Understanding in Respect of Waivers of Obligations under the GATT 1994
“The General Council agrees that while [examining requests for] [granting] waivers under Article IX of the WTO, the [legitimate] interests of [all] [other] developing country Members shall be [adequately safeguarded] [taken into account].”

and

“The General Council agrees that while granting waivers under Article IX of the WTO, the interests of all developing country Members shall be adequately safeguarded.”
Enabling Clause (Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries) – Paragraph 3(b)

36) Proposal by the LDCs - TN/CTD/W/4/Add.1

Paragraph 3(b) of the Decision provides that the extension of differential and more favourable treatment to developing countries, including special treatment to the least-developed countries, shall not constitute an impediment to the reduction or elimination of tariffs on MFN basis. However, it should be recognized that MFN tariff reductions result in the erosion of preferential margins and the consequent loss of competitiveness for the affected LDC exports. In such a situation, the LDC affected would require compensatory or adjustment support measures in the trade, financial and technological fields to mitigate adverse effects on their export earnings as well as enable them cope with increased global competition, through *inter alia*:

(i) Elimination of all internal and border constraints inhibiting the full utilization of existing preferential access.
(ii) Support diversification efforts including elimination of all tariff peaks and tariff escalation affecting semi-processed and processed products.
(iii) Provide debt relief through cancellation to release resources for building productive capacities.
(iv) Provide targeted incentives to their enterprises to facilitate technology transfer in the spirit of Article 66.2 of the TRIPS Agreement.
(v) Remove all non-tariff barriers to all LDCs exports.
(vi) Provide temporary financial compensation for fall in export earnings resulting from a reduction of MFN tariff rates in the case of products whose share in the total export earnings of an LDC exceeds 50 per cent.”

Last language considered:

(36) Enabling Clause – Paragraph 3(b)

[“Paragraph 3(b) of the Decision provides that the extension of differential and more favourable treatment to developing countries, including special treatment to the least-developed countries, shall not constitute an impediment to the reduction or elimination of tariffs on an MFN basis. However, it should be recognized that MFN tariff reductions result in the erosion of preferential margins and the consequent loss of competitiveness for the affected LDC exports. In such a situation, the LDC affected would require support measures to mitigate adverse effects on their export earnings as well as enable them cope with increased global competition. In this context, the General Council agrees that this issue be considered, in close coordination with other relevant international organizations, with a view to identifying possible ways by which LDCs should be assisted.”]

Enabling Clause. (Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries)

38) Proposal by the LDCs - TN/CTD/W/4/Add.1

“Towards this end [i.e. “... to ensure that the decisions on both the pace and the extent of the liberalizations, both in sequencing and timing, have to be left to be taken by the least-developed country concerned, taking into consideration its economic and trade
situation, and taken into account in trade negotiations and structural adjustment programmes” (paragraph 16 of document TN/CTD/4/Add.1) it is suggested that the provisions of the Decision on More Favourable Treatment should be clarified to provide for the following:

(a) In exceptional cases where it is considered that the liberalization measures in the trade field are essential for the attainment of the development and other objectives of the structural adjustment programmes, both the extent and the pace of liberalization shall be determined in consultation with the government of the recipient country, taking into account the relevant provisions in the Decision on More Favourable Treatment which require that least-developed countries shall not be required to take liberalization measures that are inconsistent with their development trade and financial needs. The new WTO Working Group on Trade, Debt and Finance should look into these issues and make appropriate recommendations.

(b) In multilateral trade negotiations credit shall be given to the measures taken by developing and least-developed countries by providing flexibility in determining the “base year” for the selection of tariffs on the basis of which reductions are to be made.

(c) The provisions in the Decision on More Favourable Treatment, which provide that the least developed countries “shall not be required to make concessions that are inconsistent” with their “development, trade and financial needs” shall be clarified to provide that these countries shall be permitted in trade negotiations, if they considered that this was warranted by economic and trade situations and the stage of development:

(i) to make no reductions in tariffs in the agricultural and/or industrial sectors;
(ii) exclude from tariff reductions certain sub sectors in both of the above sectors;
and
(iii) bind the rates reduced in the negotiations and the prevailing applied rates at levels consistent with the development, trade and financial needs of developing countries and LDCs.”

Agreement on Trade-Related Investment Measures – Whole Agreement

(84) Proposal by the LDCs - TN/CTD/W/4
“LDCs should be exempted from the disciplines of the Agreement on TRIMs.”

Decision on Measures in Favour of Least-Developed Countries – Paragraph 1
(88) Proposal by the African Group - TN/CTD/W/5/Rev.2
“It is understood that least-developed country Members, notwithstanding any provision of any WTO Agreement, shall not be required to implement or comply with obligations or commitments that are prejudicial to their individual development, financial or trade needs, or their administrative and institutional capacity.”
### Annex Table 3

**Number of LDCs exporting to Canada and growth of exports of selected exporters**

<table>
<thead>
<tr>
<th>YEARS</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
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<td>32</td>
<td>31</td>
<td>33</td>
<td>36</td>
<td>41</td>
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<tr>
<td>Bangladesh</td>
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<td>103</td>
<td>125</td>
<td>129</td>
<td>113</td>
<td>248</td>
<td>371</td>
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<tr>
<td>Cambodia</td>
<td>100</td>
<td>191</td>
<td>291</td>
<td>390</td>
<td>349</td>
<td>1,500</td>
<td>2,470</td>
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<tr>
<td>Haiti</td>
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<td>225</td>
<td>106</td>
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<td>447</td>
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<tr>
<td>Lao PDR</td>
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<td>230</td>
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* Exports value index (base=100 in 1998).

*Source: WTO (IDB), countries notifications and Secretariat’s calculations.*

### Annex Table 4

**Evolution of the number of clothing items imported by Canada from Bangladesh**

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*Source: WTO (IDB), countries notifications and Secretariat’s calculations.*
Annex 5
List of Persons Interviewed

Trade Officials
1. Mr. Siddiqur Rahman Chowdhury, Secretary, Ministry of Commerce (MOC)
2. Mr. Nasiruddin Ahmed, Director General, WTO Cell, Ministry of Commerce (MOC)
3. Md. Aminul Islam Bhuiya, Chairman, Bangladesh Tariff Commission
4. Mr. Md. Abdur Razzak Mondal, Director General, Textile, Export Promotion Bureau
5. Mr. Badrul Hasan, Member, National Board of Revenue
6. Mr. Md. Ghulam Hussain, Joint Secretary, Ministry of Commerce
7. Mr. Amitava Chakraborty, Deputy Secretary, WTO Cell
8. Dr. Mostafa Abid Khan, Deputy Chief, Tariff Commission, Dhaka
9. Ms. Sharifa Khan, Deputy Director, WTO Cell
10. Mr. Mustafa Mohiuddin, Director General, Export Promotion Bureau
11. Mr. Faridul Hassan, Director, Export Promotion Bureau, Bangladesh
12. Mr. Abdur Rahman, Director, Export Promotion Bureau, Bangladesh
13. Mr. Shufal Chandra Saha, Deputy Director, Export Promotion Bureau, Bangladesh

Business community
14. Mr. A.K.M. Toufiq Hasan, Secretary General, Bangladesh Textile Mills Corporation (BTMA)
15. Mr. Anisul Hoque, President, Bangladesh Garments Manufacturers and Exporters Association (BGMEA) and an entrepreneur
16. Mr. Abdur Rouf, Director, FBCCI and an entrepreneur
17. Mr. Abdul Matin Chowdhury, Ex-President, Bangladesh Textiles Mill Association and an entrepreneur
18. Ms Ferdous Ara Begum, Director, Research Cell, Dhaka Chamber of Commerce and Industry (DCCI)

Research group/ NGOs
19. Mr. Amir Khosru Chowdhury, Ex-Commerce Minister, MOC, Chairman, Bangladesh Development Initiative
20. Professor, M.A. Taslim, Dhaka University, Ex-Chairman, Bangladesh Tariff Commission and now also Associated with Bangladesh Development Initiative
21. Mr. Syed Alamgir Faruque Chowdhury, Ex-Secretary, Ministry of Commerce and now associated with Business Enterprise Institute (BEI), Dhaka
22. Dr. Mustafizur Rahman, Research Director, Centre for Policy Dialogue (CPD)
23. Dr. Atiur Rahman, Executive Director, Samunnoy
24. Mr. Md. Abu Eusuf, Assistant Professor, Department of Development Studies, Dhaka University
25. Dr. M. Assaduzzaman, Research Director, Bangladesh Institute of Development Studies

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26. Dr. Zaid Bakht, Research Director, Bangladesh Institute of Development Studies

**Women’s group/NGOs**
27. Ms. Farida Begum, Director, Ubinig
28. Ms Nasreen Perveen Haq, Country Director, Action Aid
29. Mr. Ziaul Hoque Mukta, Karma Jibi Nari
30. Ms Masuda Khatun Shefali, Chairperson, Nari Uddog Kendra, Dhaka
31. Ms. Shirin Akhtar, President, Karma Jibi Nari
32. Mr. Palash Kanti Das, Oxfam, Dhaka

**Donor**
33. Mr. Zillul Hye Razi, Economic and Information Officer, European Economic Commission, Dhaka

**Trade Union**
34. Mr. Sultanuddin Ahmed, Assistant Executive Director, Bangladesh Institute of Labour Studies (BILS)
35. Dr. Wajedul Islam Khan, General Secretary, Bangladesh Trade Union Kendra, Dhaka
36. Mr. Md. Zafrul Hasan, General Secretary, Bangladesh Jatiyatabadi Sramik Dal, Dhaka

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1 Refused to be interviewed
Annex 6

Questionnaire
Stakeholder Perception Survey on Development Dimension of the Doha Agenda

Key Thematic Issues for Bangladesh for perception survey

A. Defining Development Dimension:
   - How trade is related to development?
   - How is trade related to livelihood concerns?
   - How do Bangladesh qualify for special consideration in WTO?
   - How can Bangladesh benefit from having special consideration in these issues?
     - Preferential market access
     - Tariff Reduction commitments
     - Subsidies Reduction commitments (domestic and export)
     - Capacity building for negotiation
     - Capacity building for implementation issues and to reduce supply constraints
     - Strengthening negotiation process
   - What would be the livelihood concern of the above issues?
   - Which sectors in Bangladesh would be affected by WTO?
   - Which sectors in Bangladesh would benefit from having special consideration in WTO?
   - What kind of information on WTO is available and what further information is needed?
   - Which is the main objective of the July framework?
     - Creating a fair competition environment
     - Protecting national interests
     - Protecting legitimate interests of the business and the consumer
     - Contributing to socio-economic development

B. Effective market access
   - Identify three problems of market access for Bangladesh.
   - How the market access provision for Bangladesh should be bounded and made enforceable?
   - Preferential market access
     - What is the status of GSP?
     - How the issue of Rules of Origin should be addressed?
   - What are the main non-tariff barriers?
   - What should Bangladesh do to benefit from service sector negotiation?
   - Should social issues be addressed in the negotiation?
   - Your opinion on application of Anti-dumping, Countervailing and safeguard measures?
• How to increase competitiveness in Bangladesh?
• What is usually done when market barriers are faced when trading in international market?

C. Special and differential treatment towards achieving enhanced flexibility in WTO rules
• What are the main S&D issues for Bangladesh?
• Subsidy Reduction commitment
  o How elimination of domestic and export subsidy in agriculture in the developed countries will affect Bangladesh?
• Tariff Reduction Commitments
  o What is the debate between non-linear and linear formula and their implications for Bangladesh

D. Implementation Issues addressing consistency with a multilateral rules-based system
• What are the main implementation issues for Bangladesh?
• Tariff Reduction commitments
  o LDCs are exempted from reduction in tariffs in agriculture as well as in manufacturing. How can these be implemented?
  o How reductions in Tariff in Developed countries will affect erosion of preferences for Bangladesh?
  o What should be the mode of compensating for “early harvest” in tariff reduction?
• Subsidy Reduction Commitments
  o LDCs are exempted from reduction in subsidies, both for domestic and exports in agriculture and manufacturing. How can these be implemented?

E. Enhanced capacity-building programmes
• What are the main Capacity Building issues for Bangladesh?
• What are the sectors that need technical assistance?
• What are the various dimensions for which technical assistance is needed?
• What type of technical assistance is needed for negotiating capacity building?
• What is the mechanism to ensure that TA is forthcoming for meeting implementation issues in
  o SPS
  o TRIPS
  o TBT
• What is needed to strengthen legal expertise on WTO laws?
• What type of technical assistance is need to reduce supply side constraints
  o What is the status of fulfillment of commitments for capacity building under Integrated Framework?
  o Has Trade Diagnostic Study been undertaken?
  o Has there been an action programme for capacity building?
F. Strengthening negotiation process

- Ways to involve civil society in dialogue with government in order to achieve a clear identification of interests and proper ownership of the process
- How to ensure “WTO Compliant” with donors?
- How to ensure continuity in negotiating process?
- How to improve linkages?
- How to address gender concern during negotiation?