

Module-7

The Doha Round of Negotiations by the WTO Members

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Acronyms

A4T	Aid-for-Trade
AoA	Agreement on Agriculture
ENT	Economic Needs Test
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
IPR	Intellectual Property Rights
NAMA	Non Agricultural Market Access
NTB	Non Tariff Barriers
OTDS	Overall Trade-Distorting Support
SVE	Small and Vulnerable Economies
SeP	Sensitive Products
SP	Special Products
SPS	Sanitary and Phytosanitary Measures Agreement
SSM	Special Safeguards Measures
TBT	Technical Barriers to Trade Agreement
TRIPS	Trade Related Aspects of Intellectual Property Rights
URAA	Uruguay round Agreement on Agriculture

1. Introduction

The General Agreement on Tariffs and Trade (GATT) was first signed in 1947 and was created to encourage free trade between member states by regulating and reducing tariffs on traded goods. The functions of the GATT have now been replaced by the World Trade Organisation (WTO), which was born on January 01, 1995[†]. However, WTO is not about tariffs and trade, new areas were added to it, namely, agriculture and textiles & clothing (T&C). Moreover, the three new issues – which are entirely new to GATT discipline are Trade Related Aspects of Intellectual Property Rights (TRIPs), Trade Related Investment Measures (TRIMs) and General Agreement on Trade in Services (GATS) – have been added to it.

WTO has seen various rounds of negotiations since its inception in 1996. The current round of international trade negotiations is termed as “The Doha Round” named after the Qatari capital where it was launched in 2001 and is known as developmental round. The ministerial conference in Doha put forward the concerns of the developing and least developed countries (LDCs) at the centre of the new round of negotiations. Importantly, the Doha Round coveted to recognise the role of enhanced market access, balance rule and well targeted assistance to the developing and LDCs.

The initial progress of the Doha Round was not only slow, but also the little progress that was being made did not give confidence that delivering on development would actually be the overriding focus of the modalities to be developed. The Doha negotiations have not been translated into action. Almost all the deadlines were missed and no consensus is reached till now, due to the conflicting interests among member countries. Nonetheless the recently tabled report of Trade negotiations Committee (TNC) at WTO on July 27, 2007, provided with certain pace to the ongoing negotiations on the important issues of agriculture and non-agriculture market access (NAMA). The major development in the meeting was the circulation of Draft Modalities Text by the chairs on agriculture and NAMA negotiations groups. Pascal Lamy, Director General, WTO, terms it as “a significant package of trade opening and rule making, a strong collective commitment to work for a more development friendly world trading system”.[‡] Moreover, the chairman of the committee is cautiously optimistic and calls for member participant to build on the advances made in the recently concluded TNC meetings and emphasises on extra effort by all the member participants to achieve the developmental objective of Doha Round of negotiations.

In this Module, the Doha Round of Negotiations by the WTO Members is illustrated that can serve as a handy reference for the readers. Moreover, it can serve as a starting point to guide the reader and build the foundation for understanding the current negotiations and the issues for further negotiations. It seeks to enhance better understanding of policy

[†] <http://www.wto.org>

[‡] http://www.wto.org/english/news_e/news07_e/tnc_chair_report_july07_e.htm

makers by developing the knowledge on the various issues dealt under WTO such as agriculture, services, NAMA, trade measures, etc.

2. Negotiations on Agriculture – Issues and Concerns

The Uruguay Round Agreement on Agriculture (URAA) made a historic contribution to more open agricultural markets by mandating disciplines and establishing a negotiating framework for agriculture but it had only limited success in rolling back trade distorting domestic support and improving market access. Achieving substantial reform in agriculture markets has been the focus of the Doha Development Agenda (DDA) from its launch in 2001. Agriculture is important because half of the poor in developing countries drive their livelihood from farming and because distortions in agriculture markets remain very high.[§]

However, agriculture has proved to be one of the most difficult issues to negotiate. In developing countries, farmers make up a large share of the population and often exercise a corresponding political clout. In developed countries, farmers account for a much smaller share of the population, but wield political power far beyond their numbers. Moreover, agriculture is supported not only by tariffs at the border but also by domestic subsidies, which are jealously guarded by powerful interests. Agriculture trade reform requires not just tariff cuts but also reductions in these subsidies, which is extremely sensitive politically, not surprisingly, agricultural negotiations at the WTO have missed nearly every negotiating deadlines set, since the launch of the round.

Box 1: Salient Features

The objective of the Agreement on Agriculture (AoA) in Uruguay Round is:

- to improve market access by removing non-tariff barriers (NTBs); and
- to lower the tariff rates on agricultural products

The WTO AoA contains provisions in three broad areas of agriculture and trade policy, i.e. market access, domestic support and export subsidies.

Market Access: This includes tariffication, tariff reduction and access opportunities. Tariffication means that all NTBs such as quotas, variable levies, minimum import prices, discretionary licensing, state trading measures, voluntary restraint agreements etc., need to be abolished and converted into an equivalent tariff. Ordinary tariffs including those resulting from their tariffication are to be reduced by an average of 36 percent with minimum rate of reduction of 15 percent for each tariff item over a six-year period. Developing countries are required to reduce tariffs by 24 percent in 10 years. Developing countries that were maintaining Quantitative Restrictions due to balance of payment problems were allowed to offer ceiling bindings instead of tariffication.

[§] Supra Note 3

Special Safeguard: Provision allows the imposition of additional duties when there are either import surges above a particular level or particularly low import prices as compared to 1986-88 levels. It has also been stipulated that minimum access equal to three percent of domestic consumption in 1986-88 will have to be established for the year 1995 rising to five percent at the end of the implementation period.

Domestic Support: For domestic support policies, subject to reduction commitments, the total support given in 1986-88, measured by the Total Aggregate Measure of Support (AMS), should be reduced by 20 percent in developed countries (13.3 percent in developing countries). Reduction commitments refer to total levels of support and not to individual commodities. Policies which amount to domestic support both under the product specific and non product specific categories at less than five percent of the value of production for developed countries and less than 10 percent for developing countries are also excluded from any reduction commitments. Policies which have no or at most minimal, trade distorting effects on production are excluded from any reduction commitments ('Green Box'-Annex 2 of the AoA. The list of exempted green box policies includes such policies which provide services or benefits to agriculture or the rural community, public stock-holding for food security purposes, domestic food aid and certain de-coupled payments to producers including direct payments to production limiting programmes, provided certain conditions are met.

Special and Differential Treatment: Provisions are also available for developing country members. These include purchases for and sales from food security stocks at administered prices provided that the subsidy to producers is included in calculation of AMS. Developing countries are permitted untargeted subsidised food distribution to meet requirements of the urban and rural poor. Also excluded for developing countries are investment subsidies that are generally available to agriculture and agricultural input subsidies generally available to low income and resource poor farmers in these countries.

Export Subsidies: The agreement contains provisions regarding member's commitment to reduce Export Subsidies. Developed countries are required to reduce their export subsidy expenditure by 36 percent and volume by 21 percent in six years, in equal installment (from 1986 to 1990 levels). For developing countries, the percentage cuts are 24 percent and 14 percent respectively in equal annual installment over 10 years. The agreement also specifies that for products not subject to export subsidy reduction commitments, no such subsidies can be granted in the future

Doha Round Negotiations: The adoption of AoA created a whole new body of disciplines of agriculture and set quantitative commitments for member countries. The conclusion of this agreement obligates members to reduce trade and production, distorting agricultural supports and the level of protection. Article XX of AoA asks members to start negotiations on continuing reforms. The members agreed to reduce trade and production distorting agricultural support and protection by establishing disciplines and rules on three areas, such as, market access, export competition and trade distorting support policies.

**Box 2: The Doha Ministerial Declaration, November 2001
(in respect of agriculture)**

The ministerial declaration recalled the long-term objective referred to in the Agreement to establish a fair and market-oriented trading system through a programme of fundamental reform encompassing strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets. It reconfirmed commitment to this programme by setting up new mandate for negotiations aimed at:

- Substantial improvement in market access.
- Reductions of, with a view to phasing out, all forms of export subsidies.
- Substantial reductions for domestic supports that distort trade.
- Special and Differential Treatment (S&DT) for developing countries as an integral part throughout the negotiations.
- It will also take note of non-trade concerns, such as environmental protection, food security, rural development etc. which are reflected in the negotiating proposals submitted by Members and confirmed that the non trade concerns will be taken into account in the negotiations as provided in the AoA.

Current Status on Negotiations: The Doha Declaration also set deadlines for the conclusion of the negotiations. However, most deadlines were missed and any concrete results in the negotiations are to come. No major breakthrough has been made after the conclusion of the Hong Kong Ministerial conference held in December 2005. Following are the main issues in the ongoing agricultural negotiations:**

1. Market Access: Market access is the main pillar that got undivided attention from all the members because of its implication on consumers and producers of agricultural products. Nevertheless the issues in market access are classified as:

- **Tariff (Bound and applied):** Tariffs are taxes raised on imports as the products enter the country. Tariffs can be set *ad valorem*, meaning that the level of tariff is calculated as a percentage of the value of the import (an *ad valorem* tariff of five percent adds at US\$5 levy to every US\$100 of wheat imported, i.e. US\$5

** "Agriculture in WTO", South Asian Positions in the WTO Doha Round: In Search of A true Development agenda, CUTS International, Jaipur, 2005.

tariff is levied on every tonne of wheat, whether the wheat costs US\$80 or US\$120 per tonne). Like other forms of taxation, tariffs raise money for governments and also protect domestic producers from competition.

Under agreements such as AoA, governments agree maximum levels for tariff they will apply. The maximum level or ceiling is called the bound tariff rate. However, many governments bind their tariff at a level higher than they actually use, and applied tariffs are tariff levels in government's use. Maintaining gap between the bound and applied tariff provides governments flexibility to vary tariff levels as per the domestic situation warrants. Traders oppose this flexibility as it makes the market access less certain.

- **Tariff Reduction Formula:** The issue of market access to be negotiated ranges from the choice of tariff reduction formula, which would also address tariff peaks and escalation to designation of sensitive and Special Products (SPs) and establishment of Special Safeguards Measures (SSM). In the Hong Kong Ministerial Declaration, it was mentioned that the agricultural tariff rates will be divided into four bands and tiered tariff cut formula will be applied. The WTO member countries and country groups proposed different tariff cut formula, however, no consensus is reached on the issue.

Box 3: Countries' Stands on Tariff Cut Formula

The US and Cairns Group have taken a very ambitious and offensive position while EU, G-10 and ACP countries have defensive postures. The issue here is tariff reduction through tiered formula as well as account for different tariff structures. Cairns Group advocates cutting tariffs by applying 'Swiss Formula' to reduce all developed country tariffs to 25 percent or lower and also for developing countries, a lower tariff reduction (including a 50 percent maximum reduction for all tariffs less than 250 percent) while US and EU support tiered formula for reduction in tariff. Further G-20 calls for tariff caps at 100 percent and 150 percent for developed and developing countries respectively. The LDCs and the African Group have not been actively involved in the debate on tariff lines reduction formula

- **Special Products and Sensitive Products:** It is notable that a limited number of products are to be designated as sensitive products (SePs) because of their commercial sensitivity. This provision is devised on the insistence of the developed nations, although it would be applicable to all countries. The member countries will have the flexibility to undertake lower tariff cuts on these products.

The SPs are agricultural products, which are of particular importance to the developing countries for the reasons of food and livelihood security and rural development. The US and EU are not very supportive of the concept of SPs designated by developing countries for more flexible treatment in tariff reduction. Thus, they along with the Cairns Group would like to limit the scope

of SPs and strongly oppose exemption of SPs from tariff reduction. G-33 and African Group and ACP countries support SPs and insist on self-selection of appropriate number of sensitive products based on the criteria of food and livelihood security and rural development needs.

- **Special Safeguard Measures (SSM):** As proposed in the negotiations developing countries be granted the right to use safeguards as a protection against import surges or price falls in global markets. Although all the groups support the concept of SSM, as it would provide incentives for liberalisation of the agricultural sector, the US has strongly opposed it arguing that it is a duplication of the concept of SPs because both instruments are deemed to be used for the same purpose.

Preference Erosion: Erosion of trade preferences is the central issue in the ongoing efforts to negotiate further multilateral trade liberalisation in the Doha Round^{††}. While most countries recognise the benefits of dismantling the remaining barriers to trade, some, notably the LDCs are apprehensive as they face with an erosion of their preferential access owing to across the border tariff reductions. For Example, the US and Cairns Group are generally opposing the issue of preference erosion and argue that it should not be addressed at the expense of market access whereas the LDCs are long-time beneficiaries of the preferences and hence the issue is critical to them.

2. Domestic Support: The AoA subdivides domestic support programmes into a variety of categories. The issue of the reduction in domestic support is a double-edged sword. On one hand, it provides level playing field to compete in the domestic market of the subsidies providing countries. It may increase the international prices thereby increasing import bills, on the other. Thus the LDCs and developing countries need to follow a very cautious approach on the issues of reduction in domestic support. Table 1 elaborates domestic support, such as, amber box, blue box and green box.^{‡‡}

^{††} Preference erosion refers to a decline in the competitive advantage that exporters enjoy in foreign markets as a result of a loss in preferential trade treatment. This can occur when: 1) export partners eliminate preferences; 2) expand the number of preference beneficiaries; or 3) lower their most-favoured nation (MFN) tariff without lowering preferential tariffs proportionately (Alexandraki and Lankes, 2004).

^{‡‡} Raihan and Razzaque, M.A., “Global agricultural Trade Liberalisation: Implications for the Bangladesh Economy”, SANEM Discussion Paper, April 2007.

Table 1: Domestic Support

<u>Amber Box</u>	<u>Blue Box</u>	<u>Green Box</u>
<p>All domestic support measures considered to distort production and trade (with some exceptions) falls into the amber box, which is defined in Article 6 of the agriculture agreement as all domestic supports except those in blue and green boxes. These include measures to support prices or subsidies directly related to production quantities. These supports are subject to limits “De Minimis” minimal supports are allowed (5 percent of agricultural production for developed countries, 10 percent for developing countries).</p>	<p>This is the “Amber Box with conditions” designed to reduce distortions. Any support that would normally be in amber box is placed in the blue box if the support also requires farmers to limit production. In the current negotiations some countries want to keep the blue box as it is because they see it as a crucial means of moving away from distorting amber box subsidies without causing too much hardship.</p>	<p>The green box is defined in Annex II of Agriculture agreement. In order to qualify, green box subsidies must not distort trade, at most cause minimal distortion (Paragraph I). They have to be government funded (not by charging consumers at higher prices) and must not involve price support. They tend to be programs that are not targeted at particular products and include direct income supports for farmers that are not related to current production levels or prices. They also include environmental protection and regional development programmes. “Green Box” subsidies are therefore amount without limits provided they comply with the policy specific criteria set out in Annex II.</p>

Export Competition: The issue of export competition is the most contentious issues among the developed countries. WTO members have been providing export subsidies to most of the products of export interest to the LDCs. It has distorted the global market and is prone to displace their products in the export markets. The chair of the Doha Round farm trade negotiations on November 7, 2007, released a set of potential changes to WTO rules aimed at preventing countries from pursuing policies that effectively subsidise the export of agricultural products. Unlike the negotiations on farm subsidies and market access, the export competition talks are widely seen as near resolution. This is not least because governments had less to do: they already agreed to eliminate export subsidies by 2013 at the Hong Kong Ministerial Conference nearly two years ago. Similarly, the other issues for export competition are:

- **Export Credits and Export Credit Guarantee or Insurance Programmes:** Government-supported export credits are seen as a way of circumventing export subsidy commitments because interest rates and repayment terms can be easier than under normal commercial conditions. This is dealt in Article 10.2 of the AoA under WTO.

- **Discipline on the operation of STEs:** State trading enterprises are defined as governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and/or import. Article XVII of the GATT 1994 is the principal provision dealing with state trading enterprises and their operations.
- **Food Aid:** International food aid is the provision of food commodities by one country to another, free of charge or under highly concessional terms, to assist the country in meeting its food needs.^{§§}

The WTO members have spent time since debating how to discipline food aid practices, export credits, and the functioning of exporting state trading enterprises to ensure that they do not have an 'equivalent effect'.

Box 4: Latest Working paper (dated November 07, 2007)

Export credits: In his new draft provisions on this issue, Falconer had removed a number of terms and conditions that had figured in his July text (for instance, a stipulation requiring, interest payments, premiums, and risk-sharing to relate to market conditions). Instead, he left only a requirement for such programmes to be self-financing over a set maximum period - the two options proposed for developed countries were four or five years. In the absence of the extra conditions, the chair's intention was reportedly for Members to use provisions in the existing WTO Agreement on Subsidies and Countervailing Measures (SCM) that discipline government loans that act as subsidies. A proposed 180 day maximum repayment period for export financing support remains highly divisive.

State trading enterprises: In the talks on exporting state trading enterprises (STEs), the US and the EU have been keen to prohibit the monopoly powers of STEs to Canada, New Zealand and Australia, a move that the latter three resist. The only substantive change Falconer has made is to the definition, which now refers to the definition of STEs in Article 17 of the GATT. This is significant because the GATT definition refers to enterprises which affect exports and imports "through their purchases or sales." The US does not like the reference to 'purchases', since this broader definition could potentially curb the activities of agencies such as its own Commodity Credit Corporation, one of whose functions is to purchase food domestically for donation to foreign government and international relief agencies. The chair also restructured provisions on 'special and differential treatment' for developing and least-developed countries, to make them more clear.

§§ For more on food aid please refer <http://www.fao.org/DOCREP/005/Y3733E/y3733e06.htm>, accessed on November 15, 2007

Food aid: Differences on food aid have hinged on ensuring that in-kind donations of food (as opposed to cash grants) do not distort recipient markets or serve as a pretext for subsidising exports. The US is the world's main donor of in-kind food aid. One of the key outstanding issues is 'monetisation' - the sale of food aid to raise funds - in non-emergency situations. While the US is keen to allow the practice, other Members, such as Australia and Argentina, argue that it contributes to commercial displacement and should be severely curtailed. Falconer's working document provides two options for monetisation in non-emergency situations: prohibited except to raise funds for distribution, or permissible but discouraged. The paper underlines that recipient governments must be involved in all stages of the food aid process - a key point of concern for many African countries.

Source: Working Paper on Export Competition dated November 07, 2007, WTO

2.1 Latest Draft Agriculture Modalities ***

On July 16, 2007, in order to facilitate the Doha Round negotiations on agriculture and industrial goods and natural resources, Ambassador Falconer, released a new set of texts in yet another last attempt to move WTO members towards the agreement. The text tries to offer something to everyone, including:

- **Lower tariff cuts:** Lower tariff cuts for a new group of 44 developing countries (essentially the small and vulnerable economies (SVEs) and the ACP countries), a solid proposal on cotton, improved language on commodities, stronger disciplines on US food aid practices and the G-20 proposal as the basis for tariff cuts for the rest of the developing country members who are not included in the other flexibilities. Furthermore, Falconer tries to squeeze the developed countries more than he has done in the past, while the US is asked to cut domestic support to between US\$13 and US\$16.4bn a year and the Europeans are asked to make tariff cuts between 48 and 73 percent, higher than the 30 to 60 percent amount they had offered.
- **Deeper subsidy cuts:** The agriculture chair's text set out two potential levels of ambition for farm subsidy cuts, linking higher cuts to relatively deeper tariff reduction. It would have the US cap overall trade-distorting support (OTDS) at US\$13bn or US\$16.4bn, equal to a 73 or 66 percent cut respectively. Of the relatively less distorting components of OTDS, 'blue box' spending would be capped at 2.5 percent of the value of production, while 'de minimis' entitlements would be reduced either to a similar level or two percent. The paper set out rules for the elimination of export subsidies by 2013, in accordance with member's agreement at the Hong Kong Ministerial Conference in December 2005.
- **Tariff cuts:** As for market access, the agriculture chair text would have developed countries slash farm tariffs worth 75 percent and above by between 66

*** Draft Agriculture Modalities, July 17, 2007

and 73 percent. Tariffs lower than 75 percent would be classified into three other bands, each slated for correspondingly gentler rates of reduction. As per the paper, developing countries, would cut tariffs by two-thirds of whatever is agreed to for developed nations, but would be allowed some adjustments to keep their average reduction below 36 or 40 percent

- **Special products:** The text proposed allowing developed countries to ordinarily designate up to four or six percent of their tariff lines as 'sensitive', making them eligible for tariff cuts one- to two-thirds lower than that demanded by the formula in return for the creation of new import quotas. As per the paper, for the smallest deviation, governments would create new tariff quotas equivalent to three or five percent of domestic consumption of the product in question. For the full two-thirds deviation from the formula (i.e. a 20-percent instead of a 60-percent reduction), new access opportunities would have to equal at least four or six percent of domestic consumption. If the country is already importing substantial quantities of a sensitive product, quota expansion requirements would be softened. The text provided no specific details about the number or treatment of the 'special products' that developing countries will be able to shield from tariff cuts to safeguard food and livelihood security and rural development concerns, justifying this on the grounds of insufficient progress.

3. Non-Agricultural Market Access (NAMA)

Non Agricultural Market Access^{†††} (NAMA) is one of the key issues in Doha Round of trade negotiations and is based on the mandate that was given for the Doha Round at 4th WTO Ministerial Conference. The aim of the negotiations is to reduce both tariffs and non-tariff barriers (NTBs) to trade that impede the market access to industrial goods.

Box 5: What do NAMA Negotiations Cover?

NAMA negotiation considers products, which are not covered under negotiations on agriculture for all products, but are industrial products including natural resources such as fisheries, forests, gems and minerals. Nevertheless they are sometimes referred to as industrial products and/or manufacturing goods.

NAMA's sole objective is market access. In WTO parlance, market access revolves around the issue of tariffs—the reduction and elimination of tariffs, tariff peaks, and the prevention of tariff escalation as well as tariff bindings.

Doha Mandate: Para 16 of Doha Mandate states, “We agree to negotiations which shall aim, by modalities to be agreed, to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. Product coverage shall be comprehensive and without a priori exclusions. The

^{†††} Refer http://www.wto.org/english/tratop_e/markacc_e/nama_negotiations_e.htm

negotiations shall take fully into account the special needs and interests of developing and least-developed country participants, including through less than full reciprocity in reduction commitments, in accordance with the relevant provisions of Article XXVIII bis of GATT 1994 and the provisions cited in paragraph 50 below. To this end, the modalities to be agreed will include appropriate studies and capacity-building measures to assist least-developed countries to participate effectively in the negotiations”. The July text on NAMA drafted keeping in view the concerns of the developing countries, includes the following elements:

- A formula approach for tariff reduction and for reduction or elimination of tariff peaks, tariff escalation and high tariffs. Key features of this approach are:
 - a) No a priori exclusion of products
 - b) Reductions in tariffs from bound rates, or from twice the applied most favoured nation (MFN) rate in case of unbound tariffs
 - c) Conversion of specific duties into *ad valorem* duties and their binding.
- Countries that had bound less than 35 percent of their tariffs would be exempted from tariff reductions through the formula but have to bind 100 percent of their tariff lines.
- A Sectoral approach aiming at eliminating or harmonizing tariffs in a specific sector

Box 6: NAMA Draft Modalities – A Summary

The Chairman of the Negotiating Group on Market Access (NGMA), Ambassador Don Stephenson came out with his draft modalities on NAMA on July 17, 2007. The main elements of the draft modalities are as follows:

Formula and its Elements: In the draft text, the Chairman has proposed Swiss coefficients of 8 or 9 for developed countries and 19 to 23 for developing countries.

Treatment of Unbound lines: It was decided in the Ministerial at Hong Kong that a non-linear mark up approach would be adopted to establish a base rate for commencing tariff reductions on unbound lines. The draft text modalities of the Chairman propose a 20 percent mark up for all unbound lines on the applied tariff rates of 2001.

Flexibilities: The draft modalities propose the following flexibilities for the sensitive tariff lines of developing countries:

1. Applying at least 50 percent of the formula cut to 10 percent of the NAMA lines subject to 10 percent of 1999-2001 imports, or
2. Keeping unbound or/and not applying formula cut for up to five percent of NAMA lines subject to five percent of 1999-2001 imports.

Issues under NAMA: Presently, the NAMA negotiations are focused on number of issues, as follows^{†††}:

- **Product coverage:** It is still to be determined which products should be covered under NAMA negotiations. Recent proposal of having a list of NAMA products in the HS2002 nomenclature to which all NAMA modalities will apply, has been put forward. Product coverage shall be comprehensive without *a priori* exclusions.^{§§§}
- **Tariff peaks and Escalations:** Although the WTO members have unilaterally reduced the tariff rates in recent years but the reduction levels have not been formally set in stone or bound at WTO and are thus subject to reversal. Furthermore, this unilateral liberalisation has not taken evenly across the products. Some very high tariffs, i.e. ‘tariff peaks’ remain on products like textiles, clothing and fish products, etc., which are of keen interest to the developing countries. Tariff reductions or elimination shall commence from the bound rates after full implementation of current concessions; however, for unbound tariff lines, we adopt a constant non-linear mark-up of 20 percentage points to the MFN applied rate in the base year to establish base rates for commencing tariff reductions.^{****}

Box 7: Tariff Levels under NAMA

A significant proportion of the tariff of US, EU, Canada and Japan exceeds the level of 12 percent of *ad valorem* duties even after the full implementation of Uruguay Round and Generalised System of Preferences (GSP). Further, textile importing countries, i.e. US, EU and Canada impose tariff in the range of 12-32 percent; and footwear, leather and travel goods for which tariff is approximately 160 percent in Japan, 37.5-58 percent in US and 18 percent in Canada. The central problem in the industrial sector takes place in food industry, textile and clothing. In addition to high tariff and other protection measure, tariff escalation remains the main obstacle for developing countries to enter in the industrial exports.

- **Tariff Binding:** It relates to unbound tariffs^{††††}. The key issues in tariff binding includes:
 - a. It is not clear what percentage of unbound tariffs will be bounded and whether, bound tariff should be included in the tariff formula for tariff reduction.
 - b. Another vital issue is whether the negotiations should cover both bound rate and applied rate or only the bound rate.
 - c. The issue about the conversion of non *ad valorem* into *ad-valorem* duties is also the focus of the NAMA negotiation.

^{†††} Supra Note 4

^{§§§} Draft NAMA Modalities

^{****} Supra

^{††††} Those products where there is no commitment to place a maximum cap on the tariff for that particular product

- **The Formula approach:** The Swiss Formula is the name given to the mathematical formula proposed to calculate the post Doha Round value of tariff. The formula both caps and harmonises the tariff levels. At the Hong Kong Ministerial Conference in 2005, it was decided that NAMA tariff reductions would be undertaken through the Swiss Formula, which is mathematically expressed as,

$$T_1 = A \times T_0 / (A + T_0)$$

T₁ = New reduced tariff after application of the Swiss Formula.

T₀ = Existing (bound) tariff on which the Swiss Formula is to be applied.

A = The coefficient, which determines how steep the tariff cuts will be.

Box 8: How Swiss Formula Works?

For example, with coefficient of 10, an existing (bound) tariff percent will be:

$$(A \times T_0) / (A + T_0) = T_1$$

$$(10 \times 20) / (10 + 20) = 6.66$$

While, with a coefficient of 30, an existing (bound) tariff of 20 percent will be:

$$(A \times T_0) / (A + T_0) = T_1$$

$$(30 \times 20) / (30 + 20) = 12$$

With a co-efficient of 10, an existing (bound) tariff of 20 percent will be cut to 6.66 percent [(10X20)/(10+20)]. With a co-efficient of 30, an existing (bound) tariff of 20 percent will be cut to 12 percent [(30X20)/(30+20)]. With a co-efficient of 10, an existing (bound) tariff of 15 percent will be cut to 6 percent [(10X15)/(10+15)] – the higher the existing (bound) tariff, the deeper will be the cut.

This formula will be applied on bound tariffs of a country and not on its existing tariffs and thus, while existing tariffs will not be affected, there will reduction in “water in tariffs” – the difference between the existing bound tariffs and applied tariffs will be reduced. And once negotiation is complete and agreed upon by the WTO members, countries will not be allowed to increase their bound tariffs, and they may unilaterally change their applied tariffs: decrease and/or increase, subject to a bound rate. A bound rate, following this negotiation, cannot be increased but a country can unilaterally decrease it and make it equal to the corresponding applied rate.

Source: Briefing paper No. 3/2007 – Consumer Unity & Trust Society, Jaipur

Although, the Swiss Formula is simple and transparent to implement, it places disproportionate burden on the developing countries and LDCs. Hence, some new elements have been added to the formula such as possibility to have Swiss Formula with conditional flexibility of applying two different coefficients^{††††}, a Swiss type formula

†††† Proposed by US and Norway

with multiple coefficients based on averages and flexibilities and a credit system for developing countries^{§§§§}.

There is an almost unanimous view that a simple Swiss Formula with two coefficients should be adopted. Recent proposals to supplement or replace the Swiss formula with a linear cut or average cut in order to facilitate convergence on the formula were greeted with considerable concern by most Members - developed and developing - who view the Swiss formula as the principal achievement of the NAMA mandate. As regards the coefficients in the formula, the extreme positions propose a difference of 5 and 25 points between developed and developing countries.^{*****} However, the recent draft modality on NAMA suggests that following formula shall apply on line-by-line basis.

Box 9: Latest Draft NAMA Modalities

The following formula shall apply on a line-by-line basis:

$$t_1 = \frac{(a \text{ or } b) \times t_0}{(a \text{ or } b) + t_0}$$

Where,

t_1 = Final bound rate of duty

t_0 = Base rate of duty

a = [8-9] = Coefficient for developed Members

b = [19-23] = Coefficient for developing Members

The text prescribes the 'Swiss Formula' coefficients of 8 or 9 for industrialised countries, while developing nations accept a coefficient between 19 and 23. Under the Swiss Formula, a Member's coefficient effectively becomes its new tariff ceiling: when fed through the formula, all duties are slashed to below the level of the coefficient, with lower ones reduced more gently.

Source: Draft NAMA Modalities, July 17, 2007

- **Sectoral Approach and Participation in this approach:** Sectoral negotiations are aimed to eliminate complete tariffs. Although participation by developing countries, mostly LDCs could be voluntary, all Members are expected to eliminate or substantially reduce tariff on SPs. Some countries wish to eliminate

§§§§ Argentina, Brazil and India

***** Recent text on NAMA of July 17, 2007

tariffs below three or five percent. Although low, these tariffs provide important government revenues for the number of countries. The recent text on the NAMA suggests that the sectoral negotiations will remain Member-driven, a supplementary (and subsequent) modality to the formula and non-mandatory in respect of participation.^{†††††}

- **Non-Tariff Barriers:** NTBs refers to any measure other than a tariff, which protects domestic industry. Many non-tariff measures (NTMs) are based on a legitimate goal (such as protection of human health) and can be introduced in a WTO consistent manner. Agreements such as the Sanitary and Phyto-sanitary (SPS) measures and technical barriers to trade (TBT) aimed at allowing governments to take due care of these legitimate goals while minimising the impact on trade and avoiding the temptation to use them as disguised protectionism.^{†††††} The Doha Ministerial Conference called for removal of all NTBs on industrial products as they are least transparent and have major distortionary impact. For example, the imports are subject to following NTBs:
 - a. Technical regulations applicable
 - b. Hygienic SPS measures
 - c. Labour Standards and environmental protection
 - d. Quality Standards

Preference Erosion: Trade preferences are a central issue in the ongoing efforts to negotiate further multilateral trade liberalisation. While most of the countries recognise the advantages of dismantling the remaining barriers to trade, the LDCs are apprehensive as they are faced with erosion of their preferential access due to cross board tariff reductions under NAMA. It is particularly of great concern to the South Asian LDCs that have traditionally enjoyed trade preferences due to their LDC status. Preferences granted to LDCs for imports from all developed countries are extended through GSP. Developed countries are not legally committed to provide any such preference and therefore can unilaterally decide to withdraw preferences without contravening WTO commitments.

However, in the Hong Kong Ministerial Declaration, developed-country members shall, and developing-country members to provide duty-free and quota-free (DFQF) market access, on a lasting basis, for all products originating from all LDCs by 2008, and that members facing difficulties at this time to provide market access, shall provide DFQF market access for at least 97 percent of the products originating from LDCs, defined at the tariff line level, by 2008, or no later than the start of the implementation period.^{§§§§§} Several alternatives could be considered for trade preferences in Doha Round like amending the enabling clause to small and other vulnerable countries in addition to the LDCs, existing preferences under GSP be made legally binding in WTO.

^{†††††} Supra

^{†††††} Refer http://www.wto.org/english/tratop_e/markacc_e/nama_negotiations_e.htm

^{§§§§§} For more please refer the Hong Kong Ministerial Declaration.

Concerns: The major concerns about NAMA towards the developing countries and the LDCs include:

- a. A minimum level of tariff reduction by small economies, which in no way impacts on their current applied rates;
- b. No tariff reduction commitments by small economies on products, which have strategic value for their economic development;
- c. Longer implementation periods for small economies;
- d. The elimination on NTBs on products of export interest to small economies; and
- e. On the sectoral initiatives, African LDCs maintain their position on ensuring that such initiatives must be implemented on a voluntary basis.

4. Services: Main Issues and Current Status

General Agreements on Trade in Services^{*****} (GATS) is the first and only set of multilateral rules governing international trade in services. Broadly, GATS sets out the rules and procedures for trade in services across nations. Negotiated in the Uruguay Round, it was developed in response to the huge growth of the services economy over the past 30 years and the greater potential for trading services brought about by the communications revolution.

Box 10: Importance of Services, Difficulty in Measuring Services and Current Services Trade Regime

World trade in services has recently been a little under US\$2tn, about a quarter of world trade in goods. That ratio does not appear to have changed much in the last 50 years. Imports of services are now increasing more rapidly than exports, but not faster than goods imports.

Reasons for difficulty in measuring Services

Because measures of service trade are not anchored in any observation of physical movement, they are dependent on definitions of residence. An example of that dependence and the ambiguities it creates is exports of educational services, a domestic activity that becomes an export because students are defined as foreign residents. Since many students later become US residents, the supposedly exported service never leaves the US, or returns to the US unobserved and uncounted.

A particularly serious problem of measurement is the growing transfer of intangible US corporate assets to foreign affiliates of US firms, some of which use virtually no foreign factors of production. These transfers, mainly for tax saving purposes, give rise to phantom flows of services from the foreign affiliates to the US and to other countries and remove the exports from the US balance of payments. They make the meaning of measures of the current balances and GDP ambiguous. One possible solution to the measurement problems would be to use measures assigning at least intangible assets to countries of ownership, rather than nominal residence.

***** Refer http://www.wto.org/english/tratop_e/

The GATS has three elements, which includes the main text containing general obligations and disciplines; annexes dealing with rules for specific sectors and individual countries' specific commitments to provide access to their markets, including indications of where countries are temporarily not applying the "most-favoured-nation" principle of non-discrimination.

Box 11: General Obligations and Disciplines under GATS

- MFN treatment applies to all services, except the one-off temporary exemptions
- National treatment applies in the areas where commitments are made
- Transparency in regulations, inquiry points
- Regulations have to be objective and reasonable
- International payments, normally unrestricted
- Individual countries commitments, negotiated and bound
- Progressive liberalisation, through further negotiations

GATS is different from other GATT Agreement 1994 in a sense that each particular sector must be specifically placed under the auspices of the agreement for it to operate in that sector. The positive list approach differs from the usual negative list approach, which means that every relevant sector is covered by the agreement unless it is listed as being excluded. Thus under the agreement no sector is covered unless it is listed as being covered.

GATS cover all internationally traded services, for example, banking, telecommunications, tourism, professional services, financial services, etc. It also defines four ways (or "modes") of trading services:

- **Mode 1 - Cross-border supply:** The service is delivered within the territory of the consumer, from the territory of the service supplier. When most people think of "trade" in a service, they are thinking of Mode 1. Cross-border supply entails conveyance by mail, phones, Internet, satellite, etc., from one country to another. The service supplier is not present within the territory where the service is.
- **Mode 2 - Consumption abroad:** The consumer (or the consumer's property) receives a service outside the territory of the consumer's country, either by moving or being situated abroad. Repair services done on equipment shipped to a different country, foreign exchange students and people seeking medical treatment abroad fit into Mode 2.
- **Mode 3 - Commercial presence:** A service supplier establishes any type of business or professional enterprise in the foreign market for the purpose of supplying a service. Practically, the mode involves granting a right for a foreign interest to establish an investment within the territory of another country. Thus, commercial presence includes establishing corporate subsidiaries, trusts, joint ventures, partnerships, sole proprietorships, associations, representative offices or branches.

- **Mode 4 - Movement of natural persons:** The service is delivered by one individual, acting alone or as an employee of a service supplier, being present in a foreign market to provide the service. For example, an Indian engineering firm that provides engineering in the US by sending Indian employees to the US is delivering its service through the “presence of natural persons”.

Doha Agenda: The GATS provides a “build-in agenda” requiring members to enter into successive rounds of negotiation aimed at progressive liberalisation, the first of which was mandated to start in 2000. In March 2001, Members adopted the modalities for services trade negotiations, referred to as the “Negotiating Guidelines and Procedures (Guidelines S/L/93)^{†††††}” which stipulates the request and offer approach as a main method of negotiating new specific commitments on market access, national treatment and additional commitments.

The GATS recognises that the process of liberalisation must take place with due respect for national policy objectives and the level of development of individual members – both overall and in individual sector. Thus it states that there shall be appropriate flexibility for individual developing country members for opening fewer sectors, liberalising fewer types of transactions, progressively extending market access in line with their development situation and when making access to their markets available to foreign service suppliers, attaching to such access conditions as will allow them to strengthen their domestic services capacity and its efficiency and competitiveness to withstand the consequences of foreign service suppliers.

Box 12: Doha Mandate

“The negotiations on trade in services shall be conducted with a view to promoting the economic growth of all the trading partners and the development of developing and Least Developed Countries. We recognise the work already undertaken in the negotiations initiated in January 2000 under Article XIX of the General Agreement on Trade in Services (GATS), and the large number of proposals submitted by the members on a wide range of sectors and several horizontal issues, as well as, on movement of natural persons. We reaffirm the guidelines and procedures for the negotiations adopted by the council for trade in services on March 28, 2001, as a basis for continuing the negotiations, with a view to achieving the objectives of the GATS, as stipulated in the preamble Article IV and Article XIX of that agreement”.

4.1 Issues and Current Status

Market Access^{‡‡‡‡‡}: Many developing country members are dissatisfied with developed country members offers in sectors and modes of interest to them, specifically Mode 4, i.e.

††††† The guidelines also mandate members to continue negotiations on the outstanding issues, i.e. establishment of emergency safeguard mechanism (EMS) for services, possible disciplines on domestic regulation and disciplines on government procurement and subsidies. The Doha Ministerial Declaration subsequently referred to these guidelines as “the basis for continuing negotiations” with a view to achieving the objective of the GATS.

‡‡‡‡‡ “The Doha Round Negotiations on Services: An Overview”, Salzburg seminar, February 2007.

free movement of professionals. At present, Mode 4 is subject to a range of restrictions which include wage parity requirements, strict visa procedures, economic needs test (ENTs), non recognition of professional qualifications, imposition of discriminatory standards or burdensome licensing requirements, payment of social security without corresponding benefits, requirement of registration with or membership of professional organisations.

It is not surprising that the lack of quality offers in Mode 4 is often cited by delegations as basis for their reluctance to commit to opening their services markets in other areas. Some developing countries also maintain that the lack of progress on negotiating issues of importance to them in agriculture, industrial goods and rules, hinders their ability and inclination to table more liberal offers in services. On the other hand, developed country members argue that the responsibility for the poor quality of offers is on developing countries. They stress that the issue of linkage with other negotiating areas is a two way street, i.e. substantial offers in services could facilitate negotiations in other areas. Developed countries are also concerned about the time constraint on the service negotiations.

Box 13: Key Member Positions in Services Negotiations

US intends to improve the transparency with which domestic regulatory measures are formulated and implemented and also believes that disciplines which apply horizontally across all services sectors are of limited value. Such horizontal disciplines according to US are bound to be too general and will fail to address their specific characteristics of a particular sector.

EU, on the other hand is more focused on having disciplines on licensing procedures that foreign services suppliers have to go through in order to obtain a licence or permit to supply a particular service. Establishment of commercial presence, Mode 4 is the primary Mode through which developed country access trading partners markets and supply services.

Brazil, ACP countries, the African Group and the Group of SVEs are keen on preserving and emphasising members right to regulate and introduce new regulatory measures as they see their regulatory frameworks as still being in a nascent stage of development.

Hong Kong Mexico, Chile, Taiwan and Korea advocate strong horizontal disciplines as a means of reducing the unduly restrictive effects of domestic regulatory measures.

India, Thailand, Pakistan Peru and others are pushing for disciplines focusing on qualification requirements and procedures, which this group sees as the most relevant regulatory measures affecting Mode 4 area of strong offensive interest for these countries.

The negotiations are frustrated due to tension over “necessity test for regulatory measures”. While the services mandates stipulates that qualification and licensing requirement should not be “more burdensome and necessary to ensure the quality of services”, some members are concerned that such a test may constrain their ability to introduce regulations which seek to implement national policy objective that go beyond simply ensuring the quality of the service^{§§§§§§}.

Implementation of LDC Modalities remains unresolved: The EU, Canada, Japan, and the US introduced a proposal, which sought to provide “an interactive mechanism”. However, the LDC group found the proposal vague and insufficient to truly address their concerns. LDCs claimed that while the proposal touched upon the concept of a reporting mechanism to facilitate the review of members’ offers of commitments as spelled out in the Hong Kong Declaration, it failed to address the more substantial requirements to develop “appropriate mechanisms for according special priority including the sectors and modes of supply of the interest to LDCs”.

The definition of “special priority” for LDCs is referred to in the Hong Kong declaration. However, the developed country members refused to interpret special priority or anything in the LDC modalities as preferential access. For example, Zambia tabled a proposal on behalf of the LDC Group in March 2006 seeking to operationalise the notion of “special priority” and to craft a mechanism, which would allow members to provide “non-reciprocal special priority only to LDCs in areas of exports interest to them, particularly providing Mode 4 quotas in favour of LDCs”. Developed countries contended that such preferential access goes beyond the mandate for Doha Round negotiations.

Box 14: Brief Background of LDCs Modalities

Services trade in LDCs is minimal. They are mainly net services importers (US\$16bn, export share 0.4 percent, import share one percent). In light of this, major challenges faced by LDCs are:

- Both domestic (low capacity, infrastructure, human resources, and technology and external (barriers to trade);
- Low competitiveness whereby very few sectors are competitive while Mode 4 (low skilled) is not liberalised substantially; and
- Lack of access to financial resources, know how capability/skills transfer and technology.

The LDCs modalities were adopted in 2003 in recognition of LDCs special situation. Two years later, there were no results to show; hence implementation of modalities became key issue during the Hong Kong Ministerial. Moreover, LDC modalities were incorporated in Hong Kong Declaration in order to give their effective and expeditious implementation. The LDCs have special interest in Mode 4 of supply in services.

§§§§§§ Members such as Hong Kong, Chile, Korea, Australia, New Zealand and Taiwan argue that disciplines that do not subject regulatory measures to a necessity test may prove largely toothless in ensuring that do not unduly restrict trade. However Brazil and the US, the two major members opposing sizes of the services talks remain firmly oppose to incorporation of such a test in the disciplines.

Negotiations in services take place both plurilateral and bilaterally using a request and offer approach. On the positive side the level of engagement in plurilateral negotiations was better than expected, given the stagnated agriculture and NAMA negotiations. The discussions led to an improved understanding of what precisely is being requested and how it is being met in offices of commitment.

Furthermore, the plurilateral negotiations have provided a relatively substantial minimum benchmark for commitments by requesting members to compromise a significant amount of world trade in the services sector covered by the request. Requesting members are understood to have made the request upon themselves as well and are thus constrained to meet the benchmark for liberalisation. Whether or not the members receiving request undertake commitments in the Doha Work Programme, the plurilateral approach has solidify a platform for interested members to build upon initial sector specific discussions, either through an extended ground of negotiations similar to what transpired after the Uruguay Round, or in the context of the next round of services negotiations mandated under the GATS.

Box 15: Summary of Mandates for According Special Priority

- GATS Article IV:3 provides special priority for LDCs
- Paragraph 6, LDC Modalities requires Members to provide effective market access
- Paragraph 7, LDC Modalities requires Members to develop appropriate mechanisms with a view to achieving full implementation of GATS Article IV:3
- Paragraph 47, Hong Kong Ministerial Declaration calls on Members to implement the LDC Modalities and give priority to sectors and modes of interest to LDCs
- Paragraph 3, Annex C, Hong Kong Declaration calls for full and effective implementation of the LDC Modalities
- Paragraph 9 (a), Annex C Hong Kong Declaration requires Members to develop appropriate mechanisms for according special priority in sectors and modes of interest in accordance with Article IV:3 and paragraph 7 of the LDC modalities
- Paragraph 9 (b), Annex C, Hong Kong Declaration calls for undertaking commitments in sectors and modes of supply of interest to be identified by LDCs
- Paragraph 11 (e), Annex C, Hong Kong Declaration provides a deadline for implementation of 9(a) of July 31, 2006

Source: South Centre (2006)

4.2 Importance of Services for LDCs

Although LDCs are mainly net importers of services and their world share is only 0.4 percent yet the service sector is critical for them in achieving development objective and realising 40-50 percent of GDP. Despite of their low level of participation in world services, Mode 4 is of particular importance yet it remains to be least liberalised and current commitments do not apply to categories of interest to LDCs. In fact, LDCs have interest in sectors such as tourism, professional services (i.e. outsourcing potential), construction and maintenance services, cleaning services. However, the ability to realise the full potential in these areas of services is hindered by various constraints and

challenges at domestic and international levels. There are a number of reasons why LDCs should receive special priority in the services trade liberalisation. These are as follows:

- For LDCs, services continue to play a key role in the eradication of poverty because of their social, cultural, and welfare-enhancing functions.
- The services sector plays a crucial role in human development in the form of essential services.
- The pre-requisites for a strong services sector such as basic infrastructure, telecommunications, banking and financial services, entrepreneurial, and technical skills, administrative and institutional capacities, are still under-developed in most of LDCs.
- Expecting LDCs to compete in international trade in services on MFN basis (equal footing) with the rest of the WTO Membership, as provided for in the GATS, that excludes them from the benefits that this trade presents.
- LDCs remain net-importers of services.
- LDCs have comparative advantages in provision of services through the movement of their natural services suppliers (Mode 4) in all skill levels. Typically, these services suppliers send remittances to their countries of origin. For LDCs, remittances have proved to be a major, and relatively stable, source of capital inflows.
- Special priority market access for LDCs is a critical first step in ensuring their beneficial participation in the international services economy.

4.3 Developments after July 2004 Framework

- Groups of WTO Members started to circulate collective requests for countries to open their markets to foreign services providers, and in the year 2006 collective requests from groups of WTO Members seeking access to services markets in other countries continued to trickle in. 'Plurilateral requests' have been tabled in a wide range of sectors, including telecom, financial, logistics, construction, legal, environmental, energy, computer, maritime transport, audiovisual, and postal services.
- WTO Members addressed domestic regulation and special treatment for LDCs during the services 'cluster'. A consolidated draft text of disciplines on domestic regulation in services trade was issued on July 10, 2006 by the chair of the Working Party on Domestic Regulation (WPDR). Domestic regulatory measures take the form of qualification and licensing requirements and procedures or technical standards with which both foreign and local entities must comply in order to be able to supply services in a WTO Member's territory. Such measures, while legitimately intended to regulate the provision of services, could potentially be capable of unduly restricting trade. Thus, GATS contained a built-in mandate for Members to negotiate disciplines on domestic regulation. Ministers in Hong Kong Ministerial recognised the progress achieved in discussions on the issue, and instructed Members to develop disciplines for adoption as part of the Doha Round single undertaking. Market access issue stands still.

Box 16: Latest on Services (Preparations underway for new services text)

With the chairs of the Doha Round negotiating committees putting together draft deals to present to Members sometime in the next month, WTO Members are telling the mediator of the services talks what they would like to see in the text he is preparing to guide further discussions.

Unlike the negotiations on agriculture and industrial goods, where mathematical formulae in the draft deals will define Members' future market access levels, countries negotiate services market-opening through a process of requests and offers. A services text would simply set out guidelines for the market access talks. It might also describe potential rules governing services trade. In light of the deadlock in the talks on agriculture and NAMA, many developing countries are keeping their cards close their chest with regard to future market opening on services. This has been met by frustration from industrialised countries that they are seeing no signs of achieving their goals on services trade. Some developing nations, notably India, have complained that developed countries have done little to respond to their demands for certain kinds of services liberalisation.

5. Intellectual Property Rights

Intellectual property rights (IPRs) are the rights given to persons over the creations of their intellects. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.***** For example, books, paintings and films come under copyright; inventions can be patented, brand names and product logos can be registered as trademarks; and so on.

In law, intellectual property (IP) is an umbrella term for various legal entitlements which attach to certain names, written and recorded media, and inventions. The holders of these legal entitlements are generally entitled to exercise various exclusive rights in relation to the subject matter of the IP. The term IP reflects the idea that this subject matter is the product of the mind or the intellect though the term is a matter of some controversy. IP laws and enforcement vary widely from jurisdiction to jurisdiction. There are inter-governmental efforts to harmonise them through international treaties such as the 1994 WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

***** This definition of Intellectual property rights can be found in the website of WTO. For more see www.wto.org

Box 17: Types of Intellectual Property

- **Copyright and Related Rights:** Copyrights may subsist in creative and artistic works (e.g. books, movies, music, paintings, photographs and software) and give a copyright holder the exclusive right to control reproduction or adaptation of such works for a certain period of time. Copyright and related rights must comply with Berne Convention and provides term of protection of 50 years from the death of the author.
- **Trademarks, including Service Marks:** A trademark is a distinctive sign, which is used to distinguish the products or services of different businesses.
- **Patents:** A patent may be granted for a new, useful, and non-obvious invention, and gives the patent holder a right to prevent others from practicing the invention without a license from the inventor for a certain period of time (typically 20 years from the filing date of a patent application).
- **Industrial Design Right:** An industrial design right protects the form of appearance, style or design of an industrial object (e.g. spare parts, furniture, or textiles).
- **Trade Secrets:** A trade secret (which is sometimes either equated with, or a subset of, "confidential information") is secret, non-public information concerning the commercial practices or proprietary knowledge of a business, public disclosure of which may sometimes be illegal.

Trade Related Aspects of Intellectual Property Rights (TRIPs): The Agreement on TRIPs, negotiated during 1986-1994 Uruguay Round, introduced IP rules into the multilateral trading system. The basic principles of the TRIPs are as follows:

- National treatment (treating one's own nationals and foreigners equally);
- MFN status, i.e. equal treatment for all nationals of all trading partners in WTO;
- Contribution to technical innovation and the transfer of technology;

The three main features of the agreement are as follows:

- a) **Standards:** The agreement speaks of the minimum standards of protection. The main elements of protection are as under:
 - The subject matter to be protected
 - The rights to be conferred and permissible exceptions
 - The minimum period of protection
- b) **Enforcement:** The agreement covers following provisions:
 - Provisions for domestic procedure and remedies for the enforcement of the intellectual property rights.
 - It includes general principle applicable to IPRs enforcement procedure apart from administrative, civil and criminal procedure available for enforcement of rights of the right holder.
- c) **Dispute Settlement:** The Agreement further provides for the settlement of disputes over IPRs among the member states within the parameters of dispute settlement procedure.

Box 18: Traditional Knowledge, Biodiversity and IPR

The ongoing discussions on biodiversity and IPR are quite vital in TRIPs Agreement. Review of Article 27.3(b), which deals with patentability or non-patentability of plant and animal inventions, and the protection of plant varieties, is under consideration. Again the Doha Declaration points out that the TRIPs Council should also look at the relationship between the TRIPs Agreement and the UN Convention on Biological Diversity (CBD), the protection of traditional knowledge and folklore. It adds that the TRIPs Council's work on these topics is to be guided by the TRIPs Agreement's objectives (Article 7) and principles (Article 8), and must take development issues fully into account.

5.1 TRIPs and Public Health

In 2001, WTO members adopted a special Ministerial Declaration at the WTO Ministerial Conference in Doha to clarify ambiguities between the need for governments to apply the principles of public health and the terms of the TRIPs. In particular, concerns were growing that patent rules might restrict access to affordable medicines for populations in developing countries in their efforts to control diseases of public health importance, including HIV, tuberculosis and malaria. The Declaration responded to the concerns of developing countries about the obstacles they faced when seeking to implement measures to promote access to affordable medicines in the interest of public health in general, without limitation to certain diseases. While acknowledging the role of IP protection "for the development of new medicines", the Declaration specifically recognised concerns about its effects on prices.

The Doha Declaration affirms "the TRIPs Agreement does not and should not prevent Members from taking measures to protect public health". In this regard, the Doha Declaration enshrines the principles that has publicly advocated and advanced over the years, namely the re-affirmation of the right of WTO Members to make full use of the safeguard provisions of the TRIPs Agreement in order to protect public health and enhance access to medicines for poor countries.

The Doha Declaration refers to several aspects of TRIPs, including the right to grant compulsory licences^{††††††††} and the freedom to determine the grounds upon which licences are granted, the right to determine what constitutes a national emergency and circumstances of extreme urgency, and the freedom to establish the regime of exhaustion of IPRs. Another important component in TRIPs is parallel importation. It refers to importation without the consent of the patent-holder of a patented product marketed in another country either by the patent holder or with the patent-holder's consent. Article 6 of the TRIPs Agreement explicitly states that practices relating to parallel importation cannot be challenged under the WTO dispute settlement system. The Doha Declaration has re-affirmed that members do have this right, stating that each member is free to establish its own regime for such exhaustion without challenge.

†††††††† Refer : Article 31 of TRIPs Agreement

6. Aid for Trade

Aid for Trade is a part of overall aid to development with the specific objective of helping developing countries, in particular LDCs, to play an active role in the international trading system and to use trade as an instrument for poverty alleviation. Many poor countries lack the basic infrastructure to take advantage of the market access opportunities resulting from a successful outcome to the Doha Round of trade negotiations. The Doha Ministerial Declaration made technical assistance and capacity building a key component of the development dimension of this round.*****

Hong Kong Ministerial: In December 2005, the Sixth Ministerial Conference in Hong Kong created a new WTO work programme on Aid-for-Trade. The Hong Kong Ministerial Declaration included Aid for Trade as a formal clause in Article 57. A Task Force came up with a set of recommendations, endorsed in 2006, giving a monitoring role to the WTO. As a follow-up, it has been decided that this monitoring and evaluation role will consist of an annual global review to be held in the Committee on Trade and Development followed by a debate on Aid for Trade in the General Council.

Box 19: Scope and Coverage of Aid for Trade

- **Trade policy and regulations:** Covers support to help countries effectively participate in multilateral trade negotiations, analysis and implementation of multilateral trade agreements, mainstreaming trade policy and technical standards, trade facilitation, support to regional trade arrangements and human resources in trade.
- **Trade development:** Covers business development and activities aimed at improving the business climate, access to trade finance and trade promotion in the productive sectors (agriculture, forestry, fishing, industry, mining, tourism, services), including institutional and enterprise level.
- **Infrastructure:** Covers trade related infrastructure such as transport, communications, and energy.
- **Building productive capacity:** Improving the capacity of a country to produce goods and services.
- **Trade related adjustment:** Assistance to meet adjustment costs from trade policy reform, including balance of payment problems resulting from lost tariff revenues, erosion of preferences, etc.

Current Trend in Aid for Trade*****: To ensure an optimal impact of Aid for Trade, the Task Force has recommended the over-reaching guiding principles of the new aid framework offered by the Paris Declaration on Aid Effectiveness in 2005. These principles and best practices aspire to become the foundations of any development

***** http://www.wto.org/english/tratop_e/dda_e/aid4trade_e.htm

***** “ABC of Aid for Trade”, CUTS CITEE, Jaipur, 2007

initiative for a better delivery of aid. The Paris Declaration Principles states the following issues:

- **Ownership:** The recipient country has the responsibility and leadership of its national development strategy. Donors need to be responsive to the priorities identified by the country itself.
- **Alignment:** Aid to be aligned with a country's national development strategy and coherent with national priorities and policies. Donors will progressively rely on the country's own systems and institutions.
- **Harmonisation:** In order to ease the pressure on a recipient
- **Managing for results:** Result oriented strategies should guide the planning, implementation and evaluation stages of any development initiative.
- **Mutual Accountability:** All stakeholders, recipient countries and donors, are committed to transparent and participatory processes.

How will Aid for Trade benefit the poor countries? Aid for Trade benefits for poor countries is potentially manifold. It includes:

- Aid for trade can attenuate the negative effects of trade liberalisation and can also enable the developing countries to seize the benefits. It can help LDCs evade marginalisation and at the same time, increase developing countries ability to exploit global markets opportunities by improving their competitiveness and allowing them to reach for economies of scale.
- Returns will directly flow from the projects funded by Aid for Trade. Infrastructure improvement and trade facilitation will install a better business climate not only for export producers but also to a certain extent to small and medium size producers in the domestic market. It will also increase people's capacity to take advantage of trade opportunities and thus stimulate economic growth.
- It will help developing countries to become better trading partners and to participate more actively in a more equitable multilateral trading system. Aid for Trade is the necessary complement to these new economic opportunities created by previous rounds of negotiations.
- It can help implement the aid framework suggested by Paris Declaration and hence offers better coherence to the pursuit of development goals and the mainstreaming trade, consolidate country driven approaches, and confirms a country's ownership and leadership over its own development strategies.

Concerns of the Poor Countries on Aid for trade: Although each developing country has its own concerns on Aid for Trade, poor countries mostly share common apprehensions and certain concerns, including:

- Despite the rhetoric of the international discourse on the need for prioritising Aid for Trade, funds actually allocated to it are as for now insufficient to have a significant impact and fall short of the Doha Round development ambitions.
- Concerns are articulated about the conditionality attached to Aid for Trade. Many developing countries have stated their apprehension

concerning the possible bias of Aid for Trade towards donor's interests and priorities when some industries are promoted than other.

- Concerns about the time framework for Aid for Trade is crucial, as adjustment costs are considered transitional per definition and political commitment of the international community has proven volatile for the least. Yet the developing countries need long term Aid for Trade planning to be able to build a strong competitiveness in key sectors and to achieve sustainable growth.

7. Trade Measures and Rules

In addition to the formal instruments of trade policy, governments of all types sometimes use informal or administrative policies to restrict imports and boost exports. Administrative trade policies are bureaucratic rules that are designed to make it difficult for imports to enter into the country. For example, in recent years Japan's formal tariff and NTBs have been among the lowest in the world. However, critics charge that the informal administrative barriers to imports more than compensate for this.

Binding tariffs and applying them equally to all trading partners (MFN) are key to the smooth flow of trade in goods. The WTO agreements uphold the principles, but they also allow exceptions in some circumstances. Three of these issues are ^{*****}:

- Actions taken against dumping^{††††††††} (selling at an unfairly low price);
- Subsidies and special "countervailing" duties to offset the subsidies; and
- Emergency measures to limit imports temporarily, designed to "safeguard" domestic industries

Anti-Dumping Policies: If a company exports a product at a price lower than the price it normally charges on its own home market, it is said to be "dumping" the product. Although antidumping policies vary somewhat from country to country, the majority is similar to the policy used in the US. The WTO agreement does not pass judgment on antidumping: its focus is on how governments can or cannot react to dumping; and it disciplines anti-dumping actions, hence it is often called the "Anti-Dumping Agreement". (This focus only on the reaction to dumping contrasts with the approach of the Subsidies and Countervailing Measures Agreement.)

***** Refer http://www.wto.org/english/tratop_e

†††††††† In economics, "dumping" can refer to any kind of predatory pricing. However, the word is now generally used only in the context of international trade law, where dumping is defined as the act of a manufacturer in one country exporting a product to another country at a price which is either below the price it charges in its home market or is below its costs of production.

Box 20: Coexistence of Article 6 of GATT and Anti Dumping Agreement

Under Article 6 of GATT, countries are allowed to take actions against dumping. Article 6 of GATT and the Anti Dumping Agreement operate together in such a way so as not to discriminate between the trading partners in an anti-dumping action. However, the WTO agreement allows governments to take action against dumping where there is genuine (“material”) injury to the competing domestic industry. In order to do that the government has to be able to show that dumping is taking place, calculate the extent of dumping (how much lower the export price is compared to the exporter’s home market price), and show that the dumping is causing injury or threatening to do so.

Further, there are many different methods for calculating whether a particular product is being dumped heavily or only lightly. The agreement narrows down the range of possible options. It provides three following methods to calculate a product’s “normal value”.

1. The important one is based on the price in the exporter’s domestic market;
2. When the same cannot be used, two alternatives are available, i.e., the price charged by the exporter in another country; or
3. A calculation based on the combination of the exporter’s production costs, other expenses and normal profit margins. And the agreement also specifies how a fair comparison can be made between the export price and the would-be normal price.

Anti-dumping measures can only be applied if the dumping is hurting the industry in the importing country. Therefore, a detailed investigation has to be conducted according to specified rules. The investigation must evaluate all relevant economic factors that have a bearing on the state of the industry in question. If the investigation shows dumping is taking place and domestic industry is being hurt, the exporting company can undertake to raise its price to an agreed level in order to avoid anti-dumping import duty.

The agreement further says member countries must inform the Committee on Anti-Dumping Practices about all preliminary and final anti-dumping actions, promptly and in detail. They must also report on all investigations twice a year. When differences arise, members are encouraged to consult each other. They can also use the WTO’s dispute settlement procedure.

Subsidies and countervailing measures: Subsidy is a government payment to a domestic producer. Subsidies take many forms including cash grants, low interest loans, tax breaks and government equity participation in domestic forms. By lowering production costs subsidies help domestic producers in two ways:

1. They help them compete against foreign imports; and
2. They help them gain export markets.

The WTO contains agreement on subsidies and countervailing duties, wherein the definition and concept of subsidies is laid out. The agreement defines two categories of subsidies, as:

- **Prohibited subsidies:** Subsidies that require recipients to meet certain export targets, or to use domestic goods instead of imported goods are prohibited because they are specifically designed to distort international trade, and are therefore likely to hurt other countries trade. They can be challenged in the WTO dispute settlement procedure where they are handled under an accelerated timetable. If the dispute settlement procedure confirms that the subsidy is prohibited, it must be withdrawn immediately. Otherwise, the complaining country can take counter measures. If domestic producers are hurt by imports of subsidised products, countervailing duty can be imposed.
- **Actionable subsidies:** In this category, the complaining country has to show that the subsidy has an adverse effect on its interests, otherwise the subsidy is permitted. The agreement defines three types of damages that they can cause. One country's subsidies can hurt a domestic industry in an importing country. They can hurt rival exporters from another country when the two compete in the third markets. And domestic subsidies in one country can hurt exporters trying to compete in the subsidising country's domestic market. If the Dispute Settlement Body (DSB) rules that the subsidy does have an adverse effect, the subsidy must be withdrawn or its adverse effect must be removed. Again, if domestic producers are hurt by imports of subsidised products, countervailing duty can be imposed.

The WTO agreement originally contained a third category: non-actionable subsidies. This category existed for five years, ending on December 31, 1999, and was not extended. The agreement applies to agricultural goods as well as industrial products, except when the subsidies are exempt under the AoA's "peace clause".

This agreement does two things: it disciplines the use of subsidies' and it regulates the actions countries can take to counter the effects of subsidies. It says a country can use the WTO's dispute settlement procedure to seek the withdrawal of the subsidy or the removal of its adverse effects. Or the country can launch its own investigation and ultimately charge extra duty (known as "countervailing duty") on subsidised imports that are found to be hurting domestic producers.

Countervailing duty (the parallel of anti-dumping duty) can only be charged after the importing country has conducted a detailed investigation similar to that required for anti-dumping action. There are detailed rules for deciding whether a product is being subsidised (not always an easy calculation), criteria for determining whether imports of subsidised products are hurting ("causing injury to") domestic industry, procedures for initiating and conducting investigations, and rules on the implementation and duration (normally five years) of countervailing measures. The subsidised exporter can also agree to raise its export prices as an alternative to its exports being charged countervailing duty.

Safeguards: Article 19 of GATT contains provision for safeguard measures though they are used infrequently. Some governments prefer to protect their domestic industries through "grey areas" measures, by using bilateral negotiations (outside GATT auspices)

to persuade exporting countries to restrain exports “voluntarily” or to agree to other means of sharing markets. For example, agreements of this kind were reached for a wide range of products, including, automobiles, steel, and semiconductors.

The agreement sets out criteria for assessing whether “serious injury” is being caused or threatened, and the factors, which must be considered in determining the impact of imports on the domestic industry. When imposed, a safeguard measure should be applied only to the extent necessary to prevent or remedy serious injury and to help the industry concerned to adjust. Where quantitative restrictions (quotas) are imposed, they normally should not reduce the quantities of imports below the annual average for the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury.

Industries or companies may request safeguard action by their government. The WTO agreement sets out requirements for safeguard investigations by national authorities. Safeguard measures cannot be targeted at imports from a particular country. However, the agreement does describe how quotas can be allocated among supplying countries, including the exceptional circumstance where imports from certain countries have increased disproportionately quickly. A safeguard measure should not last more than four years, although this can be extended up to eight years, subject to a determination by competent national authorities that the measure is needed and that there is evidence that the industry is adjusting. Measures imposed for more than a year must be progressively liberalised.

When a country restricts imports in order to safeguard its domestic producers, in principle it must give something in return. The agreement says the exporting country (or exporting countries) can seek compensation through consultations. If no agreement is reached the exporting country can retaliate by taking equivalent action, for instance, it can raise tariffs on exports from the country that is enforcing the safeguard measure. In some circumstances, the exporting country has to wait for three years after the safeguard measure was introduced before it can retaliate in this way, i.e. if the measure conforms to the provisions of the agreement and if it is taken as a result of an increase in the quantity of imports from the exporting country.

The WTO’s Safeguards Committee oversees the operation of the agreement and is responsible for the surveillance of members’ commitments. Governments have to report each phase of a safeguard investigation and related decision-making, and the committee reviews these reports.

Standards and Safety^{*****}: Article 20 of GATT allows governments to act on trade in order to protect human, animal or plant life or health, provided they do not discriminate or use this as disguised protectionism. In addition, there are two specific WTO agreements dealing with food safety and animal, plant health and safety and with product standards.

^{*****} Refer http://www.wto.org/english/tratop_e/

Sanitary and Phytosanitary (SPS) Measures: This separate agreement provides the basic rules on food safety or animal or plant health standards. It allows countries to set their own standards though it also says regulations must be based on science. They should be applied only to the extent necessary to protect human, animal or plant life or health. And they should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail.

Box 21: Regulations under the Purview of WTO-SPS Agreement

- The protection of animal or plant life or health within a territory from risks arising from the entry, establishment, or spread of pest, disease, disease-carrying organisms, or disease-causing organisms.
- The protection of human or animal life or health within a territory from risks arising from additives, contaminants, toxins, or disease-causing organisms in foods, beverages, or feedstuffs.
- The protection of human life or health within a territory from risks arising from diseases carried by animals, plants, or products thereof, or from entry, establishment, or spread of pests.
- The prevention or reduction of the risks of other damages within a territory from the entry, establishment, or spread of pests.

Member countries are encouraged to use international standards, guidelines and recommendations where they exist. However, members may use measures which result in higher standards if there is scientific justification. They can also set higher standards based on appropriate assessment of risks so long as the approach is consistent, not arbitrary. And they can to some extent apply the “precautionary principle”, a kind of “safety first” approach to deal with scientific uncertainty. Article 5.7 of the SPS Agreement allows temporary “precautionary” measures.

Box 22: Whose International Standards?

An annex to the SPS Measures Agreement names the following bodies:

- The FAO/WHO Codex Alimentarius Commission: for food
- The International Animal Health Organisation (Office International des Epizooties): for animal health
- The FAO’s Secretariat of the International Plant Protection Convention: for plant health.

Governments can add any other international organisations or agreements whose membership is open to all WTO members.

The agreement still allows countries to use different standards and different methods of inspecting products. So how can an exporting country be sure that the practices it applies to its products are acceptable in an importing country? If an exporting country can demonstrate that the measures it applies to its exports achieve the same level of health protection as in the importing country, then the importing country is expected to accept the exporting country’s standards and methods.

The agreement includes provisions on control, inspection and approval procedures. Governments must provide advance notice of new or changed SPS regulations, and establish a national enquiry point to provide information.

Box 23: Why does the WTO-SPS Agreement Promote Free Trade?

The main purpose of the WTO-SPS Agreement is to promote free trade. In principle, a country can increase its real national income by more efficiently utilising its limited resources and engaging in mutual trade, which means consumers can enjoy a higher level of satisfaction and producers can sell their products in an expanded market. In general, the global economy as a whole is expected to benefit. However, when such trade encounters negative externalities or hidden costs (e.g., from importing harmful pests and diseases), acceptance of the general premise becomes blurred. The gains from trade are no longer a certainty.

A global SPS Agreement helps, but it is not a panacea. The main purpose of the WTO-SPS Agreement is to facilitate trade. However, to make sure that the benefits attained from trade can be sustained. Imports of harmful organisms could easily erase such gains. It must be remembered that a country's first line of defence is prevention and that prevention is always less costly than eradication.

Technical Regulations and Standards: Technical regulations and industrial standards are important, but they vary from country to country. Having too many different standards makes life difficult for producers and exporters. If the standards are set arbitrarily, they could be used as an excuse for protectionism. Standards can become obstacles to trade. The TBT tries to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles.

The agreement recognises countries' rights to adopt the standards they consider appropriate, such as for human, animal or plant life or health, for the protection of the environment or to meet other consumer interests. Moreover, members are not prevented from taking measures necessary to ensure their standards are met. In order to prevent too much diversity, the agreement encourages countries to use international standards where these are appropriate, but it does not require them to change their levels of protection as a result. The agreement sets out a code of good practice for the preparation, adoption and application of standards by central government bodies. It also includes provisions describing how local government and non-governmental bodies should apply their own regulations.

The agreement says the procedures used to decide whether a product conforms with national standards have to be fair and equitable. It discourages any methods that would give domestically produced goods an unfair advantage. The agreement also encourages countries to recognise each other's testing procedures. That way, a product can be assessed to see if it meets the importing country's standards through testing in the country where it is made.

Manufacturers and exporters need to know what the latest standards are in their prospective markets. To help ensure that this information is made available conveniently, all WTO member governments are required to establish national enquiry points.

Annexure 1

Observation by G-20 & G-33 on latest draft modalities of NAMA and Agriculture

July 16, 2007

Observation by G-20 Countries

- Countries welcomed the draft modalities for agriculture and entail it as good starting point.
- Reiterates the need for “very low teens” of overall trade distorting support
- On market access, although structure of formula is clearer yet, there is lack of clarity on flexibilities and on other layer of protection.
- Welcomes the improvements of provisions included for recently acceded members, tropical and all products, LDCs and SVEs. G-20 further welcomes the inclusion of demands of cotton 4, which they fully support.
- Commits towards the development round and focuses on the Doha mandate

Observation by G-33 Countries

- Although there are positive improvements in draft modalities, it is greatly imbalanced at the level of precision and on the issue of substance and therefore are matter of concern to developing countries and G-33
- Stresses on effectively reducing over all trade distorting support and having effective disciplines on domestic support.
- Market access in G-33’s major concern and finds major imbalance in this pillar with the interest learning towards developed countries and not for developing countries.
- G-33 disappointment that the text does not provide for any modalities on special products.

Annexure 2

G-20

About G-20

The G-20^{§§§§§§§§} is a group of developing countries established on August 20, 2003, in the final stages of the preparations for the fifth WTO Ministerial Conference, held in Cancun, from September 10-14, 2003. Its focus is on agriculture, the central issue of the Doha Development Agenda (DDA).

The Group has a wide and balanced geographical representation, currently integrated by 23 member countries: 5 from Africa (Egypt, Nigeria, South Africa, Tanzania and Zimbabwe), 6 from Asia (China, India, Indonesia, Pakistan, Philippines and Thailand) and 12 from Latin America (Argentina, Bolivia, Brazil, Chile, Cuba, Ecuador, Guatemala, Mexico, Paraguay, Peru, Uruguay and Venezuela).

Since its establishment, G-20 has generated great interest, raised expectations and also criticism from different quarters. The Group was born to try, as it did, to avoid a predetermined result at Cancun and to open up a space for negotiations in agriculture. On that occasion, the Group's main objective was to defend an outcome in the agricultural negotiations, which would reflect the level of ambition of the Doha mandate and the interests of the developing countries. For this purpose, G-20 adopted a common position that was circulated as an official document of the WTO, prior to and during Cancun (WT/MIN(03)/W/6). This position remains the central platform of the G-20.

After the lack of concrete results in the Cancun meeting, G-20 embarked on technical and political consultations with a view to injecting momentum in the negotiations. The Group has held several Ministerial Meetings (Cancun, September/2003; Brasilia, December/2003; São Paulo, June/2004; New Delhi, March/2005; Bhurban, September/2005; and Geneva, October and November/2005), and met frequently at the level of Heads of Delegation and Senior Officials in Geneva. The Group also met at technical level to discuss specific proposals in the context of the WTO agriculture negotiations and to prepare technical papers in support of the adopted common platform of the Group.

The G-20 has consolidated as an essential and recognised interlocutor in the agricultural negotiations. The Group's legitimacy is due to the following reasons:

- a) The importance of its constituency in the agricultural production and trade, as it represents almost 60 percent of the world population, 70 percent of world's rural population and 26 percent of world's agricultural exports;

§§§§§§§§ For more please refer <http://www.g-20.mre.gov.br/index.asp>

- b) Its capacity to translate a vast range of developing countries' interests into concrete and consistent proposals; and
- c) Its ability to coordinate its members and to interact with other grouping in the WTO.

The leverage of the G-20 was confirmed in the final phase of the negotiations that led to the framework agreed upon in July 2006. Thanks to the efforts of the G-20, the adopted framework meets all its negotiating objectives for the initial phase of the Doha Round: (i) it respects the Doha mandate and its level of ambition; (ii) it points the way towards positive outcomes of the negotiations in the modalities phase; and, (iii) it represents, furthermore, a substantial improvement in relation to the text submitted to Cancun in all aspects of the agriculture negotiations.

In the upcoming negotiations on modalities, the G-20 will maintain its engagement in the negotiations, its internal coordination and its efforts to interact with other groups with a view to promoting developing countries interests in agricultural negotiations.

Cairns Group

The Cairns Group^{*****} is a coalition of 19 agricultural exporting countries which account for over 25 percent of the world's agricultural exports. During the current WTO Doha Round of negotiations the Group has continued to push for the liberalisation of trade in agricultural exports, a cause that unites the Group across language, cultural and geographic boundaries. Made up of developed and developing countries across five continents, the Group is committed to achieving free and fair trade in agriculture that provides real and sustainable benefits for the developing world.

Members of the Group are: Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Pakistan, Paraguay, Peru, the Philippines, South Africa, Thailand and Uruguay

The Cairns Group's ambition and broad objectives for the agriculture negotiations were set out in its "Vision Statement", which outlines the Cairns Group's objectives in each of the three key reform areas within the framework for agricultural trade. These include deep cuts to all tariffs (including tariff peaks) and removal of tariff escalation, the elimination of all trade-distorting domestic subsidies; the elimination of export subsidies and clear rules to prevent circumvention of export subsidy commitments.

The Vision Statement reaffirmed the Group's support for the principle of S&DT for developing countries (including LDCs and small states remaining an integral part of the next WTO agriculture negotiations. Cairns Group ministers believe that the framework for liberalisation must continue to support the economic development needs, including technical assistance requirements, of developing and small members.

***** Please refer <http://www.cairnsgroup.org/index.html>, for more information

LDCs in the WTO

The WTO recognises those countries as “least-developed countries” that have been given the designation by the United Nations (UN). In its latest triennial review of the list of LDCs in 2003, the Economic and Social Council of the UN used the following three criteria for the identification of the LDCs, as proposed by the Committee for Development Policy (CDP):

- a low-income criterion, based on a three-year average estimate of the gross national income (GNI) per capita (under US\$750 for inclusion, above US\$900 for graduation);
- a human resource weakness criterion, involving a composite Human Assets Index (HAI) based on indicators of: (a) nutrition; (b) health; (c) education; and (d) adult literacy; and
- an economic vulnerability criterion, involving a composite Economic Vulnerability Index (EVI) based on indicators of: (a) the instability of agricultural production; (b) the instability of exports of goods and services; (c) the economic importance of non-traditional activities (share of manufacturing and modern services in GDP); (d) merchandise export concentration; and (e) the handicap of economic smallness (as measured through the population in logarithm); and the percentage of population displaced by natural disasters. (E/2004/33).

To be added to the list, a country must satisfy all three criteria. To qualify for graduation, a country must meet the thresholds for two of the three criteria in two consecutive triennial reviews by the CDP. In addition, since the fundamental meaning of the LDC category, i.e. the recognition of structural handicaps, excludes large economies, the population must not exceed 75 million.

However, there are currently 50 LDCs on the UN list^{††††††††}, of which 32 are WTO members: Angola, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Democratic Republic of the Congo, Djibouti, Gambia, Guinea, Guinea Bissau, Haiti, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Senegal, Sierra Leone, Solomon Islands, Tanzania, Togo, Uganda, Zambia

Participation in world trade

Between 1990 and 2004, LDCs have increased their merchandise exports share from 0.5 percent to 0.7 percent and their merchandise imports share from 0.7 percent to 0.8 percent. But they remain marginal participants in world trade. Their merchandise exports, as a group, grew by 34 percent in 2004 to US\$62bn which can mainly be attributed to oil and commodity-exporting LDCs. The merchandise imports of LDCs continue to exceed exports, rising by more than 17 percent to US\$71bn.

†††††††† <http://www.un.org/special-rep/ohrlls/ldc/list.htm>

The picture is similar in services. Globally, in 2003, trade in commercial services accounted for about one-fifth of total trade. But for LDCs, commercial services trade accounted only for about one-eighth of their total exports, that is, US\$7bn. Imports of LDCs in commercial services increased to US\$17bn. The LDCs' deficit of US\$10bn in commercial services trade continues to be larger than their deficit in merchandise trade.

Participation in the WTO's work

In the past few years, LDCs have become more active in the WTO and its negotiations. Some issues are of vital interest to them, such as cotton which is negotiated in a sub-committee under agriculture. But their participation is hampered by the small size of their delegations and, for some, the lack of a mission in Geneva.

To increase the number of WTO experts in those countries, the WTO Institute for Training and Technical Cooperation has stepped up its activities. They include: national and regional seminars, technical missions, workshops, conferences and symposiums. In 2004, LDCs have been involved in a total of 204 activities, which represented 40 percent of all technical assistance activities. More specifically, in 2004, 13 national activities in LDCs covered one of the four areas referred to in the July Package.

Doha decision on least-developed countries

At the Doha Ministerial Conference in November 2001, members renewed their commitment to help LDCs. Concretely, members committed themselves to "the objective" of duty-free, quota-free market access for products originated from LDCs. They also promised to consider additional measures to improve poorest countries' access to their wealthier markets. And they agreed to make it easier for LDCs to join the WTO.

Suggestive Readings

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