

Training Manual on
**WTO and
Bangladesh
Trade Policy**



Centre for Policy Dialogue (CPD)

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Published in March 2008 by _____

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The views expressed in the book are solely those of the manual development team and do not necessarily reflect the views of the CPD.

ISBN 984 300 001559 6

Cover and graphic design by
Ahsok Karmakar

Typesetting and page lay-out
Shaiful Hassan

Price: Tk 400

Printed at
Enrich Printers
41/5 Purana Paltan, Dhaka 1000

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Foreword

Francis Bacon once referring to King Henry VII said: "Being a king that loved wealth and treasures, he could not endure to have trade sick". Centuries later, the least developed countries (LDCs) in their own pursuit for national development are rediscovering the virtues of *international trade* in the challenging times of globalisation. Admittedly, the venerable academics remain divided on the nature of causal link which exists between international trade, economic growth and

poverty alleviation. Nonetheless, empirical evidence largely suggests that countries like Bangladesh, with shallow domestic market and large labour force, can effectively deploy export expansion as an effective tool for employment and income generation. Indeed, for good or for bad, with the decade of aid-conditionality driven unilateral trade liberalisation behind us, we have seen the trade policy debate move into the issues relating to supply-side constraints of export promotion and international trade rules.

The need for an open, transparent and rule-based multilateral trading system has emerged as one of the decisive safeguards for small, but promising trading nations in the face of arbitrary, unilateral trade-distorting policies and measures of the large economies. When the World Trade Organization (WTO), as the successor of the General Agreement on Tariffs and Trade (GATT) was launched in 1995, Bangladesh and other LDCs joined the new organisation primarily with two things in mind: *first*, fair application of the international trade rules which recognised the need for "special and differential treatment" of its disadvantaged low income members, and *second*, improving the rules and agenda of the organisation so that they can more effectively use the multilateral trading system to promote their trade to accelerate their national development. Today, out of a total of 49 LDCs, 32 are Members of the WTO and another 12 are in the accession process.

Arguably, why in that case would the LDCs with about 13 per cent of global population still together account for less than 0.8 per cent of global trade in manufactures and less than 0.5 percent of global trade in services? Amongst the many reasons underpinning such a depressing economic reality, I would like to highlight the lack of our capacity to make full use of the WTO system to the LDCs' benefit. Here again, our own state of economic underdevelopment militate against our capacity development needs in this area. Regrettably, many of the much hyped (and often very expensive) capacity building initiatives in this respect have delivered little sustained value.

Indigenous efforts, based on national expertise and institutions, have however emerged as one of the most redeeming features of WTO-related capacity development initiatives. I have personally witnessed how over the last decade awareness about the WTO system and its functioning has grown in number of LDCs from passive understanding to problem solving

mode. This positive development has encompassed, in various degrees, the government officials, private entrepreneurs, trade policy experts and civil society activists. Bangladesh remains in the forefront of this process. Strengthened by its evolving national capacity to deal with WTO-related issues, Bangladesh has been making increasing contribution to protecting LDC interests in various global platforms.

The Centre for Policy Dialogue (CPD) had always been one of the most important and effective builder of this WTO-related capacity accumulation process. Indeed, CPD is the institutional pioneer in Bangladesh in having a multifaceted work programme on the WTO since mid-1990s. Over the years, CPD with its research, analysis and policy advising as well as publications, training and outreach has emerged as a successful case of trade related capacity building under national ownership which can justifiably be projected as a role model for other low income countries. Indeed, CPD has a lot of share also in the area of judicious use of foreign assistance and effective use of international networking.

The present volume captioned "Training Manual on WTO and Bangladesh Trade Policy" is yet another contribution from CPD towards strengthening the national expertise in this area. The volume has greatly benefited from the academic excellence, policy advising experience, direct involvement in trade negotiations and close exposure to international trade architecture of the CPD professionals who have prepared this publication. This publication has in fact incrementally evolved through CPD's celebrated "WTO and Trade Policy Appreciation Course" which now can boast more than 300 alumni. The manual has embodied an instructive blend of modern training tools including lecture sessions, assignment works, negotiation simulations and learning assessment.

In conclusion, let me point out that this publication is coming out at a time when the whole world remains in suspended animation regarding the successful conclusion of the Doha "Development" Round. I trust this volume is going to help us appreciate the problems confronting the LDCs in wresting a real developmental outcome from the WTO process. Indeed, beyond the Doha Round we shall have to be more intensively engaged in the WTO process and thus I see an enduring value of this volume from CPD. I am looking forward to see many of its updated editions.

Debapriya Bhattacharya
Ambassador & Permanent Representative of Bangladesh
to the WTO, UN Offices and Other International Organisations
in Geneva and Vienna

Preface

There is no denying about the growing appreciation in developing and least developed countries about the need for increased awareness and more informed policy choices in the context of developments originating from the multilateral trading system. This is pertinent and relevant both for policymakers who have to design and craft appropriate trade policies in view of these developments and undertake measures to address the challenges and take advantage of the emerging opportunities, as also for business and commerce since they need to make the necessary adjustments in view of the changing competitive environment. It is in this context that the need for capacity building in trade related areas becomes so crucial to strengthened global integration of the increasingly globalising economy of Bangladesh.

Since, in recent years the multilateral trading system is being increasingly defined by the negotiations in the World Trade Organization (WTO), importance of monitoring the developments in the WTO for both policymakers and business people cannot be overemphasised. Of particular relevance in this connection are the ongoing negotiations in Geneva in context of the Doha Development Round in the WTO. These negotiations, being carried under five clusters (agriculture, non-agricultural market access, services, rules and aid for trade) have strong implications for Bangladesh, both in terms of its offensive as well as defensive concerns and interests. These have far reaching implications for national policies to be designed and business practices to be followed.

In view of the above and as a consequence, there is a growing felt need in Bangladesh for capacity building in the broad areas of WTO and Bangladesh trade policy. The objectives of such capacity building would be to promote a more indepth understanding about the various negotiating issues in the WTO, assess the implications of those negotiations for the Bangladesh economy and disseminate knowledge with regard to addressing the emerging needs both at policy and at business levels.

To accomplish the above, the importance of well-designed and focused training programmes on WTO and Bangladesh Trade Policy can not be overemphasised. The present *Training Manual* originates from a recent collaborative initiative implemented by the CPD and UNDP, Dhaka. The objective of this collaboration was to provide training to major stakeholder groups with a view to broadening and deepening the understanding about some of the key issues which are being negotiated in the WTO and how in this context Bangladesh trade policy could best address the concerns and interest of the country. In February 2008, CPD, in collaboration with the UNDP, Dhaka organised an intensive two-week training programme which was targeted to an audience of academics and researchers who were expected to deliver lectures and provide training on WTO related issues in their respective capacities and also

develop curriculum in academic and training institutions to which they belonged. The resource-materials developed in the course of implementing this initiative served as background information for developing this *Training Manual*. The plan to develop the lecture notes for the training programme into a comprehensive training manual was informed by a felt-need to bring together the current knowledge on the key aspects of ongoing WTO negotiations and Bangladesh trade policy in this context, so that it could serve as a ready reference for those who would like to impart training in these areas in their capacities as resource persons and facilitators. The *Training Manual* was also expected to serve as resource material for teachers who deliver lectures on WTO and trade related issues in various academic institutions. CPD would like to register its deep satisfaction at the successful completion of this joint endeavour with the UNDP through publication of this *Training Manual* and would like to express our deep appreciation for the support it has received from the UNDP, Dhaka at various stages of preparation of this manual.

The manual was developed by taking advantage of CPD's research work and rich experience in organising training programmes on WTO related issues. In this context, mention may be made about 'Trade Policy Appreciation Workshop on WTO and Bangladesh' which are being organised by the CPD since January 2000, on an annual basis. Organised under the Trade Related Research and Policy Development (TRRPD) programme of the CPD, the targeted audience for these workshops, where both national and international experts served as resource persons, were mid-level government officials, trade and business representatives, advocacy groups, academics and researchers. The objective of this programme was to expose participants coming from various stakeholder groups to negotiations in the WTO on key agreements, and make them aware about concerns and interests of Bangladesh and Bangladesh's possible negotiating stance. The manual has also drawn on background materials prepared for the training workshops for economic journalists in 2006 which was supported by the European Commission and implemented jointly by CPD and MRDI (Management and Resources Development Initiative). Thus, the *Training Manual* takes cognisance of the insights and experiences gathered by the CPD in the course of organising various trade related programmes over the past years. The *Training Manual* has also drawn generously on published sources, CPD's own research outputs and also documents and information posted on various websites.

The manual captures key issues in each of the selected areas which are discussed in a user-friendly manner. Apart from lectures, the manual envisages preparation of assignments on particular topics, negotiation simulation exercises and group discussions, learning assessment exercises and evaluation of the course by participants. The manual has been prepared in such a manner that it can be delivered within the span of one semester.

The themes which are covered in the manual include: An introduction to the WTO and Multilateral Trading System, WTO Agreement on Agriculture (AoA), Non-Agricultural Market Access (NAMA), General Agreement on Trade in Services (GATS), Trade Related Intellectual Property Rights (TRIPS), Standards (SPS, Labour and Other Agreements), Trade Remedies and Dispute Settlement Mechanism, Development Dimensions, Singapore Issues (investment, competition, transparency in public procurement and trade facilitation), Environment and Social Issues, WTO and Regional Trading Arrangements (RTAs), Status of Negotiation under Doha Work Programme, Preferential Trading Arrangements (GSPs) applicable for Bangladesh and trade relationship between Bangladesh and other major trading partners (such as EU,

USA, Japan, India, China), corporate responsibility practices in Bangladesh and WTO interfaces of Bangladesh trade policy. The manual also include sources of trade statistics, WTO negotiation related information, academic reference materials and news and views.

It is hoped that trainers who organise workshops and impart training on WTO and trade related issues in the context of Bangladesh will find this *Training Manual* useful for both designing their programmes and delivering the outputs. It is also hoped that the manual will help teachers to introduce a one-semester course on WTO related issues in academic and training institutions in Bangladesh. The *Training Manual* will serve its purpose if trainers and are able to make good use of the resource materials benefit from it and the manual is able to contribute to trade related capacity building in Bangladesh.

Acknowledgements

The *Training Manual Development Team* would like to express its deep appreciation to all who have extended the support to the team in conducting the training programme and in preparing and publishing the manual. *Dr Debapriya Bhattacharya*, Ambassador and Permanent Representative of Bangladesh to the World Trade Organization (WTO) and United Nations Offices in Geneva and immediate past Executive Director of CPD, has very kindly written the Foreword for this publication. The team would like to specially mention the cooperation received from *Ms Jessica Murray*, Trade Specialist, UNDP, Bangladesh who had been involved with this exercise from the very beginning. *Dr K.A.M. Morshed*, Assistant Country Director, MDGs and e-Development, UNDP, Bangladesh has continued to provide all round support since taking over from Jessica. *Dr Manoj Basnyat*, UNDP Country Director, Bangladesh and *Ms Shaila Khan*, Assistant Country Director provided valuable inputs in the design of the training programme from which this manual has originated. The team would like to express its sincere gratitude to all the guest resource persons, *Mr Subel Ahmed Choudhury*, Former Secretary, Ministry of Commerce and Chairman, Janata Bank and *Dr Mostafa Abid Khan*, Fellow (Research), Bangladesh Foreign Trade Institute (BFTI), who have delivered lectures to the participants at the training programme originated by the CPD during 30 January–12 February 2008.

The team acknowledges the contribution of *Ms Anisatul Fatema Yousuf*, Director, CPD and colleagues at CPD's Dialogue and Communication Division and the Administration Division who provided valuable assistance in organizing the two week training at CPD and in preparing this manual. The team would like to particularly mention the contribution of *Mr Avra Bhattacharjee*, Documentation Officer, CPD who invested a lot of time and energy to get this manual published within a short span of time. The team would also wish to express their appreciation *Mr Ashok Karmaker* for designing the cover of this manual.

March 2008
Dhaka

Mustafizur Rahman
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Acronyms

AB	Appellate Body
ACP	African, Caribbean and Pacific Group of States
ACs	Advanced Countries
ADD	Anti-Dumping Duty
AfT	Aid for Trade
AGOA	Africa Growth and Opportunity Act
AMS	Aggregate Measure of Support
AoA	Agreement on Agriculture
AP-LDC	Asia-Pacific Least Developed Countries
APTA	Asia Pacific Trade Agreement
ATC	Agreement on Textiles and Clothing
BABMA	Bangladesh Accumulator and Battery Manufacturers Association
BFTAs	Bilateral Free Trade Areas
BIFT	BGMEA Institute of Fashion & Technology
BIMSTEC	Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation
BOP	Balance of Payments
BTC	Bangladesh Tariff Commission
CACM	Central American Common Market
CAFTA	Central American Free Trade Area
CBD	Convention on Biological Diversity
CBI	Caribbean Basin Initiative

CCP	Critical Control Point
CEGAT	Custom, Excise and Gold Control Appellate Tribunal
Centad	Centre for Trade and Development
CFC	Common Fund for Commodities
CFIA	Canadian Food Inspection Agency
CIDA	Canadian International Development Agency
CPD	Centre for Policy Dialogue
CRTA	Committee on Regional Trade Agreements
CTD	Committee on Trade and Development
CTPL	Centre for Trade Policy and Law
CVM	Counter-Veiling Measure
DC	Developing Country
DCG	Developing Country Grouping
DDA	Doha Development Agenda
DDR	Doha Development Round
DF-QF	Duty-Free Quota-Free
DGAD	Directorate General of Anti-Dumping Allied Duties
DME	Developed Market Economy
DoF	Department of Fisheries
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
EBA	Everything But Arms
EC	European Commission
ECDPM	European Centre for Development Policy Management
ECOSOC	Economic and Social Council
ENT	Economic Needs Tests
EPZ	Export Processing Zone
ERP	Effective Rate of Protection
EU	European Union
FAO	Food and Agriculture Organization
FDI	Foreign Direct Investment
FMD	Foot and Mouth Disease
FTAA	Free Trade Area of the Americas
FTA	Free Trade Area
GATS	General Agreement on Trade in Services

GATT	General Agreement on Tariffs and Trade
GoB	Government of Bangladesh
GPT	General Preferential Tariff
GSP	Generalized System of Preferences
GSTP	Global System of Trade Preferences
HACCP	Hazard Analysis and Critical Control Point
HOD	Heads of Delegations
HTS	Harmonized Tariff Schedule
IATP	Institute for Agriculture and Trade Policy
IBRD	International Bank for Reconstruction and Development
ICTSD	International Centre for Trade and Sustainable Development
IF	Integrated Framework
IFPRI	International Food Policy Research Institute
IFSC	International Food Steering Committee
IICA	Inter-American Institute for Cooperation on Agriculture
IMF	International Monetary Fund
IP	Intellectual Property
IPIC Treaty	Treaty on Intellectual Property in Respect of Integrated Circuits
IPO	Import Policy Order
IPPC	International Plant Protection Convention
IRBD	Independent Review of Bangladesh's Development
ISO	International Standards Organization
ITC	International Trade Centre
ITO	International Trade Organization
KAFCO	Karnaphuli Fertilizer Company
LDC	Least Developed Country
LDCT	Least Developed Country Tariff
LMT	Local Market Test
LTFR	Less Than Full Reciprocity
MAI	Market Access Initiative
MAS	Market Analysis Section
MDG	Millennium Development Goal
MFA	Multi-fibre Arrangement
MFN	Most Favoured Nation
MTN	Multilateral Trade Negotiation

MTS	Multilateral Trading System
NAFTA	North American Free Trade Agreement
NAMA	Non-Agricultural Market Access
NGMA	Negotiating Group on Market Access
NGR	Negotiating Group on Rules
NITTRD	National Institute of Textile Training, Research and Designing
NTB	Non-Tariff Barrier
ODA	Official Development Assistance
OECD	Organisation for Economic Cooperation and Development
OIE	World Organisation for Animal Health
OTDS	Overall Trade Distorting Subsidy
OTEXA	Office of Textiles and Apparel
PTA	Preferential Trading Arrangement
QR	Quantitative Restriction
RIP	Revised Industrial Policy
RMG	Readymade Garments
RoO	Rules of Origin
RTA	Regional Trading Arrangements
S&D	Special and Differential
SAARC	South Asian Association for Regional Cooperation
SAFTA	South Asia Free Trade Agreement
SAPTA	SAARC Preferential Trading Arrangement
SAWTEE	South Asia Watch on Trade, Economics and Environment
SIDS	Small Island Developing States
SOE	State Owned Enterprises
SPS	Sanitary and Phytosanitary
SPs	Special Products
SSM	Special Safeguard Mechanism
SUNS	South-North Development Monitor
SVE	Small and Vulnerable Economies
TB	Tariff Barrier
TBT	Technical Barriers to Trade
TIFA	Trade and Investment Framework Agreement
TIM	Trade Integration Mechanism
TMNP	Temporary Movement of Natural Persons

TNC	Trade Negotiations Committee
TPRM	Trade Policy Review Mechanism
TPSC	Trade Policy Staff Committee
TPS-OIC	Trade Preferential System - Organisation of the Islamic Conference
TRIMs	Trade-Related Investment Measures
TRIPS	Trade Related Intellectual Property Rights
TRQ	Tariff Rate Quota
TRTA	Trade-Related Technical Assistance
TWN	Third World Network
UN Comtrade	United Nations Commodity Trade Statistics Database
UNCED	United Nations Conference on Environment and Development
UNCTAD	United Nations Conference on Trade and Development
UNECA	United Nations Economic Commission for Africa
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UPOV	International Union for the Protection of New Varieties of Plants
UR	Uruguay Round
VER	Voluntary Export Restraint
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

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A Guide to Manual Users

This Training Manual is intended to serve as a “Text Book” for students registered for a one-semester course on **WTO and Bangladesh Trade Policy** alike in their respective universities and institutions. The manual covers a wide range of issues from the introduction to the WTO and its various agreements as well as current status of the Doha Round Negotiations. Hence, its usage may

not be limited to the university courses only. It can also be used for training of individuals who are interested on trade policy, WTO and their impacts on Bangladesh including those who aspire to be engaged in commercial diplomacy and trade negotiation, and economic journalists who want to communicate trade issues to the masses through print and electronic media.

For such group of special audiences, inclusion of special assignments and project works would be helpful to enhance the effectiveness of the modules presented in this manual.

For a training course to be organised for economic reporters of print and electronic media, assignments may be given which will develop their reporting ability, editorial and feature writing skills, and also enhance their ability to conduct and participate in interviews and host talk shows on trade issues. A project (group assignment) on publication of a special issue in their respective newspapers on *WTO and Bangladesh* may also be given. Trainees from electronic media may be assigned for a project on the same topic which can be aired on the TV for about 10 minutes.

A training course for trade activists may take advantage of acquiring knowledge, giving additional assignments as speech, debate on specific trade topics, mock discussions, preparation of posters and leaflets, and writing open editorials and features on trade topics.

For a group of aspiring trainees who want to be engaged in trade negotiation and commercial diplomacy, assignments may be given on negotiation simulation, preparation of negotiating proposal for submission to different WTO committees, and debate on trade topics.

For the students of under graduate and graduate level who are studying international trade and enrolled for a course on WTO and Bangladesh Trade Policy may be given quiz on a regular basis, and assigned to write essays, reviews, features, take part in debates and negotiation simulation on trade issues.

Training Manual on **WTO and Bangladesh Trade Policy**

Module

1

An _____
Overview _____
of the _____
Course _____

An Overview of the Course

Objectives of the Training Course

- The Centre for Policy Dialogue (CPD) has taken initiative to organise this "training of trainers" programme with the objective of enabling participants to become capable of introducing a course on *WTO and Bangladesh Trade Policy* in their respective institutions.
- The overall objective of the training programme is to enhance the capacity of trainers and

teachers who will have a clear perception as regards trade rules in the context of bilateral and multilateral trade regime, and who will be capable of understanding, interpreting and teaching trade policies to students, persons aspiring to be trade negotiators and trade policy researchers, journalists and others having interest on trade policy and WTO related issues.

- Specific objectives of the training programme are: (i) to create awareness about WTO and trade related issues among the participants; (ii) to enhance participant's knowledge on Bangladesh's trade policy, with respect to current and emerging issues on trade negotiations on different trade topics; and (iii) to disseminate information about sources of trade statistics and other trade related information.
- The *Training Manual on WTO and Bangladesh Trade Policy* is prepared in a manner so that it can be used as Text for one-semester course in the universities. Training institutes may also introduce two-week intensive course on the topic.

1.1 Major Learning Tools

This manual and the training programme will focus on the World Trade Organization (WTO) and Bangladesh's trade policy related issues. Trade issues and status of ongoing negotiations at the WTO under the Doha Development Round (DDR) will be discussed. The Course has three major learning tools: Lectures, Assignments and Negotiation Simulations.

There will be 17 lectures and four sessions on WTO negotiation simulation. At the beginning of this course, a Bench Mark Test will be held which will be helpful to have a preliminary understanding about the level of knowledge of the participants. This will, in turn, help resource persons to deliver the lectures in an effective manner. Lecture Modules on each of the topics are prepared with pre-defined learning objectives so

that participants, after successful completion of the course, attain required skill and knowledge as regards WTO, trade negotiation, and Bangladesh's trade policy. Lectures will be participatory having 50:50 time allocations for presentation and discussion. At the end of each lecture, the resource person will provide a summary of the session and some topics for further discussion. Assignments will cover various issues including analysis, reporting, writing features and editorials, answering specific questions, etc. The participants will have the opportunity to get a feel about the negotiation process at the WTO and a negotiation simulation will be held for this purpose.

1.2 Lecture Sessions

The lectures will cover the basics of the WTO, evolution of the GATT/WTO as an institution, decisions of the major GATT/WTO Rounds, current negotiating agendas, perspectives of the major stakeholder groups, trade related issues and the international trading system. Evolution of Bangladesh's trade policy and preferential trading arrangements applicable for Bangladesh will also be the subject of some sessions. Titles of the different lecture sessions are given below:

1. An Overview of the Course
2. An Introduction to the International Trading System and the WTO
3. Agreement on Agriculture (AoA)
4. Non-Agricultural Market Access (NAMA)
5. General Agreement on Trade in Services (GATS)
6. Dispute Settlement Mechanism in the WTO
7. Trade Related Intellectual Property Rights (TRIPS)
8. WTO and Regional Trading Arrangements (RTAs)
9. Sanitary and Phytosanitary (SPS) Measures in the WTO
10. The Development Dimensions in the WTO
11. Special and Differential (S&D) Treatment in the WTO
12. WTO Negotiating Groups: An Introduction
13. A Guide to WTO Related Information
14. Evolution of Bangladesh's Trade Policy
15. Preferential Trading Arrangements (GSPs) Applicable for Bangladesh
16. Doha Work Programme and Hong Kong Outcome
17. Current Status of the Doha Round Negotiation

1.2.1 Lecture Session 2

An Introduction to the International Trading System and the WTO

This lecture will discuss the importance of trade issues and evolution of the multilateral trading system, principles and rules guiding the GATT/WTO. Another important area of this session will be special provisions stipulated in the WTO in support for the LDCs and mechanisms for dispute settlement in the WTO system.

The General Agreement on Tariffs and Trade (GATT), precursor of the WTO, was established on a provisional basis after the Second World War. Three multilateral institutions dedicated towards international economic cooperation were established during this time, notably the "Bretton Woods" institutions; The International Bank for Reconstruction and Development (IBRD) and The International Monetary Fund (IMF). The IBRD was established to provide support in the form of credit for long-term reconstruction and development; and, the IMF was to provide loans for balance of payments support. The original 23 GATT countries were amongst over 50 countries which agreed to a draft Charter for an International Trade Organization (ITO) - a new specialised agency of the United Nations to deal with trade related issues. However, when the United States government announced, in 1950, that it would not seek Congressional ratification of the Havana Charter, the ITO's future was sealed for all practical purpose. Notwithstanding, countries agreed that they would negotiate tariff liberalisation under a general agreement in the area of tariff and trade, and that they would start negotiating in the area of tariffs on and trade in industrial goods.

With a view to reducing tariffs, negotiations were opened among the 23 founding GATT "contracting parties" in 1946. Despite its provisional nature, the GATT remained the only multilateral instrument governing international trade from 1948 until the establishment of the WTO in 1995. Prior to the establishment of the WTO, eight GATT Rounds were held. The last GATT round was the Uruguay Round (UR) which was the most comprehensive of all the GATT Rounds. Whilst other Rounds dealt with only trade in industrial goods, the GATT UR for the first time, discussed issues related to trade in the Agriculture and the Services sector. The WTO was established on the basis of consensus reached at the end of the GATT-UR in 1993 and started to function in January 1995. In 1995, number of WTO members was 121, which at present stands at 151. The latest member in the WTO is Tonga, acceded in July 2007.

The objective of WTO is to move towards a global trade regime by way of gradual liberalisation of trade in commodities, services and factors of production. This is to be realised through dismantling of various non-tariff barriers (NTBs) like quantitative restrictions (QRs), anti-dumping duty (ADD), and tariffication of NTBs and gradual reduction of tariff barriers (TBs). The aim is to gradually move to an international commercial transaction that is based on competitive strength and transparency, but does not also ignore the rationale of non-reciprocity and special and differential treatment of the relatively less developed countries.

The WTO is a rule based organisation. Basic principles of the WTO are: (1) non-discrimination, (2) trade liberalisation, (3) specific disciplines, (4) general exceptions, (5) special and differential treatment for developing countries, and (6) transparency. The WTO performs six major functions: (i) administering the WTO trade agreements; (ii) forum for trade negotiations; (iii) handling trade disputes; (iv)

monitoring national trade policies; (v) technical assistance and training for developing countries; and (vi) cooperation with other international organisations.

The WTO is run by its member governments where all major decisions are taken by the membership as a whole, either by Ministers (who meet at least once every two years) or by their Ambassadors or delegates (who meet regularly in Geneva). Decisions are normally taken by consensus and they are made at three levels: (i) Ministerial Conference (held every two years, is the highest decision making body in the WTO); (ii) General Council (held in Geneva where Ambassadors and delegates meet on a regular basis); and (iii) Agreement-Specific Committees. The WTO continues the GATT practice of taking decisions by consensus but if a decision cannot be reached by consensus, it is to be reached through majority vote (unless otherwise provided in the particular agreement under reference). In the Ministerial Conference and the General Council each member has one vote. As of December 2007, six Ministerial meetings of the WTO were held. The first Ministerial Conference was held in Singapore on 9-13 December 1996; Second Ministerial in Geneva on 18-20 May 1998; Third Ministerial in Seattle on 30 November to 3 December 1999; Fourth Ministerial in Doha on 9-13 November 2001; Fifth Ministerial in Cancun on 10-14 September 2003; and the Sixth Ministerial of the WTO was held on 13-18 December 2005 in Hong Kong, China.

1.2.2 Lecture Session 3

Agreement on Agriculture (AoA)

This session is designed to provide a clear understanding about (i) background of the Agreement on Agriculture; (ii) importance of Agreement on Agriculture (AoA), especially for Bangladesh; (iii) development of negotiations since Doha Ministerial; and (iv) current status of negotiations on agriculture at the WTO. This lecture will also focus on issues of interests and concerns for Bangladesh as regards the current negotiating proposals. The session will also discuss potential negotiating strategies for safeguarding Bangladesh's interest in the ongoing negotiations on agriculture in the WTO.

Agriculture is the largest contributing sector of the Bangladesh economy accounting about 25% of the total GDP. It is also the largest employing sector with 63% of the labour force employed in agriculture, forestry and fisheries. Negotiations on agriculture trade had earlier been excluded from GATT on the ground of food security and socio-political stability, which makes it different from other sectors of the economy. By the time the Uruguay Round of negotiations began, many countries had started voicing the need to liberalise agriculture, particularly for opening this highly protected sector in the developed countries to more efficient producers from developing countries. Subsequently, agriculture was brought under the purview of GATT in 1994 with a view to minimise distortions in global trade in agricultural and food products. The Uruguay Round Agreement set up a framework of rules to

reduce protection and trade distorting support to agriculture. The objective is to reform trade in the sector and to make policies more market-oriented, which is expected to improve predictability and security for importing and exporting countries. The commitments under the Agreement on Agriculture (AoA) in GATT Uruguay Round may be broadly categorised into three groups: a) market access, b) domestic support, and c) export competition. These are considered as three pillars of the AoA.

According to the Market Access commitments, all the WTO member-countries are required to (i) replace all types of non-tariff barriers (NTBs) with tariff barriers; and (ii) reduce the level of tariffs under a time-bound programme. On the other hand, any domestic support is categorised under WTO rules as falling in one of the three boxes, viz., Amber, Green or Blue. The Amber Box contains policies that have a substantial impact on domestic production such as input subsidies and price support, while those that have little or no impact on production such as marketing assistance or are more in the nature of public goods such as research, fall in the Green Box. In other words, Amber Box contains all trade distorting supports and Green Box contains all non-trade distorting supports. Supports provided under Green Box are exempt from calculation of the Aggregate Measure of Support (AMS). The Blue Box contains direct compensatory payment policies to producers due to production-limiting programmes are also exempt from AMS calculation. The Agriculture Agreement prohibits export subsidies on agricultural products, unless the subsidies are specified in a member's list of commitments. And when such subsidies are listed, the agreement requires the WTO members to cut both the amount of money they spend on export subsidies and the quantities of exports that receive subsidies.

In sum, the AoA calls for "tariffication" of all physical controls on agricultural trade, and reductions in tariffs, domestic support and export subsidies in a time-bound program.

1.2.3 Lecture Session 4

Non-Agricultural Market Access (NAMA)

This session will expose the participants to the issue of trade in non-agricultural products under the WTO. Besides explaining the background and nature of Non-Agricultural Market Access (NAMA), a brief discussion on the state of WTO negotiations on NAMA will be included, with particular emphasis on the implications of NAMA on least developed countries (LDCs) like Bangladesh. It is hoped that this session will enable the participants to understand the key issues regarding NAMA and to apply the accumulated knowledge in their respective professional arena.

NAMA refers to industrial or manufactured products which are not covered under the Agreement on Agriculture (AoA). In other words, it includes machinery and transport equipment, fuels and mining products, office and telecom equipment,

chemicals, automotive products, other manufactures and semi-manufactures, iron and steel, clothing, textiles, fish and fish products, and forestry products.

NAMA products account for more than 90% of the world merchandise exports and hence negotiations on NAMA are of great interest and importance for all trading nations. Needless to say, it is also a very important issue for Bangladesh because non-agricultural products, especially readymade garments (RMG), consists a large part of our total exports. Thus, any change in industrial tariffs will have important impact on Bangladesh's export competitive capacity for two major reasons: (a) more favourable market access in countries where Bangladeshi exports face MFN tariffs; and (b) erosion of preferences in countries where Bangladeshi exports enjoy GSP facility. The current negotiations on NAMA aim at: (i) reducing tariffs, including reduction or elimination of tariff peaks, high tariffs and tariff escalation; (ii) eliminating (or accelerated reduction of) tariffs in particular sectors; (iii) reducing non-tariff barriers; and (iv) provision of special and differential treatment and less than full reciprocity in reduction commitments by the developing countries and LDCs.

1.2.4 Lecture Session 5

General Agreement on Trade in Services (GATS)

The underlying objective of this particular session is to expose the participants to the issue of trade in services, which are broadly covered by the General Agreement on Trade in Services (GATS) under the WTO. Besides explaining the background and nature of GATS, a brief discussion on the state of WTO negotiations will be included with particular emphasis on the implications of GATS on the least developed countries (LDCs) like Bangladesh. It is hoped that this session will enable the participants to understand the main issues relating to GATS and to apply the accumulated knowledge in their professional fields.

The GATS was developed in response to the huge growth of the services economy over the last 30 years and the greater potential for trading services brought about by the communications revolution. It entered into force in January 1995 as a result of the Uruguay Round negotiations extending the multilateral trading system to services.

Objectives of the GATS are: (i) expansion in services trade; (ii) progressive liberalisation through successive rounds of negotiations; (iii) transparency of rules and regulations; (iv) increasing participation of developing countries.

The GATS deal with four Modes of Supply of Services. Mode 1: Cross-border supply (e.g. international telephone); Mode 2: Consumption abroad (e.g. international tourism); Mode 3: Commercial presence (e.g. establishment of foreign bank); Mode 4: Movement of natural persons (e.g. doctor working abroad).

The GATS has a wide sectoral coverage which include business services,

communication, construction, distribution, education, environmental services, health-related services, financial services, tourism, recreation, culture & sport, transport and other services.

1.2.5 Lecture Session 6

Dispute Settlement Mechanism in the WTO

This session will deal with the issue of dispute settlement system under international trade agreements. It will especially focus on the nature and trends of the cases filed, identifying the complainants and respondents of these cases etc. This lecture will describe the case of India's anti-dumping duties on lead acid battery import from Bangladesh to appreciate the complexities and challenges for LDCs.

Causes of dispute may be arbitrary exercise of power and dominance by a handful of developed countries. Dispute may also arise due to dissatisfaction over the existing rules and procedures governing inter-state economic relations. A regulatory framework for international trade is the sum of actions taken by the members of the international community, with a view to facilitating trade among nations by resolving conflicts and misunderstandings that may jeopardise their economic relations.

1.2.6 Lecture Session 7

Trade Related Intellectual Property Rights (TRIPS)

This session will provide a clear idea about the Trade Related Intellectual Property Rights (TRIPS) of the WTO. Basic Concepts and Principles of IPR and categories of IP protection will be discussed. An indepth discussion about the TRIPS Agreement including the issue of enforcement, transition period and dispute settlement will be made. Finally, the session will discuss Doha Round negotiation on IPR issues and put forward Bangladesh's interests and concerns in TRIPS.

Intellectual property rights are the rights given to individuals over the creations of their minds, at certain conditions. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time. The purpose is to extract economic value through use of licensing.

The WTO's Agreement on Trade Related Intellectual Property Rights (TRIPS), negotiated in the 1986 to 1994 under the Uruguay Round, introduced intellectual property rules into the multilateral trading system for the first time.

The TRIPS Agreement, which came into effect on 1 January 1995, is to date the most comprehensive multilateral agreement on intellectual property. The areas of intellectual property that it covers are: copyright and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organisations); trademarks including service marks; geographical indications including appellations of

origin; industrial designs; patents including the protection of new varieties of plants; the layout-designs of integrated circuits; and, undisclosed information including trade secrets and test data.

1.2.7 Lecture Session 8

WTO and Regional Trade Agreements (RTAs)

Regional trade agreements have become a prominent feature of the multilateral trading system (MTS) in recent years. The aim of this particular lecture is to provide an overall idea about how Regional Trade Agreements (RTAs) is being dealt in the WTO. The session will also focus on the evolution of RTAs in the multilateral trading system. It is expected that participants, after the session, would be able to track the ongoing negotiations on RTAs, along with the issues and concerns relating to RTAs.

RTAs continue to proliferate, as progress on the Doha Round has slowed. Some 380 Regional Trade Agreements (RTAs) have been notified to the WTO/GATT upto July 2007 and 400 RTAs are scheduled to be implemented by 2010.

The WTO mandates that each member accord Most Favored Nation (MFN) status to all other WTO members. However, it allows an exception for regional trade initiatives that extend different terms of trade to participating countries, stipulating that an RTA must comply with two main requirements outlined in the GATT Article XXIV. First, the agreement must lower trade barriers within the regional groups and second, the agreement cannot raise trade barriers for non-participating members.

1.2.8 Lecture Session 9

Sanitary and Phytosanitary (SPS) Measures in the WTO

This session is designed to provide a clear idea about the Sanitary and Phytosanitary (SPS) Measures in the WTO. It will discuss various types of standards imposed by different countries under the WTO mechanism, and the implications of these standards for Bangladeshi exports. Alongside, key SPS related issues and concerns of Bangladesh will also be discussed.

There are two specific WTO agreements dealing with food safety, animal and plant health and safety, and product standards; the Agreement on Technical Barriers to Trade (TBT), and the Agreement on SPS Measures. Together, these two agreements cover issues relating to standards in the WTO.

Article 20 of the GATT allows governments to act on trade in order to protect human, animal, and plant life and health. But, government regulations or industry standards for goods can impact trade in at least three ways. Firstly, they can facilitate exchange by clearly defining product characteristics and improving compatibility and usability. Secondly, they also advance domestic social goals like public health, by establishing minimum standards or prescribing safety requirements. Finally, they can hide protectionist policies.

The stringent SPS restrictions being imposed by food importing nations under WTO is a real threat to export of Bangladeshi products. Bangladesh has already suffered the impacts of SPS related trade ban in 1997, when the EU banned the import of shrimps because SPS requirements were not adequately fulfilled. The estimated cost of the EU ban in Bangladesh was about US\$ 65.1 million, although some of the shrimp processing plants did succeed in reducing losses by diverting a large part of their intended shipment to the USA and Japan. Nevertheless, the estimated net loss was equivalent to about US\$ 14.7 million (Cato and Santos, 2000). These were evidently short-term losses. The medium to long-term losses due to loss of the sector's momentum, market diversions and erosion in price offered to exporters were much higher. In response to this debacle, the government of Bangladesh and the shrimp entrepreneurs made substantial investment to ensure Hazard Analysis and Critical Control Point (HACCP) compliance. However, recent studies in Bangladesh show that HACCP compliance by the shrimp processing firms had some unfavourable impacts especially on small firms, poor transporters and women workers (Khatun, 2006). This means that Bangladesh has to introduce appropriate SPS measures for meeting the international standards of products, and also to enter and stay in the international market.

1.2.9 Lecture Session 10

The Development Dimensions in the WTO

This lecture will provide a clear idea about the Development Dimension of the Doha Development Agenda (DDA). This session is designed in a manner so that the participants can get a clear understanding about (i) the developmental issues in the Doha round and (ii) an analysis of the Hong Kong Ministerial outcome from the perspective of developmental issues. This session will also focus on the current state of negotiation and importance of Aid for Trade, and special concerns of LDCs and implementation issues.

"Global challenges must be managed in a way that distributes the costs and burdens fairly in accordance with basic principles of equity and social justice. Those who suffer or who benefit least deserve help from those who benefit most." Principle of Solidarity of the United Nations Millennium Declaration, 2000, with these words, provide a clear idea about the development dimension of the DDA.

In the early two years after Doha, the general feeling was that the development dimension of the DDA was focused mainly around the implementation issues, S&DT work programme, technical assistance and capacity building, work programme on Small Economies; and working groups on Technology Transfer and on Trade, Debt and Finance. But, more recently, development is taken as a much broader cross-cutting issue, reflected in the results of all the areas that are being negotiated, including: agriculture, non-agricultural market access (NAMA) and services. The focus is clearly on improved and real market access, along with a certain degree of flexibility for pursuing appropriate domestic policies.

1.2.10 Lecture Session 11

Special and Differential Treatment (S&DT) in the WTO

This session will provide a basic idea about the notion of special and differential treatment (S&DT) in multilateral trading system. Participants will learn about the issue of S&DT treatment, its evolution, rationale, scope and coverage within the WTO. It will also discuss about the current debates on the structure and design and subsequent enforcement of S&DT in the WTO.

S&DT has been an integral part of the multilateral trade rules right from the Havana Charter and re-emphasised its importance in the Doha Development Round (DDR) of the multilateral trading negotiations. The S&DT provisions in the multilateral trading system emerged as recognition of the specific problems that developing countries (DCs) and least developed countries (LDCs) were facing, and continues to face till now, in their effort to integrate with global markets for goods, services, capital and labour.

The WTO Member countries generally tend to agree that most of the LDCs have not been able to benefit fully and equitably from a liberalising global trade environment because of their weak institutions, inadequate infrastructure, weak bargaining capacity, scarce human resources and formidable supply-side constraints. Consequently, LDCs and DCs have been given some flexibility in fulfilling the obligations under the WTO. Furthermore, on the part of developed countries, the offer of S&DT was also informed by the fact that if DCs and LDCs fail to integrate with the global trading system from a position of strength, it will limit the overall benefits in terms of global welfare that could potentially originate from the ongoing process of liberalisation and globalisation. The S&DT provisions in the various WTO Agreements were designed to address these concerns. But, regrettably, most of the S&DT provisions are non-binding and in the form of 'best endeavour clauses', i.e. apparently mandatory, yet de-facto non-binding, and only a few provisions are mandatory and binding.

The Doha Declaration obligates the WTO Members to make S&DT provisions 'precise, effective and operational'. The following kinds of S&DT provisions can be found in the UR Agreements: (i) provisions aimed at increasing trade opportunities (12 proposals); (ii) provisions which call upon WTO Members to safeguard the interest of DCs (49); (iii) provisions offering flexibility of commitments (30); (iv) transitional time periods (18); (v) provisions related to technical assistance (14); and (vi) provisions in favour of the LDCs (22).

LDCs have not been active in formulating and presenting appropriate S&DT proposals to be considered in the negotiation committee. However, most of the proposals suffer from the lack of clarity in language. In this regard, countries should consider redrafting the proposals to reflect their needs with the help of experts as well as the WTO Secretariat.

1.2.11 Lecture Session 12

WTO Negotiating Groups: An Introduction

Trade negotiations are an integral part of the WTO. Everything implemented in the WTO needs to be carried out through negotiations. Negotiations at the WTO take place either in the Trade Negotiations Committee (TNC) and its various sub-committees or regular WTO Councils in Geneva. This session will provide a general understanding of the WTO Negotiation Groups. It will discuss the rationale and importance of negotiations and emergence of negotiation groups. At the end of the session, participants will understand the issue of plurilateral negotiations and the importance of group based negotiations in order to carry forward the issues of interest of the developing countries and the LDCs and will have a clear idea about different groups: G20, G10, G33, Cairns Group, G14 plus 1, etc.

1.2.12 Lecture Session 13

A Guide to WTO Related Information

Sources of information and data, resource persons, news, views and events are very important for performing effectively one's professional responsibilities. This session will focus on the following issues: Sources of Trade Statistics, WTO Negotiations related documents, Reference Materials, News and Views of related topics and Tips for successful "source searching".

Major sources of Trade Data are TradeMap, UN Commodity Trade Statistics Database (UN Comtrade), Office of Textiles and Apparel (OTEXA), EUROPA (online database and information on EU Trade), Annual Reports of different organisations dealing with trade, and Food and Agricultural Organisation (FAO).

WTO negotiation related news, views and documents are available from the websites of the WTO, Third World Network (TWN), International Centre for Trade and Sustainable Development (ICTSD), Centre for Policy Dialogue (CPD), EU-LDC Network, European Centre for Development Policy Management (ECDPM), South Asia Watch on Trade, Economics and Environment (SWATEE), Centad, etc.

1.2.13 Lecture Session 14

Evolution of Bangladesh's Trade Policy

This session will discuss different phases of trade liberalisation in Bangladesh and their characteristics. Bangladesh's current Trade Policy (Import Policy 2006-09 and Export Policy 2006-09), and arguments in support of trade policy reform in developing countries will be discussed.

There are four basic arguments in favour of market-oriented policy reform: a) economic liberalisation reduces static inefficiencies arising from resource misallocation and waste; b) economic liberalisation enhances learning, technological change, and economic growth; c) outward-oriented economies are better able to cope

with adverse external shocks; and d) market-based economic systems are less prone to rent-seeking activities.

The major objective of Bangladesh's trade policies is to achieve adequate export growth coupled with employment generation, which is expected to have a direct effect on poverty alleviation. Bangladesh's trade policy has evolved from an inward oriented economy towards open, export-oriented and liberalised economy. Since independence in 1971, four major phases of evolution in trade policies may be identified in Bangladesh: first phase (1972-78); second phase (1979-1990); third phase (1991-1999); and, fourth or the current phase (the 2000s). In the first phase, Bangladesh was following an import substituting industrial policy. Second phase was the beginning of the shift towards export-oriented industrial policies. New Industrial Policy (NIP) and a Revised Industrial Policy (RIP) were introduced in this phase. In the third phase, economic reforms gained momentum and successive governments pursued export-led growth strategy. Fourth phase or the current phase (the 2000s) has focused on trade and investment.

1.2.14 Lecture Session 15

Preferential Trading Arrangements (GSPs) Applicable for Bangladesh

Main objective of this session is to expose the participants to the issue of Preferential Market Access or GSP facilities provided by developed and some transitional countries, outside the WTO mechanism. The session will explain the background and nature of the current GSP facilities applicable for Bangladesh. It will discuss implication of these arrangements on the trade from Bangladesh and other LDCs. This session will also discuss the effective utilisation of GSP by Bangladesh and also the requisite measures to be undertaken for greater utilisation of these market access preferences.

Generalised System of Preferences (GSP) is a preferential treatment by way of a reduced or duty-free tariff rate granted by developed countries, known as preference, to eligible products imported from the developing countries. This preferential treatment is granted without any reciprocal obligation on the part of the developing countries. Currently GSP is provided by the EU, the US, Australia, Canada, Japan, New Zealand, Norway, Switzerland, Belarus, Bulgaria, Czech Republic, Hungary, Poland, Russian Federation and Slovakia.

The main purposes of the tariff concession scheme under GSP are: (i) to increase the export earnings of the preference receiving countries; (ii) to promote their industrialisation; and (iii) to accelerate their role in economic growth.

1.2.15 Lecture Session 16

Doha Work Programme and Hong Kong Outcome

The session will provide an overview of the outcome of the Hong Kong Ministerial Conference from Bangladesh's perspective. Participants will learn about future strategies required by Bangladesh for successful completion of the Doha Round.

Hong Kong Ministerial Conference was the sixth conference of the WTO. It was to develop a work programme to implement the agendas undertaken in the initial Doha Development Agenda. There were five cluster of negotiating issues in the Hong Kong Ministerial: agriculture, non-agricultural market access (NAMA), services (GATS), "Development" Provisions, Rules and Trade Facilitation.

The Ministerial Declaration does not adequately project the pro-development promises of the Doha "Development" Agenda. The bracketed texts of the latest Geneva draft (with brackets and options) were "cleaned" largely in favour of the developed countries. Bangladesh's ambitions from the Ministerial remain largely frustrated as it did not get meaningful market access, with limited progress in other areas, including Mode-4 in services. Bangladesh needs to reinvigorate its negotiating capacities during the last lap of the Doha Round. The country definitely needs to revisit its trade promotion and industrialisation strategies in light of the Hong Kong Ministerial outcomes.

1.2.16 Lecture Session 17

Current Status of Doha Round Negotiation

This session will focus on the current status of the Doha Round Negotiation. It identifies Bangladesh's interests and concerns in different negotiating areas such as agriculture, NAMA, rules, services, aid for trade etc. To safeguard Bangladesh's interest in the negotiations under the Doha Development Round, the module puts forward options and strategies to be pursued by Bangladesh in the context of the ongoing negotiations.

1.3 Assignments

Five assignments will be given, to be completed in Group. These will cover various issues including oral presentation, analysis, feature writing and answering specific questions.

The theme of the five assignments are: *Assignment theme 1*- Multilateral trading system, GATT, and basic principles and functions of the WTO. *Assignment theme 2*- Agriculture, NAMA, GATS, and Standards. *Assignment theme 3*- TRIPS, Trade Remedies and Dispute Settlement, and S&D Treatment. *Assignment theme 4*- Doha Work Programme, Hong Kong Ministerial, GSPs, Development Dimensions in WTO. *Assignment theme 5*- The current state of Doha Round Negotiation and implications for Bangladesh's negotiating strategy.

1.4 Negotiation Simulation

The Sessions on Negotiation Simulation is aimed at providing the opportunity to get a feel about the negotiation process in the WTO. A mock negotiation will be held for this purpose. Topics for negotiation will be: Special and Differential Treatment provision and Duty-Free and Quota-Free (DF-QF) Market Access for LDCs. Participants in the

training programme may be grouped as Developed, Developing and LDC members, in order to provide them with a real life negotiating experience in the WTO. This mock negotiation needs to be facilitated by resource persons.

1.5 Evaluation of the Course

In order to know the relevance and effectiveness of the course, and scope for further improvements, an Evaluation of the Course will be done by the participants using a pre-designed Evaluation Sheet. Evaluation of the course will include – overall design of the training course, duration and contents, facilities, results on participant's knowledge, relevance, general questions/comments and assessments, and quality of the lecture sessions.

1.6 Learning Assessment of Participants

Participants will be assessed on the basis of: (i) a Benchmark Test which will be conducted at the beginning of the course to assess the initial knowledge of the participants; (ii) performance in Assignments, and negotiation simulations; and (iii) a Final Test will be held at the end of the course.

Documents/Sources Used in Preparation of this Module

- Cato, J.C. and Lima dos Santos, C.A. 2000. "Costs to Upgrade the Bangladesh Frozen Shrimp Processing Sector to Adequate Technical and Safety Standards and to Maintain a HACCP Programme", pp. 385-402, in Unnevehr, L (ed.) *The Economics of HACCP: New Studies of Costs and Benefits*. St. Paul. Minn. USA: Eagan Press.
- Deb, U.K. 2005. "Cancun Sammelon-Uttar Krishi Chuktir Alochona: Bangladesher Sharthoshongslishto Issueshomuho ebong Koushol Bhabna" (in Bangla). Chapter 4, pp. 55-84, in *Biswa Banijya Sangstha ebong Bangladesh: Cancun Sammelon-Uttar Muhyayan* (in Bangla). Dhaka: Centre for Policy Dialogue (CPD).
- Khatun, F. 2006. *Fish Trade Liberalisation in Bangladesh: Implications of SPS Measures and Eco-labeling for the Export-Oriented Shrimp Sector*. CPD Research Monograph 1. Dhaka: Centre for Policy Dialogue (CPD).
- Raihan, A. and Mahmood, M. 2004. *Trade Negotiations on Temporary Movement of Natural Persons: A Strategy Paper for Bangladesh*. CPD Occasional Paper 36. Dhaka: Centre for Policy Dialogue (CPD).

Training Manual on **WTO and Bangladesh Trade Policy**

Module

2

**An Introduction
to the
International
Trading System
and the WTO**

An Introduction to the International Trading System and the WTO

Learning Objectives

- This module will enable to provide a clear idea about the importance of international trading system with reference to the evolution and structure of the World Trade Organization (WTO).
- It will facilitate learners to have a sound understanding about the importance of trade issues and evolution of the multilateral trading system.
- Learners will also be able to learn about the principles and rules guiding the GATT/WTO along with special provisions and mechanisms for dispute settlement.

2.1 Importance of Trade Issues for Bangladesh

Bangladesh and most of the other South Asian countries opened up their economies under various trade and economic reforms, particularly in the 1990s, which is still continuing. Consequently, most of these economies, including Bangladesh, are becoming increasingly dependent on trade, as opposed to aid, which reemphasises the importance of trading issues for Bangladesh. As is seen from Table 2.1, Bangladesh economy's degree of openness has gone up sharply over the recent years - about two-fifths of its economy is now related to the global economy through export and import of goods and services. The challenge for Bangladesh, in such a context, lies on how aid can be made to work for promotion of its trade related capacity and also, simultaneously how to build the supply-side capacities for export and to design effective rates of protection for the domestic industries. Making trade work for poverty alleviation and achieving the Millennium Development Goals (MDGs) are major concerns of Bangladesh in this context.

Bangladesh is one of the 121 founding members of the WTO. A good understanding about the work of the multilateral trading system by all relevant stakeholders is essential to ensure Bangladesh's strengthened global integration. This is also pertinent from the perspective of taking advantage of the opportunities emanating from the global trading system.

Indeed, trade issues are also important for Bangladesh because of her membership in

**Table 2.1 Bangladesh's Degree of Openness and Extent of Globalisation
(A Transition from Aid to Trade)**

(in mln USD)

Items	FY1981	FY1991	FY2001	FY2005	FY2006	FY2007
1. Export (X)	724.90	1718.00	6467.30	8654.50	10514.01	12177.86
2. Import (M)	1954.10	3472.00	9335.00	13146.70	14746.40	17156.70
3. Remittance (R)	379.00	764.00	1882.10	3848.30	4806.31	5979.32
4. ODA Disbursed	1146.00	1733.00	1369.00	1259.00	1241.21	1624.60
5. FDI (net)	n/a	23.50	550.00	776.00	675.00	760.00
Total (1-5)	4204.00	7710.50	19603.40	27684.50	31982.93	37698.48
GDP (Current Price)	19811.60	30974.80	47825.80	60022.00	60370.00	67713.98
Items	FY1981	FY1991	FY2001	FY2005	FY2006	FY2007
Degree of Openness (Export + Import as % of GDP)	13.50	16.80	33.00	36.30	41.84	43.32
Extent of Globalisation	21.20	24.90	41.00	46.10	52.98	55.67
X as % of M	37.10	49.50	69.30	65.80	71.29	70.98
(X+R) as % of M	56.50	71.50	89.40	95.10	103.89	105.83
ODA as % of GDP	5.80	5.60	2.90	2.10	2.53	2.40
ODA As % of Export	158.10	100.90	21.20	14.50	11.80	13.34

Source: CPD-IRBD Database.

the various regional fora in South Asia that focus on preferential market access to goods from neighbouring countries. In recent years, most of the South Asian countries have taken various steps to reduce their tariffs, dismantled non-tariff

Table 2.2 Degree of Openness of South Asian Economies (in 2005)

Indicator	Bangladesh	Bhutan	India	Maldives	Nepal	Pakistan	Sri Lanka
GDP in US\$ billions	60	0.8	805.7	0.8	7.4	110.7	23.5
GDP per capita (US\$)	423	1325	736	2326	272	711	1196
GDP per capita (PPP\$)	2053	—	3452	5261	1550	2370	4595
HDI value	0.547	0.579	0.619	0.741	0.534	0.551	0.743
HDI rank	140	133	128	100	142	136	99
Population below national poverty line (%) 1990-2002	49.8	—	28.6	—	30.9	32.6	25
Share on income: richest 20% to poorest 20%	4.9	—	5.6	—	9.1	4.3	6.9
ODA received (US\$ millions)	1320.5	90	1724.1	66.8	427.9	1666.5	1189.3
Exports and Imports of goods & services (as % of GDP)	40	82	45	172	49	35	80
Exports of goods & services as % of ODA	772.43	240.00	9813.64	742.51	276.70	996.40	671.82

Source: UNDP-Human Development Report 2008.

Note: Data refer to 2005

barriers and facilities with regard to export and import of goods and services. The degree of openness of these economies has also been on the rise at the same period, as shown in Table 2.2. As a result, this has created closer trade and economic cooperation among the regional countries through preferential trading arrangements (PTAs), free trade areas (FTAs) and bilateral free trade areas (BFTAs). In such a scenario, the need for establishing closer cooperation in trade and investment involving both goods and services and study of trade issues is becoming increasingly important for the development of Bangladesh economy. In fact, for Bangladesh this applies not only within the region; making the global trading system work for the development of its economy remains as a burning concern.

2.2 Importance of International Trade and Multilateral Trading System

The economic case for an open trading system based on multilaterally agreed rules is very strong and rests largely on commercial common sense. But it is also supported by evidence, as experienced with the growth of world trade and economic development since the Second World War. During the first 25 years after the war, world economic growth averaged about 5% per year, a high rate that was partly ensured as the result of lowering of trade barriers. World trade grew even faster, averaging about 8% during the corresponding period. According to the World Trade Report 2007, world trade has recorded a twenty seven fold growth since 1950 which is three times higher than world output growth.

The link between free trade and economic growth is quite strong and economic theory points to many reasons for such links. Countries that have chosen to make trade an instrument of economic growth have, indeed, grown more strongly and become wealthier than those who have chosen a reliance on domestic markets behind protective walls. All countries, including the poorest, have assets - human, industrial, natural, and financial - which they can employ to produce goods and services for their domestic markets and/or to compete overseas with other suppliers. Economic theories assert that countries can benefit when these goods and services are traded based on comparative advantages. Simply put, the principle of "comparative advantage" says that countries prosper first by taking advantage of their assets in order to concentrate on what they can produce best, and then by trading these products for products that other countries produce best. In other words, liberal trade policies - policies that allow flow of goods and services with increasingly lowered restrictions - deepen competition, encourage enhancement of trade across borders and increase welfare. Trade promotes growth, and growth reduces poverty. Increased movements of capital and people have had a significant role in the process, as have technology.

However, welfare enhancing capacity of trade is not automatic and depends on many factors. The relevant policies need to be appropriately crafted in order to ensure that trade is both growth-inducing and equity-friendly. For this reason, the study of multilateral and regional trading systems, particularly from the perspective of developing and least developed countries is so important. And for this reason, making

trade work for poverty alleviation is not just a slogan, but an issue of enormous policy significance for these countries.

A strong case for favouring freeing of the global trade has been made in the preamble of the Marrakesh Agreement that established the WTO. The objective is to move towards a global trade regime by way of gradual liberalisation of trade in commodities, services, and factors of production, to be done through dismantling of various non-tariff barriers (NTBs) like quantitative restrictions (QRs), anti-dumping duty (ADD), tariffication of NTBs and gradual reduction of tariff barriers (TBs). The objective of the WTO is to gradually move to an international commercial transaction that is based on competitive strength and transparency, but which does not also ignore the rationale of non-reciprocity and special and differential treatment of the relatively less developed countries.

2.3 Evolution of the Multilateral Trading System: From GATT to WTO

The General Agreement on Tariffs and Trade (GATT), precursor of the WTO, was established on a provisional basis after the Second World War. Two multilateral institutions, also called 'Bretton Wood' institutions, dedicated to international economic cooperation were also established at this time: The International Bank for Reconstruction and Development (IBRD) and The International Monetary Fund (IMF). The IBRD, popularly known as 'World Bank', was established to provide support in the form of credit for long-term reconstruction and development and the IMF to provide loans for balance of payments support. The original 23 GATT countries were amongst over 50 countries which agreed to a draft Charter for an International Trade Organization (ITO) - a new specialised agency of the United Nations to deal with trade related issues. However, when the United States government announced, in 1950, that it would not seek Congressional ratification of the Havana Charter, the ITO's future was sealed for all practical purpose. Nevertheless, countries agreed that they would negotiate tariff liberalisation under a general agreement in the area of tariff and trade and that they would start negotiating in the area of tariffs on and trade in industrial goods.

Many industrialised countries were interested to correct the large overhang of protectionist measures which remained in place from the early 1930s and continued till the end of WWII. In this backdrop and with a view to reducing tariffs, tariff negotiations were opened among the 23 founding GATT "contracting parties" in 1946. This first round of negotiations resulted in 45 thousand tariff concessions affecting US\$10 billion - or about one-fifth - of world trade. This was a significant achievement given that the proposed ITO could not leave the ground. For about 50 years, countries could not agree on establishing an architecture, a body to comprehensively deal with multilateral trading issues. As a result, despite its provisional nature, the GATT remained the only multilateral instrument governing international trade from 1948 until the establishment of the WTO in 1995.

Prior to the establishment of the WTO, in all, eight GATT Rounds were held. The last GATT round was the Uruguay Round (UR) which was the most comprehensive of all the GATT Rounds. Whilst other Rounds dealt with only trade in industrial goods, the GATT-UR for the first time, discussed issues related to trade in agriculture and the services sector.

The WTO was established on the basis of consensus reached at the end of the GATT-UR in 1993 and started to function in January 1995. In 1995, number of WTO members was 121 and at present it is 151. The latest member in the WTO is Tonga which acceded in July 2007.

Table 2.3 provides an idea about the major focus of the eight rounds of GATT negotiations. As would be seen from the table, in the first few years GATT negotiations concentrated mainly on issues related to tariff reduction whilst later on other complex issues including anti-dumping, customs valuation, standards, government procurement etc. also came under the purview of subsequent GATT negotiations. But it is only during the GATT-UR that areas other than industries, such as agriculture and services and intellectual properties came under the purview of negotiations.

Table 2.3 GATT Trade Rounds

Name	Dates	Objectives	No of Participating Countries
Geneva	1947	• Adoption of GATT	23
Annecy, France	1949	• Tariff reduction	13
Torquay, England	1951	• Tariff reduction	38
Geneva	1956	• Tariff reduction	26
Geneva "Dillon"	1960-62	• Tariff reduction	26
Geneva "Kennedy"	1962-67	• Tariff reduction • GATT negotiation rules	62
Tokyo	1973-79	• Overall reduction of tariffs to an average level of 35% and 5-8% among developed nations • Non-tariff barrier codes - Government procurement - Customs valuation - Subsidies and countervailing measures - Anti-dumping - Standards - Import licensing	102
Uruguay Round	1986-94	• Broadening of GATT Limit agricultural subsidies Include services trade Include intellectual property • Establishment of the WTO (World Trade Organization)	123

Source: Compiled from WTO Website www.wto.org

The major focus of the six Ministerial rounds that were held between 1995 and 2006, and also some of the subsequent developments have been highlighted in Table 2.4. The first three Ministerial Meetings of the WTO were held in Singapore, Geneva and Seattle. The fourth was held in Doha where the Doha Development Round was

launched. The fifth Ministerial meeting was held in Cancun which ended without a Ministerial decision, indicating the difficulties and complexities of the negotiations. The sixth one, Hong Kong Ministerial Meeting, came up with a Declaration articulating the consensus that was reached following protracted negotiations. As

Table 2.4 WTO Ministerials and the Doha Development Round

Name	Dates	Objectives	No. of Participating Countries
WTO Ministerial	1995-1999 Singapore (9-13 December 1996) Geneva (18-20 May 1998) Seattle (30 November - 3 December 1999)	Deepening the process of trade liberalisation	121-143
Doha Development Round	2001 Doha Fourth Ministerial (9-13 November 2001)	<ul style="list-style-type: none"> • Agriculture Negotiations • Service Negotiations • Market Access for Non-Agricultural Products • TRIPS Negotiations • Singapore Issues 	144
	Cancun: Fifth Ministerial (10-14 September 2003)	• Fifth Ministerial (failed to come up with any Ministerial Declaration)	148
	July-Package: 2004	• After failure of Cancun, the WTO process was brought back on track with adoption of July-Package on 1 August 2004, 2004 at the General Council Meeting	
	Hong Kong: 6th Ministerial (13-18 December 2005)	<ul style="list-style-type: none"> • Agriculture • NAMA • GATS • WTO Rules • Development Issues 	149
	Modalities Meeting (June 28 - July 1 2006)	<ul style="list-style-type: none"> • Agriculture • Industrial Products 	
	"Aid for Trade" recommendations submitted by task force (27 July 2006)	• Aimed at helping developing countries to increase export of goods and services	
	Informal TNC Meeting at the level of Head of Delegation (16 November 2006)	• Facilitate Restart of the Negotiations	
	Circulation of revised Draft Modalities for Agriculture and NAMA (17 July 2007)	• Identify possible areas for Negotiations	
	Circulation of draft text on rules (30 November 2007)	Addresses issues on <ul style="list-style-type: none"> • Anti-dumping • Subsidies • Countervailing measures 	
	Eight new working documents (4 January 2008)	Circulated by chair of the negotiating committee on agriculture reflecting the progress made so far. Focuses discussion on <ul style="list-style-type: none"> • Market access • Special products • Special agricultural safeguard • Tariff quotas • Tariff simplification • Tariff escalation • Sensitive products • Tiered formula for tariff reduction 	

Source: Compiled from WTO Website www.wto.org

Table 2.4 shows, following the Hong Kong Ministerial, negotiations have been taking place in Geneva on various issues under the ambit of the Trade Negotiation Committee (TNC). The TNC addresses a wide range of issues covering the areas of Agriculture, Services, Environment, TRIPS, Dispute Settlement Understanding and outstanding implementation issues. The latest issues that have been added to these are market access and WTO Rules.

Table 2.5 Major Decisions Taken by Various WTO Ministerial Meetings (1995-2006)

Ministerial	Major Decisions Taken
First Ministerial; Singapore, 09-13 December 1996	<ul style="list-style-type: none"> • Because of the new commitments, increasing problem of multilateralism and remaining risks faced by the LDCs were acknowledged • Member countries decided to provide technical assistance to LDC members • A new of Plan of Action including Duty Free Access was agreed, though no firm agreement
Second Ministerial; Geneva, 18-20 May 1998	<ul style="list-style-type: none"> • Integrated Framework for Trade Related Technical Assistance was approved with the following major elements: <ul style="list-style-type: none"> - Ensuring Technical Assistance according to the demand in LDCs - Increasing efficiency in Trade Related Assistance - Increasing efficiency in Trade Facilitation - Training and Human Resource Development - Providing assistance in formulating trade related law and policy to encourage trade and investment
Third Ministerial; Seattle, 30 November -3 December 1999	<ul style="list-style-type: none"> • The conference ended in a deadlock without any declaration due to disagreement among the member nations on important issues • As a result, though developing nations were united regarding their demands, these did not get any specific legal framework
Fourth Ministerial; Doha, Qatar 9-13 November 2001	<ul style="list-style-type: none"> • Importance of implementation related issues and concerns was determined • Decisions taken on TRIPS Agreement and Public Health • China and Taiwan got accession to WTO • WTO waiver was agreed for the EU-ACP Cotton Agreement
Fifth Ministerial; Cancun, Mexico 10-14 September 2003	<ul style="list-style-type: none"> • Nepal and Cambodia accession to WTO was agreed • LDCs call for global duty free and quota free market access for all products • Many disagreements remained among developed, developing, and LDCs regarding agriculture and Singapore issues. The Singapore issues* were: <ul style="list-style-type: none"> - Investment - Competition Policy - Transparency in Government Procurement - Trade Facilitation • The tension between developed and any developing countries with respect to agriculture and NAMA negotiations, became increasingly visible. Developing and particularly LDCs, vehemently oppose the inclusion of the Singapore issues in the WTO negotiations. No deal is better than a bad deal • Cancun Ministerial ended without any agreement among the member nations
Sixth Ministerial; Hong Kong 13-18 December 2005	<ul style="list-style-type: none"> • Members were able to reach a consensus • Adoption of Swiss formula • Decision for industrial tariff reduction • Agreement on reduction of subsidies in agriculture • Global DF-QF market access for the LDCs (at least for 97% of goods) • Aid for Trade for developing countries and LDCs

Source: Compiled from WTO Website www.wto.org

Note: * These issues were first proposed during the Singapore Ministerial (1996) and, henceforth, known as Singapore Issues.

Table 2.5 presents the major focus of discussion in the various Ministerial meetings of the WTO. The table indicates the growing concern between developing and developed countries, most particularly with respect to the pace of liberalisation in agriculture and industrial tariffs, subsidies and NTBs. It also shows the concern of the LDCs with respect to S&D provision in the WTO, their enforcement, market access and trade related support.

Strong conflict of interests, particularly between those who want faster liberalisation of agriculture, and others who would like to press for accelerated liberalisation of service sector, have led to a situation where the negotiations virtually stalled in July 2007. Later on, the Chairs of some of the Committees (notably Agriculture and NAMA) have come up with their own texts around which negotiations are now taking place. The failure to reach any consensus has led to postponement of the Seventh Ministerial for an indefinite period.

2.4 Overview of GATT/WTO Principles and Rule-Based Regime

As was mentioned, the WTO deals with the rules of trade among member countries. Its objective is to establish a rule-based trading regime. It is a negotiating forum that operates through a set of rules and helps settle trade related disputes through agreed set of disciplines. Though WTO is not a development organisation, member countries have agreed that one of its major objectives would be to help developing countries and LDCs to develop their economies by taking advantage of international trade, and the WTO would help these countries in this regard.

2.4.1 Basic principles of WTO

The rule-based regime in GATT/WTO is premised on two basic principles, often expressed as four main elements. The two basic principles are non-discrimination and market efficiency (or open, secure access). The four main elements are: most favoured nation (MFN), national treatment, tariffication and transparency. These four elements are the four most powerful Swords of the GATT. The complex legal texts of the WTO are developed based on a number of simple and fundamental rules. Under the most favoured nation MFN (Favour One, Favour All) rule, countries cannot treat their trading partners on a discriminatory basis. The National Treatment principle calls for treating both domestic and foreign goods equally. WTO agreements opt for reduction in trade barriers through reducing tariff and non-tariff barriers in a gradual manner; and ensuring predictability through binding obligations and transparency, the WTO system discourages use of quota and other means of quantitative restrictions on trade, but developing countries and LDCs are given relatively more time for such removal through Special and Differential (S&D) Treatment. All the decisions made in the WTO are taken through negotiation and consensus whereby all members have to agree to the principle of Single Undertaking: Nothing is agreed unless everything is agreed. Although, a vote is theoretically possible allowing majoritarian decision making, till now every effort has been made to come to decisions through consensus. Such treatment is based on the principles

of non-reciprocity in the areas of commitments and obligations. This allows developing and particularly, the least developed countries (LDCs), certain agreed upon derogations.

- Most favoured nation, commonly referred to as MFN, means simply that a member of the GATT extend the same treatment to imports from all the other members, i.e. all members are treated equally as well as the "most favoured" among them. This ensures non-discrimination at the border: favour one, favour all.
- National treatment means that imported goods, once they have met all the requirements of whatever border regime is in place and have entered into the internal (domestic) market in a member's economy, will be treated no less favourably than domestic goods are treated in the domestic market. This is non-discrimination in the internal (domestic) market.

Taken together, the above two elements ensure non-discrimination.

- Tariffication refers to the elimination of Quantitative Restrictions (QRs) and Non-Tariff Barriers (NTBs) and reliance on tariffs as the sole instrument of border protection. The objective of the WTO is to quantify the tariffs on the QRs and NTBs (if required), then gradually bring the tariffs down.
- Transparency: The general goal of transparency is achieved through publication of trade laws and regulations. Transparency is expected to improve market efficiency as it is necessary for participants in the market to know the rules if they are to compete effectively. Towards this end, developed country members have to report on their trade policies to the WTO Secretariat every two years. LDCs have to do this every six years (BD's Trade Policy Review have taken place in 2000 and 2006).

The swords allow WTO to cut down the barriers to international trade, while the "Shields" allow the WTO members an opportunity to protect their interest by way of derogation from commitment and obligations, protracted implementation period and waivers in exceptional cases. Table 2.6 provides a summary of these Swords and Shields.

Table 2.6 Provisions of the GATT/WTO

SWORDS	SHIELDS
<ul style="list-style-type: none"> • Most favoured nation (MFN) • National treatment • Reliance on tariffs • Transparency • QRs must be non- discriminatory and transparent • Customs valuation rules • No unreasonable customs fees or formalities • Freedom of transit • Restrictions on subsidies, no export subsidies • Rules for state trading and monopolies 	<ul style="list-style-type: none"> • Grandfather pre-existing preferences • Regional trade agreements • Waivers "in exceptional circumstances" • Government procurement • Domestic production subsidies • Security exception • Critical shortages of food and essentials • Balance of payments • Safeguards, antidumping and subsidy/ countervail • Developing and Least Developed Countries

2.4.2 Barriers to Free Movements of Goods, Services and Factors of Production that WTO Aims to Bring under Discipline

Table 2.7 presents the various barriers to international trade that the WTO aims to bring under discipline. This is done in three ways: (a) tariffy some of the NTBs; (b) dismantle the other NTBs; and (c) gradually reduce the tariffs. The tariff barriers and NTBs refer to trade in both goods and services.

2.4.3 Decision Making in the WTO

WTO Ministerial Conference is the highest authority for decision making at the WTO. At least one ministerial meeting is supposed to be held every two years. The Ministerial Conference can take any decision under any agreement of the WTO. At the second level of Ministerial Conferences there is the General Council. The General Council has three different components: General Council, the Dispute Settlement Body and the Trade Policy Review Body. There are several councils including Council for Trade in Goods, Council for Trade in Services and Council for Trade-Related Aspects of Intellectual Property Rights.

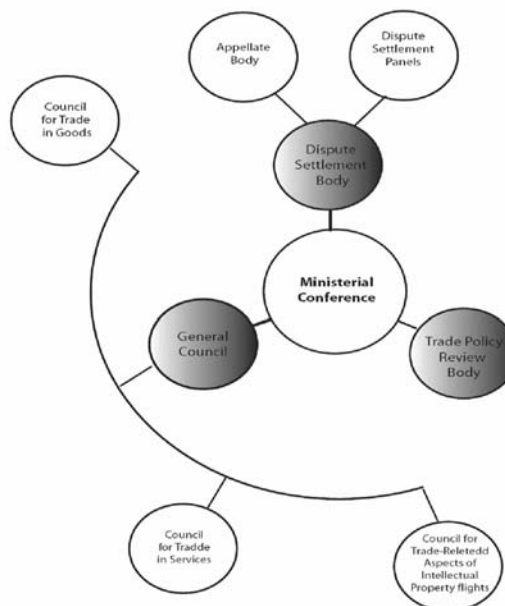
Table 2.7 Barriers to International Trade

Category	Market Access Issues
Tariff Barriers	<ul style="list-style-type: none"> • Tariff escalation • Tariff peaks • Tariff dispersion in manufacturing products • Complex and non-transparent tariffs (e.g. non-ad valorem tariffs) • Tariff Rate Quota (TRQ)
Non-Tariff Barriers	<ul style="list-style-type: none"> • Export/Import Quota, Quantitative Restriction (QR) • Voluntary Export Restraint (VER) • Rules of Origin (RoO) • Discriminatory Government Procurement Practices • Anti-dumping and Countervailing Duties, Predatory pricing and price discrimination • Sanitary and Phytosanitary Measures (SPS) • Technical Barriers to Trade (TBT) • Subsidies (particularly agricultural subsidy by the OECD countries) • Multifarious trade and market distorting practices
General Agreement on Trade in Services (GATS)	<p>Movement of Natural Persons (Mode 4 of GATT)</p> <ul style="list-style-type: none"> • Immigration Policy and Qualifications • Licensing and additional licensing requirements • Wage Parity • QR on VISA for professionals • Entry barriers in the form of Entry Needs Test(ENT) and Local Market Test (LMT)
Environmental Measures	<ul style="list-style-type: none"> • Eco labelling • Compliance sticker
New Issues	<ul style="list-style-type: none"> • Safety, Standard • Customs valuation • Trade facilitation related barriers

Source: www.wto.org

The architecture of the WTO decision making process is shown by Figure 2.1. Decisions are taken on the basis of consensus. So it is critically important that countries engage themselves during the negotiations and try to influence an outcome that is favourable to them and addresses their concerns and interests. It is said that in the WTO, countries *get not what they deserve, but what they negotiate*. In case a decision cannot be reached by consensus, it is to be arrived at through a majority vote (unless otherwise provided in the particular agreement under reference). In the Ministerial Conference and the General Council, each member has one vote. Till now all decisions in the WTO had been reached through consensus.

Figure 2.1 WTO Decision Making Process



Source: www.wto.org (2006).

The WTO is run by its member governments. All major decisions are made by the membership as a whole, either by Ministers (who meet at least once every two years) or by their ambassadors or delegates (who meet regularly in Geneva). All decisions fall under the *Single Undertaking Rule*.

2.5 Developing Countries and Special Provisions in Support for the LDCs (S&D Treatment)

2.5.1 Rationale for S&D Treatment

A large number of WTO's around 151 current members are developing countries. In WTO developed countries are self-selected with most OECD countries falling in this group. The LDC sub-strata in the WTO have been identified on the basis on certain criteria (of inclusion and graduation). Special and differential (S&D) treatment provisions in the multilateral trading system emerged as a recognition of the specific problems that the developing countries and LDCs tend to face in integrating with global markets for goods, services, capital and labour. Due to relatively weaker capacity in terms of technical and financial resources, lack of expertise to participate in negotiations and also inability to explore and extract opportunities emanating from the multilateral trading regime, the developing countries and LDCs are faced with formidable challenges in integrating with the global economy from a position of strength. S&D provision of the WTO has been designed to enable these countries in strengthening their capacity in this respect by way of granting them various flexibilities, derogation from obligations and commitments, and also through technical and financial assistance.

2.5.2 Modalities of S&D Treatment in the WTO

Once a country receives the S&D status, it is allowed additional time to fulfil its obligations under various Agreements of the WTO. Apart from the waivers from undertaking obligations and technical assistance, special initiatives in the form of financial support under the recent Aid for Trade Package, is yet another tool developed for these countries. Market access initiative of the WTO in the form of DF-QF market access for LDCs is also to be noted in this context. Table 2.8 outlines the periods given to developed, developing and least developed countries for full implementation commitment under various agreements of the WTO.

2.6 Dispute Settlement Mechanism in the WTO

2.6.1 Rules and Procedures Governing WTO Dispute Settlement Mechanism

A dispute arises when one member feels that another member is violating an agreement to the detriment of the latter's interest. Article XXIII - Nullification and Impairment - provides each WTO member the right to seek redress if it considers that any benefit accruing to it directly or indirectly under the GATT/WTO is being nullified or impaired, or that the attainment of any objective of the GATT/WTO is

Table 2.8 Time-Lines Included in Various WTO Agreements Relative to Full Implementation of Commitments

WTO Agreements	Developed Countries (Under GATT-UR decision)	Developing Countries (Under GATT-UR decision)	Least Developed Countries (Under GATT-UR decision)	DDA, July 2004 Framework and Hong Kong Ministerial
Agriculture	6 years	10 years	Exempt	• Exemption from undertaking reduction commitment in AoA and NAMA
SPS	–	2 years	5 years	• Developing country Members continue to benefit from the AoA for five years after the end-date for elimination of all forms of export subsidies
TRIPs	1 year	5 years	10 years	• TRIPs & Public Health (derogation up to 2016)
TRIMs	2 years	5 years	7 years	• Extension of TRIPs up to 2013
Import Licensing	–	2 years	–	• Exemption from TRIMs obligation
Safeguards	Up to 8 years	Up to 10 years	–	• GATS-LDC Modality
Domestic Input Subsidies	–	5 years	8 years	• Extension on removal of export subsidies till 2013
Export Subsidies	–	2 to 8 years	8 years	• Under Swiss formula, coefficients of 8-9 for developed countries and 19-23 for developing countries proposed. LDCs not asked to undertake reduction commitments but expected to bind more of their items.

Source: Compiled from WTO Website www.wto.org

being impeded as the result of any one of the three circumstances. The circumstances set out in the Article are:

- failure of another member to carry out its GATT/WTO obligations; or
- the application by another member of any measure, whether or not it conflicts with the provisions of the GATT/WTO; or
- the existence of any other situation

2.6.2 WTO Dispute Settlement Procedure

The dispute settlement mechanism is a system based on the rule of law with specific timetable. The Dispute Settlement Body is responsible for setting up a panel of experts. Initially the rulings are made by a panel and endorsed (or rejected) by the WTO's full membership. However, the spirit of the relevant provisions lies in settling disputes, through consultations whenever possible.

Stage 1 : Consultations

A request for a panel must be preceded by consultations. A request for consultations must be responded by the member to whom it is addressed within 10 days, and consultations must be entered into within 30 days. If a settlement is not reached within 60 days of the request for consultations, then the complaining party can request for the establishment of a panel. If a member refuses to engage in consultations, an immediate request can be made for a panel. There is also scope for mutually agreed Arbitration Process.

Stage 2 : Panel

If consultation fails, a request for a panel is made to the Dispute Settlement Body (DSB). The responding party can object to the creation of the panel at the first meeting of the DSB at which it is raised, but at the next meeting of the DSB, a panel must be established unless the DSB decides by consensus to not to do so. Once established by the DSB, the panel's membership of three individuals has to be determined. This is done by the parties in consultation with the WTO secretariat. If the names have not been agreed upon within 20 days of the DSB's establishment of the panel, then either party may request the WTO's Director-General to choose the panel members.

Officially, the panel helps the Dispute Settlement Body to make rulings or recommendations. However, as the panel's report can only be rejected by consensus in the Dispute Settlement Body, its conclusions are difficult to overturn. The panel's final report should normally be given to the parties to the dispute within six months unless there is any urgency. Under such circumstances the report is finalised within three months.

Stage 3 : Appeal

The Appellate Body (AB) is a standing body composed of seven individuals appointed for four year terms by the DSB. Appeals have to be based on points of law such as legal interpretation - they cannot re-examine existing evidence or examine new issues. Each appeal is heard by three members. Once an appeal is made, the procedures before the AB consist of a written pleading by the appellant, a written response by the appellee and a written submission and notification from third parties. An oral hearing by the appellee and written submission by the parties come next. Appeals should not last more than 60 days with a maximum of 90 days. The appeal can endorse, modify or overturn the panel's legal findings and conclusions. The Dispute Settlement Body gets 30 days to approve or reject the appeal whereby rejection is only possible by consensus.

2.7 Summary

- Bangladesh's economy is becoming increasingly dependent on trade, as opposed to aid. The country has experienced an increasing degree of openness of the economy in the recent past following radical trade reforms, particularly in the 1990s. Growing importance of trade in the Bangladesh economy indicate that conducive global trading system and strengthened capacity for global integration are issues of heightened interest to the Bangladesh economy in the current context.
- International trade is growing at a robust pace in today's world. There is a general agreement that trade stimulates economic growth, and growth is a necessary factor for development (though not necessarily a sufficient factor). The multilateral trading system under the WTO is expected to ensure free movements of goods, services and factors of production, which in turn are important from growth perspective. However, without special measures and safeguards, trade could be inequalising and marginalising.
- Establishment of the WTO on 1 January 1995 marked the biggest reform in the international trading system since the Second World War. One recalls in this context the failed attempt in 1948 to create an International Trade Organization.
- WTO's two objectives are to dismantle NTBs and reduce tariffs. WTO agreements are often called the WTO's trade rules, and the WTO is often described as a "rules-based" system. The WTO agreements cover goods, services and intellectual property rights. The Agreements spell out the principles of liberalisation and the permitted exceptions. They include individual countries' commitments to lower customs tariffs and other trade barriers, and to open up service markets. They set procedures for settling disputes. The agreements prescribe special treatment for developing countries under the S&D provisions which require governments to make their trade

policies transparent by notifying the WTO about laws in force and measures adopted through regular reports by the WTO secretariat on countries' trade policies.

- WTO works on the four principles; MFN, National Treatment, Tariffication and Transparency. In WTO decision making is on the basis of single undertaking (nothing is agreed unless everything is agreed). Decision is generally consensus-based, though majoritarian decision making through voting is allowed. The highest decision making body is the Ministerial Conference. Between conferences, General Council and Trade Negotiations Committees sit to discuss texts prepared by the various negotiating groups working in Geneva.
- It is generally agreed that developing and particularly the LDCs face formidable difficulties in integrating with the global economy. In view of this and increasing marginalisation of these countries in the context of the evolving global trading system, WTO members have agreed to provide asymmetrical and preferential treatment to these countries, based on the principle of non-reciprocity. Special and differential treatment (S&D) provisions in the multilateral trading system emerged as a recognition of the particular problems that developing and least developed countries (LDCs) face in view of the liberalisation of global trade in goods and services. Global community of nations agree that these countries failed to benefit fully and equally from a liberalised trade environment because of their weak institutions, inadequate infrastructure, scarce human resource and formidable supply side constraints. S&D provisions are aimed at enhancing trade opportunities of developing countries including providing greater access to developed country markets. They allow developing countries certain flexibilities with regard to commitments and use of policy Instruments, which include exemptions from, or reduced level of, commitments, limited time-bound derogations from rules, and provision of technical assistance and aid under the proposed Aid for Trade (AfT) package.
- WTO dispute settlement procedure includes Consultations and Panel Requests. Both sides are also allowed to appeal a panel's ruling. Dispute Settlement is a mechanism which can redress the interests of the vulnerable trading nations in the context of emerging trade conflicts among the WTO members.

2.8 Questions for Discussion

- 1 Why trade issues are important for Bangladesh?
- 2 What were the major GATT Trade Rounds?
- 3 What are the four basic principles of WTO?
- 4 What is MFN and National Treatment Principles?

- 5 What is 'single undertaking'?
- 6 Why is there a need for special and differential treatment for the developing countries and LDCs in the WTO?
- 7 How is S&D treatment ensured in the WTO system?
- 8 Is WTO member-driven or it can exercise veto power as in the UN?
- 9 Where and how the WTO member countries can resolve their trade related conflicts?

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Training Manual on **WTO and Bangladesh Trade Policy**

Module

3

**Agreement on
Agriculture (AoA)**

Agreement on Agriculture (AoA)

Learning Objectives

- The aim of this particular lecture is to provide a clear idea about the Agreement on Agriculture (AoA) of WTO. The lecture tries to figure out the background of the AoA, the current state of agriculture negotiations at the WTO and their implications for Bangladesh.
- At the end of the session, participants would have a clear understanding about (i) importance of Agreement on Agriculture (AoA), especially for a country like Bangladesh; (ii) background of Agreement on Agriculture; (iii) development of negotiations since the Doha Ministerial; and (iv) the current state of negotiations on agriculture at the WTO and options and strategies for Bangladesh.

3.1 Why the Agreement on Agriculture?

Agriculture was brought under the purview of GATT, 1994 with a view to minimise distortions in global trade in agricultural and food products. Negotiations on agricultural trade had earlier been excluded from GATT on the ground of food security and socio-political stability, which makes agriculture different from other sectors of the economy. By the time the Uruguay Round of negotiations began, many countries had started voicing the need to liberalise agriculture, particularly for opening this highly protected sector in the developed countries to more efficient producers from developing countries. The Uruguay Round agreement set up a framework of rules to reduce protection and trade distorting support to agriculture. For implementation of the rules agreed during the Uruguay Round of multilateral trade negotiations, the GATT Secretariat has been transformed into the World Trade Organization (WTO) on 1 January 1995. Bangladesh is a founding member of the WTO.

3.1.1 Why the Issue of AoA is Important for Bangladesh?

Agriculture plays a major role in providing livelihood to a large proportion of the population in Bangladesh. More than 60 per cent of the total work force is engaged in agriculture. Recent studies have shown that agricultural trade liberalisation has direct

link with changes in area under crops and cropping pattern. Therefore, WTO negotiations on agriculture are very important for Bangladesh. The results of the negotiations provide a framework for the long-term reform of agricultural trade and domestic policies over the years to come. It makes a decisive move towards the objective of increased market orientation in agricultural trade. The rules governing agricultural trade are strengthened which will lead to improved predictability and stability for importing and exporting countries alike. The agricultural package also addresses many other issues of vital economic and political importance to many Members. These include provisions that encourage the use of less trade-distorting domestic support policies to maintain the rural economy, that allow actions to be taken to ease any adjustment burden, and also the introduction of tightly prescribed provisions that allow some flexibility in the implementation of commitments. Specific concerns of developing countries have been addressed including the concerns of net food importing countries and least developed countries are also included in the negotiation on agriculture.

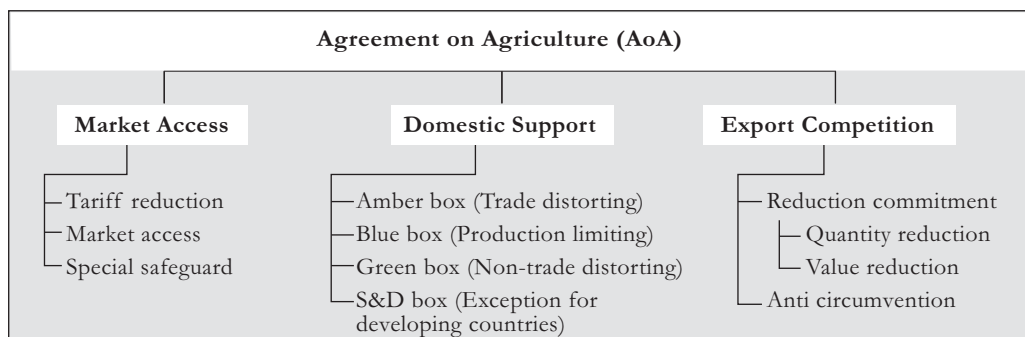
Economic policies, investments, technical developments and credit are within the policymaking domain of each individual country while trade policies of developed countries are exogenous to developing countries; hence the need for a multilateral system like the World Trade Organization (WTO) to minimise any adverse impact on the latter.

3.2 The Agreement on Agriculture (AoA)

The objective of the *Agreement on Agriculture* is to reform trade in the sector and to make policies more market-oriented. This would improve predictability and security for importing and exporting countries alike.

The commitments under the Agreement on Agriculture (AOA) in GATT Uruguay Round may be broadly categorised into three groups: a) market access; b) domestic support; and c) export competition. These can be considered as the three pillars of the AoA (Figure 3.1). In addition to these three pillars, there are other rules such as Special and Differential (S&D) Treatment, Peace Clause, and Commitment to Reform. All of these together consist the commitments under the AoA.

Figure 3.1 Pillars of the Agreement on Agriculture



3.2.1 Market Access

All Member countries of the WTO are required to (i) replace all types of non-tariff barriers (NTBs) with tariff barriers, and (ii) reduce the levels of tariffs under a time-bound program. These levels are to be reduced by 36 per cent in the case of developed countries and by 24 per cent in the case of developing countries (Box 3.1). Developed countries are required to implement these reductions within six years (1995-2000), while the time limit for the developing countries is ten years (1995-2004). In addition, AoA requires all countries to allow a certain minimum market access for each individual agricultural product. The least developed countries (LDCs) like Bangladesh are, however, not required to undertake any such commitment. However, Bangladesh will not be allowed to increase her bound tariff. It may be noted here that Bangladesh, like many other countries, has bound her tariff at well above the actual operative levels. Tariff bound rates for Bangladesh has been set at a uniform ceiling rate of 200% for all agricultural goods except for 13 items for which the bound rate is 50%. In addition, there is a general license fee of 2.5% with certain exceptions. Bound tariff rates for two agricultural products (green and black tea) were lower than actual operative tariff. Bangladesh has to reduce bound tariff on four commodities to 150% and on one commodity to 100% by 2004. Average bound tariff for Bangladesh is 114.8%. It is true that Bangladesh, as a least developed country member of the WTO, is not required to reduce tariffs during the implementation period. However, on an autonomous basis, Bangladesh has substantively simplified and rationalised her tariff structure, and reduced the number of tariff bands from 15 in 1992/93 to 5 in 1999/2000 and lowered the maximum tariff rate from 300 per cent to 37.5 per cent during the 1990s (WTO 2000).

Box 3.1 Uruguay Round Numerical Targets for Agriculture

The reductions in agricultural subsidies and protection agreed in the Uruguay Round. Only the figures for cutting export subsidies appear in the agreement.

	Developed countries 6 years: 1995-2000	Developing countries 10 years: 1995-2004
Tariffs		
Average cut for all agricultural products	-36%	-24%
Minimum cut per product	-15%	-10%
Domestic support		
Total AMS cuts for sector (base period: 1986-88)	-20%	-13%
Specific Exemption	Article 6.2 exemption for certain investment, input and diversification subsidies	
Exports		
Value of subsidies	-36%	-24%
Subsidised quantities (base period: 1986-90)	-21%	-14%
Specific Exemption	Article 9.4 Transport and Marketing subsidies	

Notes: Least developed countries do not have to make commitments to reduce tariffs or subsidies.
The base level for tariff cuts was the bound rate before 1 January 1995; or, for unbound tariffs, the actual rate charged in September 1986 when the Uruguay Round began.
The other figures were targets used to calculate countries' legally-binding "schedules" of commitments.

3.2.2 Domestic Support

The main complaint about policies which support domestic prices, or subsidise production in some other way, is that they encourage over-production. This squeezes out imports or leads to export subsidies and low-priced dumping on world markets. The Agriculture Agreement distinguishes between support programmes that stimulate production directly, and those that are considered to have no direct effect.

Domestic policies that do have a direct effect on production and trade have to be cut back. WTO members calculated how much support of this kind they were providing per year for the agricultural sector (using calculations known as "total aggregate measurement of support" or "Total AMS") in the base years of 1986-88. Developed countries agreed to reduce these figures by 20 per cent over six years starting in 1995. Developing countries agreed to make 13 per cent cuts over 10 years. Least developed countries do not need to make any cuts (this category of domestic support is sometimes called the "**amber box**", a reference to the amber colour of traffic lights, which means "slow down").

Measures with minimal impact on trade can be used freely — they are in a "**green box**" ("green" as in traffic lights). They include government services such as research, disease control, infrastructure and food security. They also include payments made directly to farmers that do not stimulate production, such as certain forms of direct income support, assistance to help farmers restructure agriculture, and direct payments under environmental and regional assistance programmes.

Also permitted, are certain direct payments to farmers where the farmers are required to limit production (sometimes called "**blue box**" measures), certain government assistance programmes to encourage agricultural and rural development in developing countries, and other support on a small scale ("de minimis") when compared with the total value of the product or products supported (5 per cent or less in the case of developed countries and 10 per cent or less for developing countries).

3.2.3 Export Subsidies

The Agreement on Agriculture prohibits export subsidies on agricultural products unless the subsidies are specified in a member's lists of commitments. Where they are listed, the agreement requires WTO members to cut both the amount of money they spend on export subsidies and the quantities of exports that receive subsidies. Taking averages for 1986-90 as the base level, developed countries agreed to cut the value of export subsidies by 36 per cent over the six years starting in 1995 (24 per cent over 10 years for developing countries). Developed countries also agreed to reduce the quantities of subsidised exports by 21 per cent over the six years (14 per cent over 10 years for developing countries). Least developed countries do not need to make any cuts.

During the six-year implementation period, developing countries are allowed under certain conditions to use subsidies to reduce the costs of marketing and transporting exports.

3.2.4 Definition of Agriculture in WTO

The WTO's definition of agriculture, as agreed upon in the WTO Agreement on Agriculture (AoA), is different than conventionally understood as agriculture. The WTO definition of agriculture, as reported in Annex 1 of the AoA, is reported in Table 3.1. Usually all crops, livestock and primary dairy processing and fisheries and forestry activities are included in agriculture. However, the WTO definition excludes fish and fish products and jute (among crops) but includes certain tree products such as sorbitol, manitol, essential oils, glue and such other products. The WTO definition of agriculture also includes some industrial items such as cigarettes that are processed from agricultural products. It is noteworthy to mention here that the Annex 1 of the AoA specifically mentions that the product coverage under the Agreement shall not limit the product coverage on the application of Sanitary and Phytosanitary (SPS) Measures.

Table 3.1 Product Coverage in the WTO Agreement on Agriculture (AoA)

(i)	HS Chapters 1 to 24 less fish and fish products, plus*		
(ii)	HS Code	2905.43	(mannitol)
	HS Code	2905.44	(sorbitol)
	HS Heading	33.01	(essential oils)
	HS Headings	35.01 to 35.05	(albuminoidal substances, modified starches, glues)
	HS Code	3809.10	(finishing agents)
	HS Code	3823.60	(sorbitol n.e.p.)
	HS Headings	41.01 to 41.03	(hides and skins)
	HS Heading	43.01	(raw furskins)
	HS Headings	50.01 to 50.03	(raw silk and silk waste)
	HS Headings	51.01 to 51.03	(wool and animal hair)
	HS Headings	52.01 to 52.03	(raw cotton, waste and cotton carded or combed)
	HS Heading	53.01	(raw flax)
	HS Heading	53.02	(raw hemp)

Source: WTO Agreement on Agriculture.

Note: *The product descriptions in round brackets are not necessarily exhaustive.

Agricultural items, which are excluded in the WTO definition, have significant importance to Bangladesh. Total export of fish and fish products (HS 03.03; 0306.13; 0304.90; 03.05; 0305.60) from Bangladesh in FY2002-03 was US\$ 330.14 million which accounted for 5.04 per cent of total export earnings of Bangladesh. Export earning from raw Jute (HS 5303.01) by Bangladesh in FY2002-03 was US\$ 82.46 million which accounted for 1.26 per cent of total export earnings of Bangladesh.

3.2.5 The Mandate for Negotiation: Article 20

The negotiations began under Article 20 of the Agriculture Agreement. This says WTO members had to negotiate to continue the reform of agricultural trade. The direction of the reform was clearly set out in the article — "substantial progressive reductions in support and protection resulting in fundamental reform".

Box 3.2 Article 20 of the Agriculture Agreement: Continuation of the Reform Process

Recognising that the long-term objective of substantial progressive reductions in support and protection resulting in fundamental reform is an ongoing process, Members agree that negotiations for continuing the process will be initiated one year before the end of the implementation period, taking into account:

- a. the experience to that date from implementing the reduction commitments;
- b. the effects of the reduction commitments on world trade in agriculture;
- c. non-trade concerns, special and differential treatment to developing country Members, and the objective to establish a fair and market-oriented agricultural trading system, and the other objectives and concerns mentioned in the preamble to this Agreement; and
- d. what further commitments are necessary to achieve the above mentioned long-term objectives.

3.3 Doha Round Work Program on AoA**3.3.1 Doha Declaration**

At Doha, Ministers recognised that the negotiations on agriculture started in early 2000 under Article 20 of the Agreement on Agriculture (AoA). The Fourth WTO Ministerial, as reflected in its Articles 13 and 14 of the Doha Declaration, progressed further with AoA in terms of fixing deadline for meaningful negotiations on agriculture under the WTO regime. Thus, the Doha mandate on agriculture includes the following aspects:

- *Modalities for negotiations* should be established no later than March 31, 2003;
- A *draft schedule of commitments* to be submitted no later than the Fifth WTO Ministerial meeting; and
- The negotiations, as a whole, to be concluded by 1 January 2005.

Trade Ministers, at Doha, agreed that the negotiations would be difficult because of the wide range of views and interests among member governments. "Without prejudging the outcome", member governments committed themselves to comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support (See Box 3.3, for details).

The Doha Declaration made "special and differential treatment" (S&DT) for developing countries integral throughout the negotiations, both in countries' new commitments and in any relevant new or revised rules and disciplines. The declaration conveyed that the outcome should be effective in practice and should enable developing countries to meet their needs, particularly in food security and rural development. The ministers also took note of the non-trade concerns (such as environmental protection, food security, rural development etc.) reflected in the negotiating proposals.

At Doha, the main negotiation objectives for agricultural and food-exporting developing countries were insisting that European Union agree to phase out all export subsidies; for Japan, the EU, and the United States to dismantle their trade-distorting domestic support measures, tariff escalation, and tariff peaks; and for wealthy

Box 3.3 Doha Mandate on Agriculture from the Doha Ministerial Declaration, November 2001

13. We recognize the work already undertaken in the negotiations initiated in early 2000 under Article 20 of the Agreement on Agriculture, including the large number of negotiating proposals submitted on behalf of a total of 121 members. We recall 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. We reconfirm our commitment to this programme.

Building on the work carried out to date and without prejudging the outcome of the negotiations we commit ourselves to comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support.

We agree that special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall be embodied in the schedules of concessions and commitments and as appropriate in the rules and disciplines to be negotiated, so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development. We take note of the non-trade concerns reflected in the negotiating proposals submitted by Members and confirm that non-trade concerns will be taken into account in the negotiations as provided for in the Agreement on Agriculture.

14. Modalities for the further commitments, including provisions for special and differential treatment, shall be established by no later than 31 March 2003. Participants shall submit their comprehensive draft Schedules based on these modalities no later than the date of the Fifth Session of the Ministerial Conference. The negotiations, including with respect to rules and disciplines and related legal texts, shall be concluded as part and at the date of conclusion of the negotiating agenda as a whole.

countries to provide greater market access. Food security was also a crucial concern for developing countries heavily dependent on agriculture. They asked for a stronger S&DT provision, recognising the right of all peoples to have access to safe and nutritious food. Others pursued for an agreement on a Development Box, to ensure food security. They negotiated to allow developing countries to have flexibility and policy autonomy to pursue agricultural policies serving their broader development needs.

Although there was pre-Doha consensus among members on some agricultural issues, differing views on the draft agricultural text in Doha, seemingly surmountable, became almost intractable, making negotiations on agriculture pivotal to achieving the goal of the overall agreement. The Cairns Group of 17 agricultural exporting countries insisted on significant movement on the phase out of export subsidies, but the EU remained staunchly opposed to this issue. The United States attempted to justify its own domestic income support to farmers – which the EU and many developing countries oppose as trade distorting – yet was supportive of the Cairns Group, whose members were adamant that EU subsidies be phased out. After long discussions and debates at Doha, finally the EU agreed to "reductions, with a view to phasing out all forms of subsidies". The intent of the EU is unclear because the commitment they made was "without prejudging the outcome of the negotiations" – in other words, the ultimate deal is far from preordained. Moreover, the EU made its

concession only in exchange for stronger language on environment, investment, and competition policy. The triangle of agriculture, environment, and "Singapore issues" – especially investment and competition policy – thus became the most important nexus for trade negotiation and bargaining in the final hours at Doha. Indeed, it was cross bargaining and compromise by different WTO members in these three areas that determined the final outcome.

Agreed Time Schedule at Doha

- Formulas and other "modalities" for countries' commitments: by 31 March 2003
- Countries' comprehensive draft commitments: by 5th Ministerial Conference, 10–14 September 2003 (in Cancun, Mexico)
- Stock taking: 5th Ministerial Conference, 10–14 September 2003 (in Cancun, Mexico)
- Deadline: by 1 January 2005, part of single undertaking

3.3.2 Major Developments upto Hong Kong

Deadlines agreed at Doha were not met. Members submitted proposals in two phases. Chairperson Stuart Harbinson prepared a draft, and a revised draft. Harbinson's draft was not agreed as base document for discussion in Cancun. The EU and USA were given the responsibility to prepare a Joint Draft proposal with an expectation that this would solve the problem. The joint draft was prepared and circulated on 12 August 2003. A counter proposal was placed by developing countries, and in this process the G-20 emerged. The Ministerial Draft for Cancun ("skeletal draft" on July 18, revision 1 on August 24, 2003 and Revision 2 during the September meeting at Cancun) was prepared and circulated. Cancun Ministerial failed because developed and developing countries failed to agree.

In July 2004 (1 August 2004), WTO members agreed on a framework package to keep the Doha Round trade negotiations alive. This framework package is popularly known as "July Package" or "August Framework". There were follow-ups on July Package but limited progress before Hong Kong.

3.4 Agriculture in the Hong Kong Ministerial

The Hong Kong Ministerial Conference of the World Trade Organization (WTO), held in Hong Kong, China during 13-18 December 2005, was concluded with a Ministerial Declaration (WTO, 2005). Through this Declaration, WTO members agreed on various issues negotiated on, including agriculture. This is going to guide the final set of discussions towards the successful conclusion of the Doha Round. Member countries agreed to successfully conclude the negotiations launched in Doha in 2001. The Hong Kong Ministerial Declaration of the WTO, adopted on 18

December 2005 (WTO, 2005), clearly mentioned all decisions and proposals related to agriculture. Annex A of the Declaration includes the Report by the Chairman of the Special Session of the Committee on Agriculture to the trade negotiations committee (TNC). Annex F of the Declaration, which deals with Special and Differential Treatments for least developed countries (LDCs), has also relevance for the agriculture sector of Bangladesh.

In Hong Kong, Member countries reaffirmed their commitments to the mandate on agriculture as set out in paragraph 13 of the Doha Ministerial Declaration and to the framework adopted by the General Council on 1 August 2004. They had taken some concrete decisions and took note of the progress on various contentious issues like domestic support, market access and export subsidy. Members also agreed to establish modalities by April 2006 and to submit draft schedules by the end of July 2006. Detailed discussion of Hong Kong Declaration related to agriculture is provided in Annex 3.6, but we provide below a summary of the developments in Hong Kong.

Primary offensive interest of LDCs in the Hong Kong was 'Market Access' for agricultural commodities. *Secondary* priorities included reducing trade distortion in cotton, ensuring food aid discipline. *Defensive interests* of LDCs were serviced through the July 2004 text whereby Bangladesh and other LDCs were not required to undertake any obligations under the Doha Round, and in particular cases, were given derogation and various waivers.

Through the Hong Kong Declaration, WTO members agreed that:

- (i) There will be three bands for reductions in Final Bound Total AMS and in the overall cut in trade-distorting domestic support, with higher cuts in higher bands. However, threshold levels for these bands and the level of cut would be decided later on.
- (ii) Elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect to be completed by the end of 2013. However, modalities for these would be decided later on.
- (iii) Tariff cuts would be on ad valorem equivalents and Members will adopt four bands for structuring of tariff cuts. However, relevant threshold and extent of tariff cuts and flexibilities for developing countries to be decided later on.
- (iv) There is agreement for sensitive products. As regards special products and special safeguard mechanism for developing countries, there will be flexibility to self-designate an appropriate number of tariff lines as special products guided by indicators based on the criteria of food security, livelihood security and rural development. However, number of products to be covered as sensitive products, special products and precise arrangement for special safe guard mechanism will be decided later on.

- (v) LDCs would be exempted from any reduction commitment as regards tariff, domestic support and export subsidy for agricultural products.

In Hong Kong Ministers also set a concrete time line. Agriculture Negotiations Timelines in 2006 are given below:

- Conclude Doha Round Negotiations successfully in 2006 (Paragraph 1)
- Establish modalities by no later than 30 April 2006 (Paragraph 10)
- Complete disciplines on export credits, export credit guarantees or insurance programmes, exporting state trading enterprises and food aid by 30 April 2006 as part of modalities (Paragraph 6)
- Date (2013) for elimination of all forms of export subsidies, agreed to be achieved in a progressive and parallel manner, to be confirmed only upon completion of modalities (Paragraph 6)
- Submit comprehensive draft Schedules based on modalities no later than 31 July 2006 (Paragraph 10).

3.5 Post-Hong Kong Developments

As mentioned earlier, in Hong Kong, Members agreed to conclude Doha Round Negotiations successfully in 2006 and submit comprehensive draft Schedules based on modalities by no later than 31 July 2006. However, members failed to agree on modalities by July 2006. Doha Round Negotiations were suspended for an indefinite period through the General Council Meeting held in July 2006. On 16 November 2006, WTO Director General Pascal Lamy asked all the negotiating groups to hold informal meetings which will focus only on technical works. Accordingly soft resumptons were made. Current negotiations on agriculture are mostly based on recent documents circulated by Ambassador Crawford Falconer, Chairperson of the Negotiations Committee since July 2007.

Agriculture negotiations Chairperson Ambassador Crawford Falconer circulated a revised draft "modalities" on 17 July 2007. Ambassador Falconer circulated another Revised Draft Modalities for Agriculture (TN/AG/W/4) on 1 August 2007, which is the same as that distributed on 17 July 2007 as JOB(07)/128 with corrections to a number of typographical errors which were included in that document. Modalities are drawn from WTO member governments' positions over several months in the latest phase of the negotiations, but reflect the Chairperson's judgment of what governments might be able to agree on—based on what members have proposed and debated on over seven years of negotiations and their responses to the Chair's previous papers. Therefore, these are not "proposals" from the Ambassadors in the sense that "proposals" are normally understood. In other words, these are not the Chair's opinions of what would be "good" for world agricultural trade, but what might be accepted by all sides in the negotiations.

After the Chairperson circulated his revised draft "modalities" paper in July and August 2007, the talks entered their most intensive phase so far. As a follow up of the Revised Draft on Modalities, Ambassador Falconer, sent members 16 working documents on export competition (4 Documents), domestic support (4 Documents) and market access (8 documents). These were sent by the Chairperson during 6 November 2007 to 4 January 2008. The working documents reflect the progress made. They were designed to focus on the discussions and help the Chairperson prepare the next revised draft "modalities" paper.

On 8 February 2008, Committee on Agriculture in its Special session circulated the Revised Draft Modalities for Agriculture [TN/AG/W/4/Rev.1; 8 February 2008; (08-0611)].

3.6 Modalities for Agriculture: The February 2008 Revised Draft

Revised Draft Modalities has five Sections and thirteen Annexes. The five sections are on: Domestic Support (Section I), Market Access (Section II), Export Competition (Section III), Monitoring and Surveillance (Section IV) and Other Issues (Section V). Annex A provides product specific blue box limits for United States (to be finalised). Annex B includes proposed amendments on Annex 2 of the Agreement on Agriculture. Annex C provides basis for the calculation of tariff quota expansion. Annex D provides tariff escalation provisional potential list. Annex E is on Tariff Quota under Fill Mechanism. Annex F provides illustrative list of indicators for the designation of special products. Annex G includes list of tropical and alternative products. Annex H provides indicative list of preference erosion products. Annex I deals with Small and Vulnerable Economies. Annex J is on Export Credits, Export Credit Guarantees or Insurance Programmes. Annex K deals with Agricultural Exporting State Trading Enterprises. Annex L deals with the issue of International Food Aid. Annex M is on Monitoring and Surveillance issue.

3.6.1 Domestic Support

As mentioned, Section I of the Revised Draft on Modalities on Agriculture, deals with Domestic Support. Proposals on different issues pertaining to domestic support are described under seven sub-sections: A. Overall Reduction of Trade-Distorting Domestic Support: A Tiered Formula; B. Final Bound Total AMS: A Tiered Formula; C. Product-Specific AMS Caps; D. De Minimis; E. Blue Box; F. Green Box; and G. Cotton: Domestic Support.

Overall Trade Distorting Support (OTDS): Substantial reductions in OTDS are expected. According to the proposal, reduction in OTDS will be under three bands. The base level of OTDS shall be the sum of (a) the Final Bound Total AMS specified in Part IV of a member's schedule; plus (b) for developed country Members, 10 per cent of the average total value of agricultural production in the 1995-2000 base period (this

being composed of 5 per cent of the average total value of production for product-specific and non-product-specific AMS respectively). For developing country Members it shall be 20 per cent and base period shall be 1995-2000 or 1995-2004 as may be selected by the member concerned; plus (c) the higher of average Blue Box payments as notified to the Committee on Agriculture, or 5 per cent of the average total value of agricultural production, in the 1995-2000 base period .

For developing country Members the base period shall be 1995-2000 or 1995-2004 as may be selected by the member concerned. As regards the tiered formula, proposed reduction in OTDS may be summarised as in Table 3.2. It is also proposed that developed country Members with high relative levels of OTDS in the second tier (at least 40 per cent of the total value of agricultural production in the 1995-2000 periods) shall undertake an additional effort.

Table 3.2 Domestic Support Cut Possibilities

Bands	Thresholds (US\$ billion)	Cuts
1	≤ 10	50%-60%
2	> 10 - ≤ 60	66%-73%
3	> 60	75%-85%

Source: Revised Draft Modalities for Agriculture, 8 February 2008, p.2.

As regards implementation period, for developed country Members, the reductions shall be implemented in six steps over five years. For Members in the first two tiers the Base OTDS shall be reduced by one-third on the first day of implementation. The remaining reductions shall be implemented annually in five equal steps.

Developing country Members with no AMS Commitments shall not be required to undertake reduction commitments in their base OTDS and NFIDCs (net food importing developing countries) shall be exempt from reduction commitments. Very recently acceded Members and small low income RAMs (Recently Acceded Members) with economies in transition shall not be required to undertake reduction commitments in their Base OTDS.

AMS Reduction: Proposed reduction in Final Bound Total AMS may be summarised as in Table 3.3, where cuts will be under three bands. Developed country Members with high relative levels of Final Bound Total AMS (at least 40 per cent of the total value of agricultural production) shall undertake an additional effort in the form of a higher cut than would otherwise be applicable for the relevant tier. For developed country

Table 3.3: AMS Reduction Possibilities

Bands	Thresholds (US\$ billion)	Cuts
1	≤ 15	45%
2	> 15 - ≤ 40	60%
3	> 40	70%

Source: Revised Draft Modalities for Agriculture, 8 February 2008, p.2.

Members, reductions in Final Bound Total AMS shall be implemented in six steps over five years. The reduction in Final Bound Total AMS applicable to developing country Members shall be two-thirds of the reduction applicable for developed country Members. NFIDCs and recently-acceded Members with economies in transition will not be required to undertake reductions in Final Bound Total AMS.

The Revised Draft has proposed that the product-specific AMS limits shall be specified in the Schedules of all developed country Members other than the United States shall be the average of the product-specific AMS during the Uruguay Round implementation period (1995-2000) as notified to the Committee on Agriculture. For the United States only, the product-specific AMS limits specified in their Schedule shall be the resultant of applying proportionately the average product-specific AMS in the [1995-2004] period to the average product-specific total AMS support for the Uruguay Round implementation period (1995-2000) as notified to the Committee on Agriculture. Where a Member has (after the base period specified) introduced product-specific AMS support above the *de minimis* level provided for under Article 6.4 of the Uruguay Round Agreement on Agriculture, and it did not have product-specific AMS support above the *de minimis* level during the base period, the product-specific AMS limit specified in the Schedule may be the average amount of such product-specific AMS support for the two most recent years prior to the date of adoption of these modalities, for which notifications to the Committee on Agriculture have been made.

The *de minimis* levels shall be reduced by no less than [50] [60] per cent [effective on the first day of the implementation period] [through five equal annual instalments]. Furthermore, where, in any year of the implementation period, a lower level of *de minimis* support than that resulting from application of that minimum percentage reduction would still be required to ensure that the Annual or Final Bound OTDS commitment for that year is not exceeded, a Member shall undertake such an additional reduction in what would otherwise be its *de minimis* entitlement. For developing country Members with Final Bound Total AMS commitments shall be reduced by at least two-thirds of the reduction rate specified above. The timeframe for implementation shall be three years longer than that for developed country Members. Developing country Members with no Final Bound Total AMS commitments or with such AMS commitments that either allocates almost all that support for subsistence and resource-poor producers, or are NFIDCs, shall continue to have the same access as under their existing WTO obligations to the limits provided for product-specific and non-product-specific *de minimis*. Recently-acceded Members shall not be required to undertake reduction commitments in *de minimis*.

It is pertinent to mention that there will be a cap for products as well as for support under different Boxes. It is proposed that the *Blue Box* support shall not exceed 2.5 per cent of the average total value of agricultural production in the 1995-2000 base periods. For all Members other than the United States, the limit to the value of support that may be provided to specific products as Blue Box entitlements shall be

the average value of support provided to those products during the 1995-2000 periods. For the United States, the limits shall be [110] [120] per cent of the average product-specific amounts that would result from applying proportionately the legislated maximum permissible expenditure under the 2002 Farm Bill for specific products to the overall Blue Box limit of 2.5 per cent of the average total value of agricultural production during the 1995-2000 period. In case of Green Box, it is proposed that it shall be minimally trade distorting. The Revised Draft also proposed to allow some flexibilities for developing countries on account of food stock holding payments under the Green Box.

Cotton—Domestic Support: The Revised Draft proposed that AMS support for cotton shall be reduced using the formula proposed in the Revised Draft. The reductions for trade-distorting domestic support on cotton shall be implemented over a period which is one third of the implementation period.

3.6.2 Market Access

Section II of the Revised Draft Modalities on Agriculture, deals with Market Access related issues. Proposals on different issues pertaining to market access are described under seven sub-sections: A. Tiered Formula for Tariff Reductions; B. Sensitive Products; C. Other Issues; D. Special and Differential Treatment; E. Least Developed Countries; F. Cotton Market Access; and G. Small, Vulnerable Economies.

Substantial reductions in tariffs are expected. Revised Draft Modalities has proposed different rates of reduction in bound tariffs for developed and developing countries. Proposed reductions in bound tariff for developed countries may be summarised as in Table 3.4, where reductions would be in four tariff bands. Proposed reductions in tariff for developing countries would also be in four bands, which may be summarised as in Table 3.5. In brief, Revised Draft has followed the principle of

Table 3.4 Possibility in Tariff Cuts in the Developed Countries

Tariff Bands	Thresholds	Range of cuts (%)
Band 1	> 0% - ≤ 20%	48-52
Band 2	> 20% - ≤ 50%	55-60
Band 3	> 50% - ≤ 75 %	62-65
Band 4	> 75%	66-73

Source: Revised Draft Modalities for Agriculture, 8 February 2008, p.12.

Table 3.5 Possibility in Tariff Cuts in the Developing Countries

Tariff Bands	Thresholds	Range of cuts (%)
Band 1	> 0% - ≤ 30%	2/3 of 48-52
Band 2	> 30% - ≤ 80%	2/3 of 55-60
Band 3	> 80% - ≤ 130%	2/3 of 62-65
Band 4	> 130%	2/3 of 66-73

Source: Revised Draft Modalities for Agriculture, 8 February 2008, pp.12-13.

higher rate of tariff, deeper the level of cut. It is proposed that the developed countries shall reduce their bound tariffs in equal installments over five years and developing countries shall reduce their final bound tariffs in equal annual installments over eight years. It is pertinent to mention here that non-advalorem tariffs will be converted to advalorem tariff equivalents (AVEs) following the formula agreed in July 2006. Some special provisions (i.e. more flexibility) are proposed for recently acceded members (RAMs) and small and vulnerable economies.

Special Products (SPs) and Special Safeguard Mechanisms (SSM), Sensitive Products (SePs) and Special Agricultural Safeguards (SSG)

Each of the developing country Members shall be entitled to self-designate Special Products guided by indicators based on the criteria of food security, livelihood security and rural development. There shall be a minimum entitlement of 8 per cent, and a maximum entitlement of [12] [20] per cent, of tariff lines available for self-designation as Special Products. On the other hand, developed country members shall have the right to designate up to 4 to 6 per cent of dutiable tariff lines as sensitive products.

Revised Draft has outlined some modalities for SSM and SSG. It has mentioned that SSM may be invoked for all products; both price-based and volume-based SSM shall be available. However, most of the key provisions to understand the implementation of the future SSM (i.e. level of triggers and additional duties) are bracketed and remain controversial. It is also argued that some elements (such as provisions related to scope of product identification, bound rates, price fall requirement for price-based SSM) might constrain the ability to resort to SSM significantly. In case of SSG, two contradicting options are suggested. The first option suggests maintenance of the SSG and a reduction in its scope, while the second option suggests that SSG be eliminated.

3.6.3 Least Developed Countries

Least developed country Members are not required to undertake reductions in bound duties (para 145 of the Revised Draft). According to para 146 of the Revised Draft, developed country Members shall, and developing country Members declaring themselves in a position to do so should:

- (a) Provide duty-free and quota-free market access on a lasting basis, for all products originating from all LDCs by 2008 or no later than the start of the implementation period in a manner that ensures stability, security and predictability.
- (b) Members facing difficulties at this time to provide market access as set out above shall provide duty-free and quota-free market access for at least 97 per cent of products originating from LDCs, defined at the tariff line level, by

2008 or no later than the start of the implementation period. In addition, these Members shall take steps to progressively achieve compliance with the obligations set out above, taking into account the impact on other developing country Members at similar levels of development, and, as appropriate, by incrementally building on the initial list of covered products.

- (c) Developing country Members shall be permitted to phase in their commitments and shall enjoy appropriate flexibility in coverage.
- (d) Ensure that preferential rules of origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access.
- (e) Inform WTO Members of the products that will be covered under the commitment to provide duty-free and quota-free market access for at least 97 per cent of products originating from LDCs, defined at the tariff line level by 2008, or no later than the start of the implementation period.
- (f) Notify the steps and possible time frames within which they will progressively achieve full compliance with the Decision.

As part of the review foreseen in the Decision, the Committee on Trade and Development shall monitor progress made in its implementation, including in respect of preferential rules of origin. The monitoring procedure should be defined and agreed on, by the time of final schedules.

3.6.4 Export Competition

Section III of the Revised Draft on Modalities on Agriculture, deals with Export Competition related issues. Proposals on different issues pertaining to Export Competition are described under six sub-sections: A. General; B. Scheduled Export Subsidy Commitments; C. Export Credits, Export Credit Guarantees or Insurance Programmes; D. Agricultural Exporting State Trading Enterprises; E. International Food Aid; and F. Cotton.

Para 154 of the Revised Draft mentioned: "Developed country Members shall eliminate their remaining scheduled export subsidy entitlements by the end of 2013. This shall be effected on the basis of:

- Budgetary outlay commitments being reduced by 50 per cent by the end of 2010 in equal annual instalments from the date of entry into force, with the remaining budgetary outlay commitments being reduced to zero in equal annual instalments so that all forms of export subsidies are eliminated by the end of 2013.
- Quantity commitment levels being [reduced to zero in equal annual instalments from the applicable commitment levels] [applied as a standstill from the commencement until the end of the implementation period at the lower of either the then current actual applied quantity levels or the bound levels reduced by 20 per cent."

Para 155 adds: "Developing country Members shall eliminate their export subsidy entitlements by reducing to zero their scheduled export subsidy budgetary outlay and quantity commitment levels in equal annual instalments by the end of 2016."

Para 156 adds: "In accordance with the Hong Kong Ministerial Declaration, developing country Members shall, furthermore, continue to benefit from the provisions of Article 9.4 of the Agreement on Agriculture until the end of 2021, i.e. five years after the end-date for elimination of all forms of export subsidies."

3.6.5 International Food Aid

There is commitment to maintain adequate levels of food aid. General disciplines for all food aid transactions would be observed. Food Aid will be needs-driven and provided fully in grant form and will not be tied to commercial exports of goods or services. It is also proposed that food aid will not be linked to market development objectives of donor.

Two types of food aid—emergency and non-emergency—will be allowed. Emergency food aid would be provided after declaration and assessment by UN agencies while non-emergency food aid will have to maintain general discipline plus need assessment. Food aid will take into account local market conditions of the same or substitute products. Donors are encouraged to procure food aid from local or regional sources and they will be encouraged to shift towards cash based food aid.

3.7 Implications and Concerns for Bangladesh

Trade liberalisation proposals putforward through the February 2008 Draft has important implications and concerns for Bangladesh. These are listed below:

- *Increase in global price:* Reduction in domestic support and export subsidy by developed and developing countries is likely to increase food prices globally that will negatively affect net food importing countries including Bangladesh.
- *Greater market access possibility:* Reduction in applied and bound tariff rates is likely to provide greater market access for Bangladeshi products in both the developed and developing countries. Bangladesh's export level may increase substantially. Export of bovine meat, sheep meat, poultry, roots and tubers, raw sugar, tropical oilseeds, banana might increase.
- *Loss of total welfare:* Total welfare from trade liberalisation arises from three sources: changes in producer surplus, changes in consumer surplus and changes in government revenue. An analysis carried out at the CPD revealed that Bangladesh might experience loss in total welfare after implementation of the proposals mentioned in the revised draft. This loss will arise as the net change to be derived from the positive changes in producer surplus is dominated by the negative changes in consumer surplus and reduction in government revenue.

- The text remains incomplete and it contains many brackets. Some of these particularly the level of ambition requires political decision (for example, numbers in the formulas for reductions of tariffs and domestic support). However, others (such as SSM, preference erosion vs. tropical products) could entail additional technical work, prior to adoption of modalities.
- Modalities for Export Competition and Domestic Support appear to be more finalised form than the market access pillar, where more technical issues remain outstanding. In this sense, the current text adds more precision in certain elements such as: base and implementation periods for commitments on domestic support, specific formula to address tariff escalation, provisions on in-quota tariffs, on Special Safeguard Mechanism (SSM), tariff simplification and tariff-rate quota (TRQ) administration.
- The number of tiers, their thresholds, and comparatively deeper cut in higher tariff in the proposed tiered formula is good for Bangladesh. We may agree with this. But we have to seek and negotiate for the exclusion of our interest product from sensitive list.
- Reduction in domestic support and export subsidies in cotton is likely to increase cotton price globally, which is likely to negatively affect RMG sector of Bangladesh.

3.8 Negotiating Strategy for Bangladesh

In view of the current state of negotiation at the WTO, Bangladesh needs to adopt a comprehensive and coordinated strategy for advancing its interests in the ongoing negotiations which may include the following:

- *Duty-free and Quota-Free Market Access*: The issue of market access is more important for Bangladesh. Transforming market access potential into reality is a major challenge. So the concerns have to be more active to ensure proper activation of the modalities. Bangladesh should negotiate about the issue of selecting agricultural commodities for the exclusion list comprising 3 percent of the tariff lines. In this context, two sub paragraphs (para 146, e and f) of the revised draft which deal with the issue of DF-QF market access are important. Bangladesh may propose to add the word "commercially meaningful" duty-free quota-free market access in sub paragraph (e) and to end the issue within the Doha implementation period. Bangladesh may also seek market access in developing countries like China, Brazil and India so that we may get greater access in these markets.
- *De minimis Support*: Developed countries and developing countries have to reduce their *de minimis* supports. LDCs are eligible to provide same *de minimis* level of support as mentioned in Article 6.4 (b) of the WTO Agreement on Agriculture (AoA). Total support provided by Bangladesh to its agriculture

sector ranged 0.28 to 0.56 of the agricultural GDP. So, Bangladesh will be comfortable with the *de minimis* to be allowed even after reduction.

- *Food Aid:* As a net food importing country Bangladesh may suffer from food price rise as a result of negotiations in agriculture. To compensate for the negative shock on domestic support Bangladesh may seek food aid without conditionality. Bangladesh should also negotiate for provision to monetise the food aid if needed, to bear the cost of transportation at the international and domestic level.
- *Proactive Engagement in other WTO Negotiations:* Bangladesh has to take a more pro-active interest in other ongoing negotiations' positive agenda, S&D provisions, transfer of technology, enabling clause, and assistance under integrated framework initiative trade capacity building of LDCs must be a mandatory activity under "Aid for Trade" particularly in the areas of (i) market information (ii) human resource development, and (iii) development of facilities, and systems for compliance with SPS requirements in developed countries, especially in case of exports of shrimp and other agricultural commodities.
- *Actions in the Domestic Level:* Bangladesh has to take actions in the domestic front by raising investment and support level for agriculture, establishing SPS compliant facilities and certification system for exporting and importing agro-commodities, and enacting laws for preservation of biodiversity and community knowledge, plant variety protection act.

3.9 Summary

- More than half of the total work force is engaged in agriculture and more than 125 million farmers are engaged in South Asian Countries. Therefore a negotiation on Agreement on Agriculture (AoA) is very important for countries like Bangladesh. The agricultural package also addresses many other issues of vital economic and political importance to many WTO members. These include provisions that encourage the use of less trade-distorting domestic support policies to maintain the rural economy, allow actions to be taken to ease any adjustment burden, and also the introduction of tightly prescribed provisions that allow some flexibility in the implementation of commitments.
- The negotiations have resulted in four main portions of the Agreement: the Agreement on Agriculture itself; the concessions and commitments Members are to undertake on market access, domestic support and export subsidies; the Agreement on Sanitary and Phytosanitary Measures; and the Ministerial Decision concerning Least Developed and Net Food Importing Developing countries.
- The original GATT (General Agreement on Tariff and Trade) did apply to

agricultural trade, but it contained loopholes. The Uruguay Round agreement included a commitment to continue the reform through new negotiations. These were launched in 2000, as required by the Agriculture Agreement.

- Under the Agriculture Agreement, WTO members have to reduce their subsidised exports. But some importing countries depend on supplies of cheap, subsidised food from the major industrialised nations. A special Ministerial decision sets out objectives, and certain measures, for the provision of food aid and aid for agricultural development. It also refers to the possibility of assistance from the International Monetary Fund and the World Bank to finance commercial food imports. The Cotton Initiative was originally raised both in the General Council and the agriculture negotiations by Benin, Burkina Faso, Chad and Mali.
- Major Issues of Doha Mandate are: (i) market access which stipulates substantial reductions in tariffs; (ii) export subsidies with a reductions of, with a view to phasing out, all forms of supports to exporters provided by governments; and (iii) Domestic Support related to substantial reductions for supports that distort trade. Secondary Issues of Doha Mandate are capacity building, S&D for developing countries, food security and rural development.
- Discussions carried out in Cancun—mainly commenting on selected parts of the Pérez del Castillo draft, led to a revised annex in the new draft declaration compiled by the conference Chairperson, Mexican Foreign Minister Luis Ernesto Derbez, and circulated on 13 September (the "Derbez text"). Various members still had problems with the new draft. But because of deadlock on the four "Singapore issues" (investment, competition policy, transparency in government procurement and trade facilitation), there were no detailed negotiations on this text before the meeting ended.
- Ten months later the Cancun deadlock was broken. Shortly after midnight on 1 August 2004, the WTO's 147 member governments approved a package of agreements that includes an outline (or "framework") to be used to complete the "modalities" on agriculture.
- Hong Kong Ministerial agreed to end all export subsidies to agriculture by 2013. As agreed under paragraph 45 of the July Framework agreement, LDCs including Bangladesh are exempt from any tariff reduction commitment. Members agreed that there would be three bands for tariff reductions in Final Bound total AMS. In the overall cut in trade-distorting domestic support, there would be higher linear cuts in higher bands.
- It was also agreed that the level of cuts would be decided later. Members agreed that all forms of export subsidies for cotton would be eliminated by developed countries by 2006. Members agreed that disciplines on in-kind food aid, monetisation and re-exports would be made.

- It will be in Bangladesh's advantage if the ongoing negotiations do result in duty and quota-free access of LDC agro-products (inclusion in the 97 per cent category) to the developed country markets, and substantial de-subsidisation in developed countries, and ensures market based domestic prices for farm products in developed countries.
- Bangladesh has to take a more pro-active interest in other ongoing negotiations' positive agenda, S&D provisions, transfer of technology, enabling clause, and assistance under integrated framework initiative trade capacity building of LDCs must be a mandatory activity under "Aid for Trade" particularly in the areas of market information, human resource development, and development of facilities and systems for compliance with SPS requirements in developed countries, especially in case of exports of shrimp and other agricultural commodities.
- Bangladesh has to take actions in the domestic front by raising investment and support level for agriculture, establishing SPS compliant facilities and certification system for exporting and importing agro-commodities, and enacting laws for preservation of biodiversity and community knowledge, plant variety protection act.

3.10 Questions for Discussion

1. What are the pillars of Agreement on Agriculture (AoA)?
2. What the Article 20 of the Agriculture Agreement mentioned about?
3. Apart from the three pillars what are the issues of importance for the Agreement on Agriculture?
4. What are the major Issues and secondary issues of Doha Mandate?
5. When and how the cotton issue get momentum and what actually reflected in the Hong Kong Ministerial?
6. How far the Hong Kong Ministerial has been able to protect the interest of Bangladesh in the context of AoA?
7. What should be the strategies for Bangladesh to gain the most from the WTO?

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Module

4

Non-Agricultural

Market Access

(NAMA)

Non-Agricultural Market Access (NAMA)

Learning Objectives

- The underlying objective of this particular module is to expose the participants to the issue of trade in non-agricultural products under the WTO.
- Besides explaining the background and nature of Non-Agricultural Market Access (NAMA), a brief discussion on the state of WTO

negotiations on NAMA has been included with particular emphasis on its implications on the least developed countries (LDCs), like Bangladesh.

- It is hoped that this module will enable participants to understand the nitty-gritty of NAMA and apply the accumulated knowledge in the professional arena.

4.1 Introduction

4.1.1 Importance of NAMA Negotiation for Bangladesh

Non-Agricultural Market Access (NAMA) refers to all goods not covered by the Agreement on Agriculture. In other words, it includes in practice, manufacturing products, fuels and mining products, fish and fish products, and forestry products. These are sometimes referred to as industrial products or manufactured goods.

The Uruguay Round produced significant improvements in market access for non-agricultural products in the developed country markets, as tariff averages were reduced from 6.3% to 3.8%. However, this is an average and conceals tariff peaks in a number of traded items. In the case of developing countries, the most important contribution was in the form of new tariff bindings. Binding coverage for NAMA products in developing countries increased from 21% to 73%, which has considerably increased the predictability of trade.

About 90% of global trade in goods relates to trade in industrial goods. From this perspective, negotiations to liberalise trade in manufactured goods, through negotiations under the NAMA, is of critical importance in context of the multilateral trading regime.

It is also to be noted that overwhelming majority of Bangladesh's export products belong to the category of industrial goods. About 90% of Bangladesh's global

exports (2.1 billion in FY2007) relate to manufactured goods and any change in industrial tariffs in her export markets will have important impact for our competitiveness. This will happen in two ways -

- More favourable market access where it faces MFN tariffs
- Erosion of preferences where it receives GSP treatment

Thus, how the NAMA negotiations will evolve is going to have important implications for Bangladesh and will influence its stance in other areas of negotiations.

4.1.2 Objectives of NAMA Negotiation

The objectives of NAMA negotiation are three fold, (a) lower the non-tariff barriers (NTBs); (b) Conversion of NTBs through putting in place tariff rate equivalents; and (c) Reduction of the final tariff rates in a phased manner to be determined through negotiations.

As can be seen from Table 4.1, NTBs can be of various types, starting from *quantitative restrictions* and ending with an array of trade distorting practices. Tariffs could be in the form of tariff escalation (when import tariffs increase based on the stages of processing), tariff peaks (high tariffs on certain products), tariff dispersion (divergence in tariff rates within same tariff line), non-ad valorem tariffs (specific duties), Tariff Rate Quota (TRQ) (higher tariff rates based on volume of import), etc.

Table 4.1 Tariff Barriers and Non-Tariff Barriers

Issues	Market Access Issues
Tariff Barriers	<ul style="list-style-type: none"> • Tariff escalation • Tariff peaks • Tariff dispersion in manufacturing products • Complex and non-transparent tariffs (e.g. non-ad valorem tariffs) • Tariff Rate Quota (TRQ)
Non-Tariff Barriers	<ul style="list-style-type: none"> • Export/Import Quota, Quantitative Restriction (QR) • Voluntary Export Restraint (VER) • Rules of Origin (RoO) • Discriminatory Government Procurement Practices • Anti-dumping and Countervailing Duties, Predatory pricing and price discrimination • Sanitary and Phytosanitary Measures (SPS) • Technical Barriers to Trade (TBT) • Subsidies (particularly agricultural subsidy by the OECD countries) • Multifarious trade and market distorting practices

Sources: WTO Website www.wto.org

4.1.3 Major Market Access Issues in the Doha Declaration

The Doha Ministerial Declaration stipulated that: (a) Negotiations 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; (b) NTBs are to be tariffed and then reduced, in particular on products of export interest to developing countries are to be reduced expeditiously; and (c) 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. To this end, the modalities to be agreed will include appropriate studies and capacity building measures to assist least developed countries in order to participate effectively in the negotiations.

The Doha decision adopted the framework for modalities for negotiations on non-agricultural products that was set out in Annex B of the Declaration. The Doha decision also reiterated the commitment of the developed WTO members to the objective granting of duty-free, quota-free market access for products originating from the LDCs. The Ministerial Declaration recognised that integration of the LDCs into the multilateral trading system requires meaningful market access, support for diversification of their production and export base, and trade-related technical assistance and capacity building support.

At present, the NAMA negotiation is focusing on the following five areas: (a) formula tariff cut; (b) unbound tariff lines; (c) flexibilities for developing countries; (d) sectoral initiatives; and (e) preferences and erosion of preferences.

Bangladesh's objectives in the NAMA negotiation are four fold: (a) Play the LDC card: not to take any obligations under the NAMA negotiations; (b) Bind as few products as possible; (c) Active duty-free, quota-free access for its industrial goods; and (d) Address the issue of preference erosion.

4.2 NAMA Negotiations: Modalities and LDC Perspectives

In the initial GATT rounds, tariffs were reduced on a selective product-by-product basis through requests and offers made between participants. However, this was found to be time-consuming and complex. Gradually, contracting parties came to agree to use formulas to cut tariffs across-the-board. For example, during the Kennedy Round (linear cut formula) and in the Tokyo Round (Swiss formula), developed countries applied formula to reduce tariffs, but with several exceptions. In the Uruguay Round, developing and developed member participants negotiated their tariff cuts by using a variety of methods to reach an average target comparable to that of the Tokyo Round (1/3 cut).

Following intensive discussions, participants agreed on the advantages of the formula approach to the tariff cut. A formula approach provides transparency (every Member will know how the other will reduce its tariffs); efficiency (simpler process than

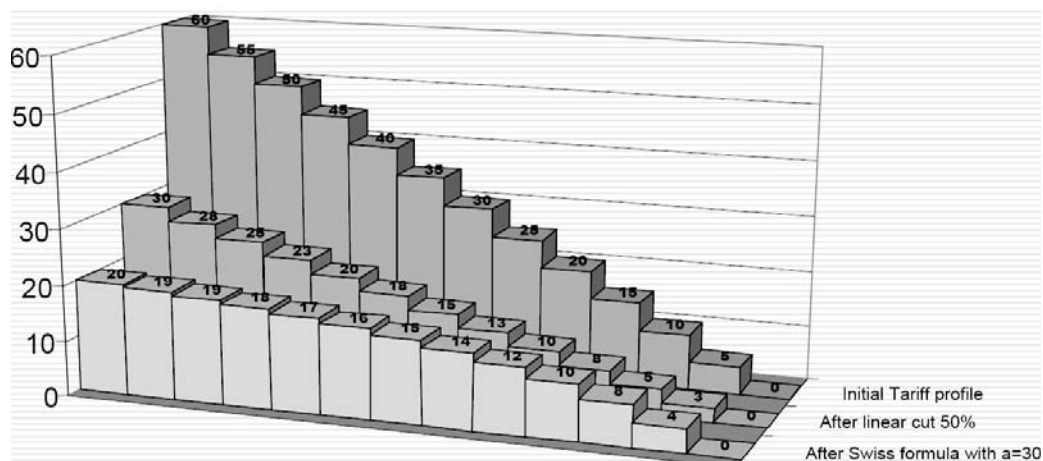
request/offer approach); equity (tariff reduction depends on rules rather than "bargaining power"); and, predictability (easy to foresee the results of the negotiations).

4.2.1 Linear Cut versus the Swiss Formula

The *Swiss formula*, initially proposed during the Tokyo Round, is a tariff-dependent, non-linear formula which can be expressed mathematically as, $t_1 = \frac{a \times t_0}{a + t_0}$, where t_0 and t_1 are the initial and final tariffs respectively, and a is the coefficient which is to be negotiated. By rearranging the formula, one gets the rate of tariff reduction, $R = \frac{t_0}{a + t_0}$,

which implies that an increase in the value of a will reduce the rate of tariff reduction whilst a decrease will increase the rate of reduction. In other words, the lower (higher) the coefficient, the higher (lower) the reduction in tariff profile and if the formula is applied the final tariff will always be lower than the initial tariff. The other implication of the Swiss formula is that for the same coefficient a , the higher the tariff the deeper will be the reduction.

Figure 4.1 Comparison between Linear Cut and Swiss Formula



The *Swiss formula* is applied on a line-by-line basis. Therefore, trade and tariff data are required at the level of HS-6 digit disaggregated tariff line in order for it to be applied. This also helps to estimate the value of currently received preference, and to come at an estimation about the erosion of preference arising from the reduction of the tariff rate as a result of application of the *Swiss formula*.

The July 2004 Framework Agreement recognised the advantage of the Swiss formula as a reduction approach. The framework required the NGMA (Negotiating Group on Market Access) to work on, "a *non-linear formula applied on a line-by-line basis* which 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*".

When agreement was reached as to which type of formula will be used (i.e. Swiss Formula), members came up with several variations of the "Swiss Formula" which they perceived best, to serve the objective. In reality, variations suggested by individual members were designed in such a manner that it tended to serve the specific interests of the respective members! However, each has tried to impress upon other members that its proposal was the most appropriate to meet the mandated objectives and requirements.

- The US proposal sought for a *dual coefficient, lower for developed and higher for developing countries, but without any flexibilities*
- The EC proposal was about a *single coefficient with credits*
- The Norwegians wanted a *dual coefficient with credits*
- The APEC countries supported the Swiss formula, but suggested that the coefficients will have to be negotiated
- The ABI (Argentina, Brazil and India) proposed that, *each country's bound tariff average will be its coefficient; additional variables also proposed to moderate ambition levels*

4.2.2 Developing Country and LDC Stance in the NAMA Negotiations

Flexibility provisions for developing countries: According to the July 2004 Framework, developing countries would enjoy longer implementation periods for their tariff reductions and choose between: 1) less than formula cuts for up to [10%] of their tariff lines representing up to [10%] of their import value; or 2) not apply formula cuts, or leave unbound tariff lines, for up to [5%] of their tariff lines representing up to [5%] of their import value.

Least Developed Countries: The least developed country participants are not required to apply the formula or participate in the sectoral approach. They will be expected to contribute to the Round by substantially increasing their binding coverage at levels in accordance with their needs and development.

Other S&D Treatment: Developing countries with a binding coverage of less than [35%] would be exempted from formula reductions, but instead would contribute by binding their tariffs at an average level that does not exceed the overall average of the post-Uruguay Round bound tariffs for all developing countries.

The dual coefficient for the Swiss formula being indicated are (a) 10 for developed; and (b) 15 for developing countries. The arguments in favour of a higher coefficient for the developing countries were as follows:

- Infant industry argument; Relatively Weak Economies
- Tariffs provide revenue for developmental needs
- It is a policy tool to help domestic industries develop and be able to cope with external shocks

- Many developing countries have lower applied tariffs as a result of IMF-WB driven reforms and will not actually benefit from lower reduction commitments, but they would like to keep some 'policy space' by undertaking lower levels of reduction.

4.2.3 ABI Formula

The ABI formula uses average as part of the coefficient (it is the best proxy for the tariff profile of a Member):

Where:
$$t_1 = \frac{(B \times t_a) \times t_0}{(B \times t_a) + t_0}$$

t_a = simple average; t_0 = base tariff ; t_1 = final tariff; B = Ambition coefficient

There are some advantages of the ABI formula. These are: (a) it is a flexible 'Swiss' type formula, reflecting the tariff structure of each Member; (b) it is based on an objective criterion; (c) as it does not cease to be a Swiss Formula, it cuts tariff peaks, tariff escalation and high tariffs; and (d) it is development friendly – as it requires concessions commensurate with each Member's present tariff profile.

The July Framework Agreement allows developing countries two options as flexibilities: (a) applying less than formula cuts for up to [10%] of their tariff lines; or (b) keeping as unbound or not applying formula cuts for up to [5%] of tariff lines. Proposals have been made to restrict the recourse to these flexibilities – either one or the other flexibility. India, and other developing countries have made it clear that they want both flexibilities, and that these are non-negotiable.

4.2.4 The Issue of NTBs (Non-Tariff Barriers)

There is no official definition of NTBs. WTO has attempted to identify the plethora of NTBs that are in place in the various member countries. In general terms, NTBs refer to any measure other than a tariff which protects domestic industry. Many non-tariff measures are based on a legitimate goal (such as the protection of human health) and can be introduced in a WTO consistent manner. Agreements such as the SPS and TBT aim 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 negotiating group has been identifying, categorising and examining the various NTBs. Many NTBs are being resolved bilaterally, others are being addressed on a sectoral basis which some are also part of other existing multilateral NTB Agreements. Results on NTBs are also expected from other Negotiating Groups, such as Trade Facilitation. It is felt that outcomes of the NTB negotiations will have multilateral effect and therefore, benefit all Members. Furthermore, it is also expected to raise transparency in international trade.

NAMA also allows for 'Sectorals' negotiations which implies opening up certain sectors in a more (than WTO mandated MFN rate) radical manner by bringing down the tariff to zero. Such liberalised regime will be implemented only for countries which agree to participate in those plurilateral negotiations. Interested countries are participating in sectoral negotiations to decide on — (a) product coverage, (b) elimination or harmonisation, (c) phasing-out, (d) critical mass etc. Some of the present proposals include gems and jewellery, footwear, chemicals, environmental goods, electrical and electronic products, raw materials. LDC position on sectorals as regards participation is voluntary; however, this will have varying impacts on their interests. Nonetheless, some of the LDC members, especially the Africans, are against sectorals because of apprehensions about preference erosion. They have warned about the likely detrimental affects of sectorals for their economies.

Through increased binding coverage and reduction of the binding overhang, market access conditions was to be made more secure for all countries. The Doha mandate calls on developed Members as well as other developing countries 'in a position to do so' to grant duty free and quota free market access to LDC products on a date to be determined.

4.3 Concerns of LDCs as Regards NAMA and Preference Erosion

The ongoing negotiations on NAMA in the WTO are expected to lead to substantive reductions in the tariff rates on industrial goods in both the developed and the developing countries. Although an agreement on the formula and coefficient(s) is yet to be reached, it is becoming increasingly clear that countries are moving towards a differentiated Swiss-type formula with deeper cuts for higher tariffs. As was noted earlier, the July (2004) Framework Agreement stipulated that LDCs will not be required to undertake any tariff reduction commitments under the NAMA. However, LDCs are likely to suffer substantive tariff preference erosion as a result of the ongoing NAMA negotiations, since any tariff reduction by the developed countries will result in a fall in the preferential margins currently enjoyed by the LDCs, under the various GSP schemes operated by the developed countries. Consequently, the competitive edge currently enjoyed by the LDCs, by taking advantage of the preferential treatment under the various GSP schemes, is set to suffer erosion. Such preference erosion will also occur when developing countries belonging to RTAs reduce their MFN tariffs as a result of NAMA negotiations. LDC members of such RTAs will suffer preference erosion when their developing country partners, from whom they used to receive non-reciprocal preferential treatment, will reduce their MFN tariffs under NAMA. Thus, preference erosion is a major concern for Bangladesh and other LDCs in the Asia-Pacific region. Reduced preference margin is thus likely to undermine future competitiveness of LDCs in the developed country markets and in some instances, in the markets of developing countries as well.

It is also to be noted, on the other hand, that tariff reductions under NAMA is likely to have positive implications for Bangladesh in the US market where most of her

industrial goods do not enjoy GSP treatment. NAMA, thus, may increase Bangladesh's competitive edge vis-à-vis Caribbean and Sub-Sahara African countries which are currently enjoying zero-tariff access for their apparels export under the AGOA and the CBI in the US market. Accordingly, when MFN tariffs are reduced under NAMA negotiations, it is expected to have diverse implications for Bangladesh's export of industrial goods depending on whether it gets preferential treatment or not.

4.3.1 Relevance of Preference Erosion for the Asia Pacific-LDCs

In 2005, AP-LDC export exceeded USD 16.0 billion which was equivalent to about 17 per cent of their GDP. The structure of their exports is heavily tilted towards labour-intensive sectors such as apparels, textiles, fisheries, agriculture and tourism. Of particular importance is export of clothing and textile by these countries which together account for about two-thirds of the total commodity export of the AP-LDCs. Erosion of preferential margin is likely to undermine their competitive advantage with consequent adverse implications for their economic growth, foreign exchange reserves, livelihood for large number of people and overall poverty alleviation.

In this context, it is also to be noted that the MFN tariff rates on items of export interest to the AP-LDCs tend to be relatively high. For example, average tariffs on apparels in the EU is about 12.0 per cent, whilst in the USA and Canada these vary between 10-30 per cent (e.g. for Bangladesh, the MFN tariffs on apparels in the US market is about 15 per cent). The concern of the AP-LDCs in the context of NAMA originate from the fact that at present, under the various GSP schemes, these countries are enjoying duty-free access for most of their products in the markets of many developed countries (e.g. EU, Japan, Canada, Australia, New Zealand). For example, the *Everything But Arms* (EBA) Initiative of the EU (EU-EBA) enables the AP-LDCs to export, among other items, apparels to the EU markets at zero-tariff, providing their exporters, vis-à-vis those not enjoying such benefit, a competitive edge equivalent to the MFN tariff.

Table 4.2 provides information on the margin of preference enjoyed by the LDCs in developed country markets (the difference between the MFN tariff and the rate applicable to LDCs). The data justifies the apprehension as regards erosion of preferences following MFN tariff reduction. As is known, many products of export interest to the LDCs also face high tariffs (tariff peaks) in these markets. These tariffs are likely to be subjected to deeper cuts under the current negotiations. To that extent, the erosion of preferences for LDCs is also likely to be larger.

Table 4.3 provides information as regards average tariffs facing exports from selected AP-LDCs in the Quad markets. The data indicates the range of preferential margin enjoyed by these countries, if and when, they get preferential treatment for their products in the Quad market.

Table 4.2 Tariffs Under Preferential Schemes

Preferential Agreement	Average Tariff Rate (all HS-6 products)	Average Tariff Rate (tariff peak products)
Canada		
GSP	4.3	28.2
LDCs ¹	4.4	22.8
MFN	8.3	30.5
European Union		
GSP	3.6	19.8
Non-ACP LDCs ²	0.9	12.4
MFN	7.4	40.3
Japan		
GSP	2.3	22.7
LDCs	1.7	19.0
MFN	4.3	27.8
United States		
GSP	2.4	16.0
Non-AGOA LDCs	1.8	14.4
MFN	5.0	20.8

Sources: Hoekman, and Olarreaga 2002 and IMF staff estimates as quoted in Subramanian 2004.

Table 4.3 Likely Preference Margin Enjoyed by Selected AP-LDCs in Quad Markets

Country	Average Tariff (in percentages)				
	QUAD	US	EC-15	Japan	Canada
Bangladesh	12.4	12.1	12.3	7.3	21.7
Bhutan	12.4	12.1	12.3	7.3	21.7
Cambodia	13.4	4.4	4.4	4.4	4.4
Maldives	14.9	14.6	17.6	5.8	11.9
Myanmar	4.7	12.1	6.1	1.1	19.5
Nepal	9.5	11.1	7.4	7.7	18.7
Kiribati	5.7	0.1	14.7	7.1	4.4

Sources: Subramanian A 2003.

Some of the developed country members including the US, EU and Japan have indicated strong interest favouring dramatic reduction in tariff levels, generally by way of non-linear formula. The US has submitted a proposal to the effect that tariff levels be brought down to no more than 8% by 2010, and subsequently to zero by 2015.

¹Does not reflect the recent Canadian initiative with regard to LDCs' exports; for example, under the revised GSP (2002) apparels exports enjoy zero-tariff access to the Canadian market under an LDC-friendly RoO criteria of 25 per cent local value addition requirement.

²Estimates for the European Union's preference schemes for LDCs are for the post-EBA regime. They assume that the EBA will provide unrestricted access at the end of the transitional period.

New Zealand is also a supporter of speedy tariff reduction to zero. If such ambitious proposals are considered, and there is a decision to this effect under the current DDR negotiations or beyond, in all practical purpose, GSP preferential treatment will have a declining significance. Under such circumstances demand for global zero-tariff access for LDC products will have no relevance after a few years. This fact only reinforces the LDC concern about increasing preference erosion and strengthens their demand for acquiring zero-tariff access on an immediate basis.

Estimates of losses originating from tariff erosion show that these are likely to be significant for a number of AP-LDCs. The study carried out by Subramanian, A. (2003) indicates that export losses to be incurred by Bangladesh on account of preference erosion originating from reduction in MFN tariffs would be in the range of USD 222.4 million; for Cambodia this would be USD 53.6 million, and for Nepal USD 17.8 million. The estimates, however, also indicate that for most of the other AP-LDCs the erosion is not likely to be of significant magnitude; and also, the impact is likely to be spread out over time, owing to the phased out nature of MFN reductions. However, this relatively low magnitude of the likely adverse impacts could, in part, be explained by two factors: firstly, the fact that limited supply-side capacities of the LDCs do not enable these countries to take full advantage of the GSP facilities, and hence the lower impact; and secondly, as was mentioned, many AP-LDCs are not being able to enjoy preferential treatment under the existing GSP schemes even when products are eligible, because of inability to comply with the RoO criteria which is yet another possible reason for lower estimates.

4.3.2 Suggested Policy Measures in View of Preference Erosion

The concern about tariff preference erosion was also echoed by G-90 Trade Ministers who, in their July 13, 2004 communication, stressed the need for resolution of the preference erosion issue within the WTO negotiations. A number of proposals submitted by WTO members have attempted to address the issue. The Livingstone Declaration, adopted at the Fourth LDC Trade Minister's Meeting during 25–26 June 2005, also called for "further strengthening of the existing preferential schemes and the incorporation of provisions in the modalities to address the erosion of preferences" (WTO, 2005).

In this regard, two issues need be recognised: firstly, the issue of preference erosion should be addressed in a manner that does not jeopardise or undermine the liberalisation of global trade; secondly, from a long-term perspective, countries which suffer readjustments in their market share originating from preference erosion, are also at the same time expected to benefit from new potential markets subsequent to multilateral liberalisation. In short, an offsetting of the potential losses could be expected.

A number of proposals have been floated to enable the affected countries to address

the adverse impact of preference erosion. Subramanian (opt. cit) rightly points out that the 'shocks from preference erosion are likely to be permanent', and goes on to say that these countries may need to be supported through adjustment financing and this should be an 'integral part of any response' to changes in MFN tariff levels. The author is of the view that in light of the distinguishing features of the losses from preference erosion (a permanent shock, ability to anticipate beforehand, the potential losses being spread over time), any financing will be best done in the context of 'medium-term adjustment and programme financing facilities' and that creating a dedicated facility to address this particular issue 'would seem unnecessary and inefficient'. On the other hand, some others have suggested that the level of preference erosion could be set as a floor for a 'dedicated new assistance programme' (UNESCAP, 2004).

A proposal by Benin, on behalf of the ACP countries, proposes construction of a *Vulnerability Index* taking into cognizance three factors: (a) product concentration; (b) market concentration; and (c) global market share. Products would be identified on the basis of this index, and likely range of preference erosion would be assessed for these products. Another proposal (Sandrey, 2005) stipulates that rather than having tariff exemption privileges at the developed country border, an adjustment package be put in place based on the level of the baseline preferences, with a phase-out over time. As preferences erode due to tariff reduction, the difference between the baseline and current preferences would be compensated in the form of adjustment assistance. Another proposal that has been floated recently relate to switching from *unilateral preferences to LDCs* to an *import subsidy scheme* (Limao and Olarreaga, 2004). Instead of preferential access, the recipient country will receive a subsidy that will be subsequently revised depending on the reduction of MFN tariffs and its impact on the preference receiving economy. They estimate that total tariff revenue currently foregone due to preferences to LDCs is about USD 763 million. Here also Bangladesh is likely to be the largest loser (USD 202 million). The loss due to a 33 per cent reduction in MFN tariffs is estimated to be about USD 624 million in the absence of a move towards a subsidy scheme (this is relatively high since MFN tariff reductions is expected to result in higher volume of imports to the Triad -EU, Canada, Japan and simultaneously increased world prices).

Proposals have also been floated that a fund should be established to provide support to the LDCs in order to offset the possible negative impacts of preference erosion. Page (opt cit.) suggested that \$500 million, equivalent to the total estimated amount of preference erosion, could be a reasonable size for this fund and that this fund may be created through transfers from developed countries as part of "their contribution to benefit both the gainers and the losers among developing countries". As a matter of fact, IMF's special lending programme, titled *Trade Integration Mechanism* (TIM) has been introduced recently to mitigate concerns about the prospect of balance of payments shortfalls, as multilateral liberalisation changes the competitive position of developing countries.

Developing countries have generally opined that since preferences are given by developed countries, the onus is on them to resolve the matter without affecting market access of other developing countries.

What the policymakers in the AP-LDCs should argue most forcefully in context of the envisaged preference erosion is that this possibility reinforces their argument for a global zero-tariff access for all products from the LDCs. Such enhanced market access could somewhat compensate for the likely losses. In fact, the *July Framework* of the WTO also urges 'the developed WTO members as well as advanced developing countries who are in a position to do so' to accord zero-tariff access to LDC products. As far as developed countries are concerned, this would essentially mean zero-tariff access to the US market which is the only remaining Quad country that is yet to allow such preferential treatment to major products of exports interest to the AP-LDCs including apparels. For example, tariff revenues on exports from Cambodia and Nepal in the US stood at USD 195.9 million and USD 21.4 million respectively (4.4 times and 0.65 times the respective ODA flow from the USA). Preferential market access to the USA is also justified by the fact that since 2000, most of the non-AP-LDCs have been enjoying preferential treatment for this apparels export under the *Africa Growth and Opportunity Act* (AGOA) and *Caribbean Basin Initiative* (CBI) of the USA.

In context of the ongoing WTO negotiations, the LDCs have also been calling for LDC-friendly rules of origin under the various GSP Schemes (lower value addition and flexible processing requirements). The justification for favourable consideration of this demand is also strengthened by the looming prospect of preference erosion. However, there is no denying the fact that even if adequate measures are taken to address the issue of preference erosion, LDCs will need to do their necessary homework in order to remain competitive in the global market. Reforms to enhance trade competitiveness and efficiency enhancement, and concrete steps to improve institutions and infrastructures related to trade facilitation, are crucial in ensuring long-term competitive advantage of LDC products in the global market.

4.4 Hong Kong Ministerial Decision on NAMA

4.4.1 Salient Features of Hong Kong Ministerial Decision

The Hong Kong Declaration with respect to the NAMA stipulates the followings:

- We adopt a Swiss Formula with coefficients at levels which shall *inter alia*
- Reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs and tariff escalation, in particular on products of export interest to developing countries
- Take fully into account the special needs and interests of developing countries, including through less than full reciprocity in reduction commitments

- We instruct the Negotiating Group to finalise its structure and details as soon as possible
- We reaffirm the importance of special and differential treatment and less than full reciprocity in reduction commitments, including paragraph 8 of the NAMA Framework, as integral parts of the modalities. We instruct the Negotiating Group to finalise its details as soon as possible
- In furtherance of paragraph 7 of the NAMA Framework, we recognise that Members are pursuing sectoral initiatives. To this end, we instruct the Negotiating Group to review proposals with a view to identifying those which could garner sufficient participation to be realised. Participation should be on a non-mandatory basis
- We take note of the progress made to convert non-ad valorem duties to ad valorem equivalents on the basis of an agreed methodology as contained in JOB(05)/166/Rev.1.
- As a supplement to paragraph 16 of the NAMA Framework, we recognise the challenges that may be faced by non-reciprocal preference beneficiary Members as a consequence of the MFN liberalisation that will result from these negotiations. We instruct the Negotiating Group to intensify work on the assessment of the scope of the problem with a view to finding possible solutions.
- We note that the Negotiating Group has made progress in the identification, categorisation and examination of notified NTBs. We also take note that Members are developing bilateral, vertical and horizontal approaches to the NTB negotiations, and that some of the NTBs are being addressed in other fora including other Negotiating Groups. We recognise the need for specific negotiating proposals and encourage participants to make such submissions as quickly as possible
- However, we recognise that much remains to be done in order to establish modalities and to conclude the negotiations. Therefore, we agree to intensify work on all outstanding issues to fulfill the Doha objectives, in particular, we are resolved to establish modalities no later than 30 April 2006 and to submit comprehensive draft Schedules based on these modalities no later than 31 July 2006.

However, as will be noted later, these deadlines were missed and negotiations on key issues are still continuing in Geneva.

The Duty-Free Quota-Free (DFQF) Market Access in Developed countries, markets for all exports from the LDCs was a key demand of the latter during the Hong Kong Ministerial Meeting. However, in the face of opposition from the USA and even from some of the developing countries, the DF-QF proposal that emerged in

Hong Kong was a watered-down version of what the LDCs had been calling for. In place of the 100% coverage, the LDCs received a reduced DF-QF Market Access (97%).

4.4.2 HK Decision on DF-QF for LDCs

The pertinent part of the Ministerial Decision on "Measures in Favor of LDCs" read thus:

We agree that developed country Members shall, and developing country Members declaring themselves in a position to do so should:

(a) (i) *Provide duty-free and quota-free market access on a lasting basis, for all products originating from all LDCs by 2008 or no later than the start of the implementation period in a manner that ensures stability, security and predictability.*

(ii) *Members facing difficulties at this time to provide market access as set out above shall provide duty-free and quota-free market access for at least 97 per cent of products originating from LDCs, defined at the tariff line level, by 2008 or no later than the start of the implementation period. In addition, these Members shall take steps to progressively achieve compliance with the obligations set out above, taking into account the impact on other developing countries at similar levels of development, and, as appropriate, by incrementally building on the initial list of covered products.*

(iii) *Developing country Members shall be permitted to phase in their commitments and shall enjoy appropriate flexibility in coverage.*

(b) *Ensure that preferential rules of origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access.*

Members shall notify the implementation of the schemes adopted under this decision every year to the Committee on Trade and Development. The Committee on Trade and Development shall annually review the steps taken to provide duty-free and quota-free market access to the LDCs and report to the General Council for appropriate action.

In view of the apprehensions of LDCs about many of their actual exportables being excluded from the DF-QF list (not being included in the 'at least 97%' list), albeit only in some of the major developed country markets such as the US, the Chair in his concluding speech mentioned that the modalities for designing the lists will be finalised following discussion with LDCs. In his remarks, the Chair (Trade Minister of PRC) noted: "I would also like to suggest that, we take note of our understanding that the text concerning the duty-free, quota-free decision in sub-paragraph 36 a (ii) of Annex F is a framework and that developed members and developing members declaring themselves in a position to do so are to set up by the end of 2006, the means by which they will implement this decision".

This explanation of the Chair, whilst giving some hope to the LDCs with regard to

the design of the DF-QF lists prepared by developed countries (and some developing countries), whilst welcome, is yet to be materialised.

4.5 Current Developments in NAMA: Draft NAMA Modalities of July 2007 and February 2008

As was pointed out above, most of the negotiation deadlines of the Doha Round, particularly those set by the July 2004 Framework decision and also the Hong Kong Ministerial Decision, were missed.

On 17 July 2007, prior to the meeting of the WTO-TNC on 26 July 2007, the Chairman of the WTO Negotiating Group on Non-Agricultural Market Access (NAMA), Ambassador Don Stephenson of Canada, circulated a draft text on NAMA modalities titled *Chairman's Introduction to the Draft NAMA Modalities*. In the draft, the NAMA Chairman came up with a number of suggestions towards further liberalisation of industrial tariffs and called upon members to consider his proposals and come to an agreement.

As the Chairman noted, the NAMA text was drafted on the basis of his understanding of the various perspectives articulated during the NAMA negotiations. Although, during their deliberations in the TNC a number of countries have expressed their opposition to the idea that the draft be considered as a working document, there is a high likelihood that the draft modalities will serve at least as an important reference point for negotiations which commenced in September 2007. It is thus important that Bangladesh closely examines this document to understand the possible consequences of the proposed NAMA modalities, and firms up her stance with respect to the proposals in the draft modalities.

4.5.1 Salient Features

There is by now a general consensus that a *Swiss type* formula will be adopted for tariff reduction under the NAMA, with varying coefficients for the developing and developed country members of the WTO in light of the principle of non-reciprocity in commitments by these two groups of countries. LDCs have not been asked to undertake reductions commitments; however, the expectation is that they will bind their industrial tariff lines.³ In this regard, the NAMA text states, "Individual LDCs shall determine the extent and level of tariff binding commitments in accordance with their individual development objectives" (Para 14, Draft NAMA Modalities, 17 July 2007).

Reduction of tariffs to be implemented by the developed and Non-LDC developing country members of the WTO, as suggested in the draft NAMA modalities, is likely to have adverse impact on LDCs such as Bangladesh, through *preference erosion* in those

³Most, including Bangladesh, have already bound their agricultural tariff lines.

tariff reducing countries that provide preferential treatment to the LDC exports. (Rahman and Shadat, 2005).

The draft modalities have suggested that the coefficient in the *Swiss formula*, to be used for tariff reduction purposes, would be 8–9 for industrial countries, whilst for the developing country members the coefficient will be between 19 and 23.⁴

One of the major implications of the Swiss coefficient suggested in the draft modalities is that reductions will be much steeper for products with higher tariffs (*tariff peaks*). As is known, apparels, Bangladesh's major export item, face tariff peaks (high tariffs) in both the US and the EU markets. Accordingly, Bangladesh will need to closely study the impact of all proposals with regard to NAMA negotiations.

4.5.2 Annex 2 and Annex 3 of NAMA Draft

The NAMA Chair proposed Annex 2⁵ and Annex 3⁶ in the NAMA draft on modalities with a view to mitigating the adverse affect of preference erosion for the LDCs, and also for developing countries. The idea is to slow down the pace of reduction in the preferential margins and to provide producers in these countries same breathing space to adjust. Instead of reductions of tariffs in 5 installments, the Chair has proposed reductions in 7 installments for selected items in the EU (Annex 2 of the Draft NAMA Modalities) and the USA (Annex 3 of the Draft NAMA Modalities). Annex 2 of the Draft Modalities contains 23 items at HS 8 digit level whilst Annex 3 has 16 items at the HS 8 digit level. In both cases the selected items are predominantly apparels, but also included a few other items.

4.5.3 Implications of Annex-2 and Annex-3 for Bangladesh

The analysis presented in Table 4.4 and Table 4.5 shows that with a *Swiss coefficient* of 9, the higher the rate of tariff the deeper will be the tariff reduction,⁷ and consequently, the average annual tariff cuts will be higher in those cases. As was stated above, tariffs on apparels generally face *tariff peaks* in developed countries, so that the depth of tariff cuts will be significant for apparel products. The estimates presented in Table 4.4 of this document shows that with a current base tariff of 12% for apparels in the EU, the tariffs will come down to 5.14%, and the reduction will be to the tune of 6.86%. If the reduction is carried out in 5 installments the average yearly tariff cut would be 1.4%; and to compare, if it is done in 7 installments the average yearly tariff cut will be about 1.0%. Although, the tariff cut itself will be deep enough, the difference between the annual rates of reduction

⁴It is to be noted in this context that the developed countries wanted a coefficient of 10, while the developing countries sought a coefficient of no less than 30.

⁵See Annexure 1 for the detailed list of Annex 2 of the Draft NAMA Modalities for the EC.

⁶See Annexure 2 for the detailed list of Annex 3 of the Draft NAMA Modalities for the USA.

⁷As would be expected under the Swiss formula.

under the two regimes (5 installments and 7 installments) are not significant, only to the tune of 0.39% each year. Since LDCs including Bangladesh, receive preferential treatment in the EU, a slower pace of reduction is likely to result in slower pace of preference erosion.

Table 4.4 Estimates of Final Tariff Rate and Per Year Reduction Rate Applying the Swiss Formula with a Coefficient of 9

Tariff Rate (%)	Coefficient	New Tariff Rate (%)	Tariff Reduction	Per Year Tariff Reduction (5 installment)	Per Year Tariff Reduction (7 installment)
12	9	5.14	6.86	1.37	0.98

Source: Estimates based on NAMA Draft Modalities and TARIC database.

Table 4.5 Estimates of Final Tariff Rate and Per Year Reduction Rate Applying the Swiss Formula with a Coefficient of 9

Tariff Rate (%)	Coefficient	New Tariff Rate (%)	Tariff Reduction	Per Year Tariff Reduction (5 installment)	Per Year Tariff Reduction (7 installment)
8	9	4.24	3.76	0.75	0.54
16	9	5.76	10.24	2.05	1.46
32	9	7.02	24.98	5.00	3.57

Source: Estimates based on NAMA Draft Modalities and USITC.

Situation in the USA is somewhat different, since tariffs on items in Annex-3 vary widely, between 8 – 32%. As Table 4.5 shows, the tariff peak of 32% will come down sharply to 7.0% i.e.; by about 25%. Thus, if carried out in 5 installments this will mean an average yearly tariff cut of 5.0%, whereas if done in 7 installments the average yearly cut will be about 3.6%, a difference of 1.4% each year.

As mentioned already above, Bangladesh does not receive duty-free access in the US. This is in contrast to the EU where slower pace of reduction will benefit Bangladesh; while in the US a slower pace will be to the detriment of Bangladesh's interest. Accordingly, it is to Bangladesh's advantage to have faster reduction in tariff in the US market. Indeed, slower reduction is going to be advantageous for AGOA and CBI LDCs which do enjoy duty-free access to US market.

4.5.4 The Extent of the Impact

As is known, in the EU Bangladesh receives zero tariff market access under the EU's EBA (Everything But Arms) initiative. Analysis show that for most of the items in Annex-2 of the NAMA draft, the MFN tariff is at the level of 12%. Accordingly, any reduction in the MFN applied rate as a result of application of the *Swiss coefficient* proposed in the NAMA draft will lead to considerable preference erosion. CPD analysis shows that out of the 23 items in Annex 2 of the draft text, Bangladesh exported 14 of these items in 2006. However, in only 9 of these, Bangladesh had any

significant export in 2006. Export of the other five items was insignificant (these are the shaded items in Table 4.6). A slower pace of reduction of the proposed items may be of some benefit to Bangladesh, since this will slow down the pace of preference erosion. But as was earlier stated, this will not matter much as a compensatory mechanism.

As a matter of fact, the actual consequence in terms of preference erosion for Bangladesh in the EU market will depend on whether the list in Annex-2 of the NAMA Draft included items that are entering the EU market by making use of the GSP facilities or not. If any of the 9 items (mentioned above with significant export from Bangladesh to the EU market) was not being able to enjoy GSP facilities (because of inability to comply with the EU Rules of Origin), then it would be better for Bangladesh to have such items excluded from Annex 2 of the draft text. Similarly, in pushing for items to be included in Annex 2 of the draft text (during subsequent negotiations), Bangladesh will need to see whether such items are actually being able to enter the EU market at 'zero' tariff by utilising the EC GSP facilities. Only if for those selected items the GSP utilisation rate was found to be high, will it make sense to ask for inclusion of such items in Annex 2.⁸

Table 4.6 Bangladesh GSP Utilisation Performance in EU(27) for Items in NAMA (Annex 2)

(Million USD)

Products	GSP Zero (a)	Total Exports (b)	GSP Utilisation Rate (%) (a/b)
03037998 – frozen salt water fish(excl./3.79-87)	0.23	0.27	85.53
03042019 – frozen fillets of freshwater//salmon)	0.06	0.06	100.00
03042094 – frozen fillets of saltwater//renadier)	0.00	0.01	0.00
03061350 – frozen shrimps of the genus//water	59.31	118.87	49.89
03061380 – frozen shrimps and prawns//'penaeus')	68.98	102.22	67.49
57011090 – carpets and other textil//byweight)	0.00	0.01	0.00
61051000 - men's or boys' shirts o//thervests)	183.51	215.86	85.01
61091000 - t-shirts, singlets and other//rocheted	1218.14	1413.96	86.15
61101290 - jerseys, pullovers, cardigan//rticles)	18.85	19.08	98.79
61102099 - women's or girls' jerseys,//stcoats)	386.38	424.31	91.06
61103099 - women's or girls' jerseys,//stcoats)	559.50	639.39	87.51
62034235 - men's or boys' trouser//underpants)	190.39	360.06	52.88
62052000 - men's or boys' shirts o//thervests)	62.05	232.85	26.65
62142000 - shawls, scarves, mufflers//crocheted)	0.01	0.01	100.00
Total (14 HSC)	2747.42	3526.97	77.90

Source: Estimated from EuroStat Database.

⁸This exercise will need to be done by analysing the GSP utilisation scenario of Bangladesh in the EU market at HS 8 digit disaggregate level.

It is seen from Table 4.6 that the GSP utilisation rates for the 9 items of Bangladesh's (considerable) export interest in Annex-2 of the NAMA draft vary across the various items. For some items the utilisation rate is high, ranging between 85% and 100% (for five items). However, for the other three items the GSP utilisation rate varies between 26% and 68% (Table 4.6). For the latter group of items, some of the exports in each tariff line enjoyed GSP facilities, but most did not (resulting in low GSP utilisation rate). Indeed, if these three items, along with the four items noted above (where Bangladesh exports are negligible) are replaced by items for which Bangladesh's GSP utilisation rate was higher, Bangladesh would stand to gain from a protracted time line for tariff reduction in the EU. The strategy for Bangladesh thus should be to pursue negotiations along this line. It should be noted in this context that the EC is thinking of changing the RoO. Impact of any such possible change on Bangladesh's GSP utilisation rate should also be closely studied for the purpose of strategising in the context of NAMA negotiations.

On the other hand, Bangladesh currently does not receive GSP preferential treatment for most of her exports to the US market (including apparels). Indeed, in 2005 only about 1.07% of Bangladesh's export (in value terms) to the US was under preferential treatment.⁹ In 2006 Bangladesh exported all the 16 items, belonged to woven wear and knitwear, listed in Annex-3 of the NAMA modalities. None of these items are covered under the US GSP Scheme for LDCs. Reduction of tariffs on these items, therefore, will allow Bangladesh to enter the US market at reduced tariff. Accordingly, the suggested protracted implementation of tariff reduction in the NAMA modalities for the 16 items proposed in Annex 3 will not help Bangladesh's export to the US; rather this will harm Bangladesh's market access because of the slower pace of reduction. Indeed a more prolonged reduction of tariffs on these items will help AGOA and CBI beneficiary LDCs which currently enjoy 'zero' tariff market access for apparel products in the US market, as their preference erosion will be slowed down. In contrast, slower pace of implementation of tariff liberalisation will mean that Bangladesh will need to continue exporting the 16 items in Annex-3 at relatively higher MFN duties (compared to a situation whereby tariff would be reduced at normal pace i.e. in 5 installments).

4.5.5 NAMA February 2008 Draft and Maseru LDC Declaration

NAMA Chairman, Canadian Ambassador Don Stephenson, released a revised draft on 8 February 2008 which reflected progress in negotiations since the first draft was circulated (also by him) on 17 July 2007.

The language, in context of the LDCs, in the NAMA modalities has been somewhat

⁹In 2005 Bangladesh exported 602 items at HS 8 digit level to the USA. Of these only 125 received 'zero' duty under the GSP facility accounting for 20.7% of Bangladesh's export (no. of tariff lines) to US market in 2005.

improved in the revised draft of February 2008. As is known, the LDCs' Trade Ministers met from 27-29 February in Maseru, Lesotho to discuss their stand with regard to the ongoing negotiations in Geneva. It is to be noted here that the Bangladesh delegation played a key role in this meeting. A lot of attention was accorded at this meeting to NAMA related issues and views of the LDCs' Ministers were incorporated in the Maseru Declaration.

The NAMA February 2008 draft mentions about 'recommitting full implementation of the Decision' that was taken in the Hong Kong Ministerial Meeting and reiterates that LDCs shall be exempt from tariff reduction commitments. However, they are expected to 'substantially increase their level of tariff binding commitments'. In this context, the Maseru Declaration calls for flexibilities for LDCs to determine the level of bindings of their tariff lines. 'LDCs will be the judge' the Declaration states. The Maseru Declaration also calls for "An agreement to eliminate all non-tariff barriers on products originating in LDCs".

With respect to implementation of the DF-QF decision, the draft asks donor members to inform WTO members of the products that will be covered under the commitment to provide duty-free and quota-free market access for at least 97 per cent of the products originating from LDCs. However, it is felt that the text needs to be strengthened in two areas: commercial value of the products selected under the 97 per cent list, and secondly, a firm time-line for the implementation of this decision. The text in the Maseru Declaration reflects LDC concerns quite strongly. It urges for a commitment by developed country members to fully implement the decision on DF-QF market access "with a view to ensuring commercially meaningful duty-free and quota-free market access for at least 97 per cent of the products originating from LDCs, defined at the tariff level, by the end of 2008".

With regard to the phasing out of the 3 per cent exclusion list, the February 2008 NAMA draft asks developed and developing WTO members to 'notify the steps and possible time-frames within which they will progressively achieve full compliance with the Decision'. Here also it is felt that a definitive time frame would have assuaged the apprehensions of LDCs, since a meaningful DF-QF market access for all products could be an inordinately long process in the absence of a precise timeline for phasing out the 3 per cent exclusion list. In this regard, the LDC Ministers in Maseru calls for phasing out the exclusion list 'at an earlier date but not later than the end of the implementation period of the Doha Round'.

The Maseru Declaration also calls for specification by each developed country, on a product-by-product basis, of the dates on which it will grant DF-QF market access on the remaining 3 per cent of products originating in LDCs, by the time Members submit their comprehensive draft schedules of concessions.

With respect to the wordings 'developing countries in a position to do so', the

NAMA February 2008 draft uses the same language for the developed country members. In this context LDC Ministers have called for, 'a commitment by a larger number of developing countries declaring themselves in a position to do so to progressively implement beyond current market access levels and to provide duty-free and quota-free market access to products originating from all LDCs starting at an earlier date, but not later than the end of the implementation period'.

With regard to Rules of Origin (RoO), the revised NAMA draft offers a better language regarding the use of simple and transparent RoO in trade preferential schemes. The draft particularly recommends the use of document TN/MA/W/74 which was submitted by the LDCs themselves. However, use of the wordings 'as appropriate' to some extent dilutes the text. In this context, the Maseru Declaration calls for an 'agreement by members to base their RoO for products originating in LDCs on the model RoO in TN/CTD/W/30, TN/MA/W/74 and TN/AG/GEN/20' which would make the text more concrete and LDC-friendly. As is known, this document, in its eight Articles provides a detailed methodology for estimation of RoO criteria, both for wholly obtained items and for those relating to substantial transformation. It is felt that the Canadian RoO could serve as a model in this respect since it is considered to be the most LDC-friendly.

The NAMA February 2008 draft mentions that the CTD 'shall monitor progress made in its (HK Decision) implementation, including in respect of preferential RoO'. The text in the Maseru Declaration goes further in making the implementation of HK decisions more effective and based on an institutional framework. It calls for, 'an agreement to establish an effective monitoring mechanism, as part of the NAMA and Agricultural modalities of the Doha Round' with respect to implementation of both the DF-QF decision and to simple and transparent RoO criterion for products originating in LDCs. The Maseru Declaration calls for, 'an agreement to incorporate both trade and non-trade solutions in NAMA and Agricultural modalities to address the erosion of preferences'.

The Declaration also calls for initiatives to protect LDCs' interests in the face of preference erosion, if there is substantial progress in the context of sectoral negotiations. The Maseru Declaration states, "The sectoral initiatives of the NAMA negotiations shall not harm the export interests of LDCs due to erosion of their preferences. Effective mechanism should be established to mitigate any negative effect of the sectoral tariff initiatives". Since some of the items in these negotiations are of vital export interest to particular LDCs, we think this is a valid concern of LDCs and it needs to be reflected in the revised NAMA draft in future.

It needs to be noted that the NAMA February 2008 draft includes more detailed and specific language concerning Aid for Trade in general, and Enhanced Integrated Framework in particular. The Maseru Declaration aims at making the language more concrete by focusing on "operationalisation of commitment by

donors and the relevant international institutions to provide additional financial and technical assistance through appropriate delivery mechanisms aimed at industrialisation and diversification of LDCs' economies, and to meet their implementation obligations".

The Maseru Declaration also states that, "Parallel progress should be made in the implementation of DF-QF market access commitments in Agriculture and NAMA modalities for comparable outcomes in both cases".

The revised NAMA 2008 draft mentions about non-reciprocal preferences in respect of a limited number of tariff lines which are of 'vital export interest for developing member beneficiaries of such preferences'. The new text includes additional items both with respect to the EC list [number of tariff lines has now increased from 23 to 40] and the US list [list of items has increased from 16 to 25]. In this context, the Maseru Declaration calls for, "an Agreement by all members to incorporate all the tariff lines contained in the list submitted by the LDCs in Document Job(07)/167 with a view to addressing the erosion of preferences on the LDCs in their major markets, namely the EC and the US, and to subject these tariff lines to a longer grace period in tariff cuts as proposed by LDCs".

For Bangladesh, the Annexes contained in the recently circulated NAMA draft have dual implications. In case of the EU, inclusion of items for which GSP utilisation is high, will be beneficial since a more protracted implementation of tariff reduction (in seven installments, instead of five) will mean slower pace of preference erosion. On the other hand, for items where GSP utilisation is low, inclusion of items (apparels) in Annex-3 will not be helpful. However, the RoO in EC-GSP is going to change shortly (from stages of conversion to value addition) which could significantly alter the GSP utilisation scenario. On the other hand, inclusion of items (apparels) in Annex-4 (applicable to the US market) will not be of benefit to Bangladesh because her apparels are not covered under the US-GSP scheme, whereby a slower pace of MFN tariff reduction is likely to constrain Bangladesh's market access. However, the actual impact will hinge on whether the Annex-4 items are included in the 3 per cent exclusion list (in which case it is not in Bangladesh's interest) or in the 97 per cent DF-QF list (in which case slower reduction will be of benefit to Bangladesh since it will imply slower pace of preference erosion).

Overall, although the revised February 2008 draft is an improvement over the July 2007 draft, it needs to be further improved in light of the Maseru Declaration in order to fully reflect LDCs' concerns and interests.

4.6 Bangladesh Strategy in View of NAMA Negotiations

The above discussions indicate that the NAMA negotiations are critically important for LDCs such as Bangladesh. Of special interest to Bangladesh is the implementation modality of the Hong Kong Decision on DF-QF Market Access. In

this context, the two Annexes to the NAMA chair's draft will need to be carefully examined. In the EU market Bangladesh's interest will be to have as many tariff lines of export interest included in Annex 2, provided Bangladesh is able to utilise GSP facility for these items. In the US market Bangladesh's interest is not to have items of her export interest included in Annex 3.

But, if the US provides 'zero' tariff market access to Bangladesh (for apparels or for all products) this scenario will be reversed. In this case, as is true for the EU, Bangladesh's strategy should be to have as many items of her export interest as possible included in Annex 3 of the NAMA draft. Although this is perhaps highly unlikely at this point of time, Bangladesh should remain alerted to this possibility.

Bangladesh will also need to forcefully argue the case for adequate compensatory safeguards in view of the anticipated preference erosion. All the LDCs should team up to have an effective Aid for Trade in place in order to be able to address the many concerns that they have in the context of the ongoing negotiations on NAMA.

4.7 Summary

- Non-Agricultural Market Access (NAMA) refers to all goods not covered by the Agreement on Agriculture. In other words, it includes, in practice, manufacturing products, fuels and mining products, fish and fish products, and forestry products. These are sometimes referred to as industrial products or manufactured goods.
- The objectives of NAMA negotiations are three fold: (a) lower the non-tariff barriers (NTBs), (b) conversion of NTBs through putting in place tariff rate equivalents; and (c) reduction of the final tariff rates in a phased manner to be determined through negotiations.
- At present the NAMA negotiation is focusing on the following five areas: (a) formula tariff cut; (b) unbound tariff lines; (c) flexibilities for developing countries; (d) sectoral initiatives; and (e) preferences and erosion of preferences.
- Bangladesh's objectives in NAMA negotiation are four fold: (a) play the LDC card: not to take any obligations under the NAMA negotiations; (b) bind as few products as possible, (c) active duty-free, quota-free access for her industrial goods; and (d) address the issue of preference erosion.
- The *Swiss formula*, initially proposed during the Tokyo Round, is a tariff-dependent, non-linear formula which can be expressed mathematically as,

$$t_1 = \frac{a \times t_0}{a + t_0},$$

where t_0 and t_1 are the initial and final tariff respectively, and a is the coefficient which is to be negotiated.

- The July 2004 Framework Agreement recognized the advantage of the Swiss formula of reduction approach. The framework required the NGMA (Negotiating Group on Market Access) to work on, "a non-linear formula applied on a line-by-line basis which 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".
- The July Framework Agreement allows developing countries two options as flexibilities: (a) applying less than formula cuts to up to [10] percent of tariff lines; or (b) keeping as unbound or not applying formula cuts for up to [5] percent of tariff lines.
- The ongoing negotiations on NAMA in the WTO are expected to lead to substantive reductions in the tariff rates on industrial goods in both the developed and the developing countries.
- Preference erosion is a major concern for Bangladesh and other LDCs in the Asia-Pacific region. Reduced preference margin is likely to undermine future competitiveness of LDCs in the developed country markets and in some instances, in the markets of developing countries as well.
- In the context of the ongoing WTO negotiations, the LDCs have also been calling for LDC-friendly rules of origin under the various GSP Schemes (lower value addition and flexible processing requirements).
- Reforms to enhance trade competitiveness and efficiency enhancement, and concrete steps to improve institutions and infrastructures related to trade facilitation are crucial in ensuring long-term competitive advantage of LDC products in the global market.
- The duty-free, quota-free (DF-QF) market access to developed countries for all exports from the LDCs was a key demand of the latter during the Hong Kong Ministerial Meeting. However, in the face of opposition from the USA and even from some of the developing countries, the DF-QF proposal that emerged in Hong Kong was a watered-down version of what the LDCs had been calling for. In place of the 100% coverage, the LDCs received was a reduced DF-QF Market Access (97%).
- Although the revised February 2008 draft is an improvement over the July 2007 draft, it needs to be further improved in light of the Maseru Declaration in order to fully reflect LDC's concerns and interests.
- Bangladesh will need to forcefully argue the case for adequate compensatory safeguards in view of the anticipated preference erosion. All the LDCs should team up to have an effective Aid for Trade in place in order to be able to address the many concerns that they have in the context of the ongoing negotiations on NAMA.

- While an agreement has been reached among the member countries to apply the Swiss formula for tariff cut, a consensus is yet to be reached as regards the adoption of coefficients for the developed and developing country Members.
- As regards implementation modalities of DF-QF market access (proposed in Annex 2 and Annex 3 of the NAMA February 2008 draft), in the EU market Bangladesh's interest will be to have as many tariff lines of export interest included in Annex 2, provided Bangladesh is able to utilise GSP facility for these items. On the other hand, in the US market Bangladesh's interest is not to have items of her export interest included in Annex 3 stipulating slower tariff reduction (however, if the US decides to provide 'zero' tariff market access to Bangladesh, for apparels and other products, this scenario will be reversed).

4.8 Questions for Discussion

1. What are the NAMA products and why is it so important?
2. What do tariff bindings mean and how do they work?
3. How were tariff rates reduced in the previous Rounds?
4. How will flexibilities be applied to developing countries and LDCs?
5. What is a non-tariff barrier?
6. What impact will change in industrial tariffs have on Bangladesh's export competitive capacity?

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Training Manual on **WTO and Bangladesh Trade Policy**

Module

5

**General
Agreement on
Trade in Services
(GATS)**

General Agreement on Trade in Services (GATS)

Learning Objectives

- The module will enable to expose the learners to the issue of trade in services which are broadly covered by the General Agreement on Trade in Services (GATS) under the WTO.
- The module will explain the background and nature of GATS. A brief discussion on the state of WTO negotiations on GATS with particular

emphasis on the implications of GATS on least developed countries (LDCs) like Bangladesh is also included.

- The module will enable the participants to learn the nitty-gritty of GATS and to apply the accumulated knowledge in their professional arena.

5.1 Introduction to GATS

The General Agreement on Trade in Services (GATS) entered into force in January 1995 as a result of the Uruguay Round negotiations to provide for the extension of the multilateral trading system to services. With a view to achieving a progressively higher level of liberalisation, pursuant to Article XIX of the GATS, WTO Members are committed to entering into further rounds of services negotiations. All Members of the World Trade Organization are signatories to the GATS and have to assume the resulting obligations.

The GATS 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. Ranging from architecture to voice-mail telecommunications and to space transport, services are the largest and most dynamic component of both developed and developing country economies. Services represent the fastest growing sector of the global economy and account for two thirds of global output, one third of global employment and nearly 20 per cent of global trade.

The idea of bringing rules on services into the multilateral trading system was floated in the early to mid 1980s and since January 2000, they have become the subject of multilateral trade negotiations. The GATS agreement allows a high degree of flexibility to participating countries, both within the framework of rules and also in terms of the market access commitments.

5.2 GATS Explained

5.2.1 Origin of GATS and its Coverage

Since the inception in 1947, the focus of multilateral trading system under GATT was largely on trade in goods. Hence, from 1947 through the Tokyo Round of GATT, services were not covered in successive rounds of trade negotiations. These developments, coupled with the growing recognition of the significance of trade in services ultimately culminated in services being included in the multilateral trading system under the General Agreement of Trade in Services (GATS).

The GATS is one of 28 World Trade Organization (WTO) agreements and the first multilateral agreement which provides legally enforceable rights to trade in all services. The agreement included built-in commitment for continuous liberalisation through periodic negotiations. The agreement also covered, for the first time, the issues related to investment since it covers not only the cross-border trade but also every possible means of supplying a service. Due to diverse nature of trade in services, the complicated negotiation process could not be completed during the Uruguay Round and there were areas which still required substantive negotiations before concluding a comprehensive framework for trade in services. Thus, the outstanding issues were incorporated in the agreement in 1994, and it was decided unanimously that the first round of negotiations on the GATS was to start no later than five years from 1995 under the "Built-in-Agenda" in the GATS. Accordingly, the services negotiations started officially in early 2000 under the Council for Trade in Services of the WTO.

Under the GATS four modes of supply of services in international trade have been identified. These are; Mode 1: Cross Border Supply; Mode 2: Consumption Abroad; Mode 3: Commercial Presence, and, Mode 4: Presence of Natural Persons. The post-Uruguay negotiations on services liberalisation were somehow overlooked due to the increased focus on matters such as negotiations on agriculture liberalisation, non-agricultural market access (NAMA) and the so called "Singapore Issues". Together with the negotiations on market access, the issues relating to service sector liberalisation are still under the "built-in" agenda of the WTO, and it is expected that with the progress in negotiations in other areas, GATS negotiations will receive increased attention due to the growing importance of services liberalisation to both the developed and developing countries.

5.2.2 Objectives of GATS

The GATS is intended to contribute to trade expansion "under conditions of transparency and progressive liberalisation and as a means of promoting the economic growth of all trading partners and the development of developing countries". Trade expansion is thus not seen as an end in itself, but as an instrument to promote growth and development.

GATS' contribution to world services trade rests on two main pillars; (a) ensuring increased transparency and predictability of relevant rules and regulations; and (b) promoting progressive liberalisation through successive rounds of negotiations, which is tantamount to improving market access and extending national treatment to foreign services and service suppliers across an increasing range of sectors. The Agreement explicitly recognises governments' right to regulate, and introduce new regulations, to meet national policy objectives and the particular need of developing countries to exercise this right.

5.2.3 Basic Principles of GATS

- All services are covered by the GATS
- Most-favoured-nation 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 are normally unrestricted
- Individual country's commitments would be negotiated and bound
- Progressive liberalisation through further negotiations

5.2.4 Scope and Application of GATS

The GATS applies to measures by Members affecting trade in services. It does not matter in this context whether a measure is taken at central, regional or local government level, or by non-governmental bodies exercising delegated powers. The relevant definition covers any measure; whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form, in respect to the purchase, payment or use of a service; the access to and use of, in connection with the supply of a service, services which are required by those Members to be offered to the public generally; or the presence, including commercial presence, of persons of a Member for the supply of a service in the territory of another Member.

For purposes of structuring their commitments, WTO Members have generally used a classification system comprised of 12 core service sectors (document MTN.GNS/ W/120):

- Business services (including professional services and computer services)
- Communication services
- Construction and related engineering services
- Distribution services
- Educational services
- Environmental services

- Financial services (including insurance and banking)
- Health related and social services
- Tourism and travel related services
- Recreational, cultural and sporting services
- Transport services
- Other services not included elsewhere

These sectors are further subdivided into a total of some 160 sub sectors. Under this classification system, any service sector may be included in a Member's schedule of commitments with specific market access and national treatment obligations. Each WTO Member has submitted such a schedule under the GATS.

5.3 Definition of Services Trade and Modes of Supply

The GATS covers all internationally-traded services — for example, banking, telecommunications, tourism, professional services, etc. The definition of services trade under the GATS is four-pronged, depending on the territorial presence of the supplier and the consumer at the time of the transaction. The GATS covers:

- a) Services supplied from the territory of one Member into the territory of any other Member (Mode 1: Cross-border trade);
- b) Services supplied in the territory of one Member to the service consumer of any other Member (Mode 2: Consumption abroad);
- c) Services supplied by a service supplier of one Member, through commercial presence, in the territory of any other Member (Mode 3: Commercial presence); and
- d) Services supplied by a service supplier of one Member, through the presence of natural persons of a Member in the territory of any other Member (Mode-4: Presence of natural persons).

The above definition is significantly broader than the balance of payments (BOP) concept of services trade. While the BOP focuses on residency rather than nationality – i.e. a service is being exported if it is traded between residents and non-residents – certain transactions falling under the GATS, in particular in the case of mode 3, typically involve only residents of the country concerned.

Commercial linkages may exist among all four modes of supply. For example, a foreign company established under mode 3 in country A may employ nationals from country B (mode 4) to export services cross-border into countries B, C, etc. Similarly, business visits into A (mode 4) may prove necessary to complement cross-border supplies into that country (mode 1) or to upgrade the capacity of a locally established office (mode 3).

**Box 5.1 Examples of the Four Modes of Supply
(From the Perspective of an "Importing" Country A)**

Mode 1 : Cross-border

Cross-border supply is defined to cover services flows from the territory of one Member into the territory of another Member country. Electronic banking, telecommunication, satellite television, and services provided through internet fall into this category.

Mode 2 : Consumption abroad

This refers to situations where a service consumer, for example tourist or patient, moves into another Member country's territory to obtain a service.

Mode 3 : Commercial presence

This implies that a service supplier of one Member establishes a territorial presence, including through ownership or lease of premises, in another Member's territory to provide a service. For example, domestic subsidiaries of foreign insurance companies or hotel chains.

Mode 4 : Movement of natural persons

Consists of persons of one Member entering the territory of another Member to supply a service (e.g. accountants, doctors or teachers). The Annex on Movement of Natural Persons specifies, however, that Members remain free to operate measures regarding citizenship, residence or access to the employment market on a permanent basis.

5.4 Concepts

5.4.1 Most Favoured Nation (MFN) Treatment (Article II)

MFN means treating one's trading partners equally on the principle of non-discrimination. Under the GATS, if a country allows foreign competition in a sector, equal opportunities in that sector should be given to service providers from all other WTO members. This applies even if the country has made no specific commitment to provide foreign companies access to its markets under the WTO.

MFN applies to all services, but some special temporary exemptions like "MFN exemptions" have been allowed. When GATS came into force, a number of countries already had preferential agreements in services that they had signed with trading partners, either bilaterally or in small groups and GATS allows WTO members to maintain these preferences temporarily. In order to protect the general MFN principle, the exemptions could only be made once; nothing can be added to the lists. They are currently being reviewed as mandated, and will normally last no more than ten years.

5.4.2 Commitments on Market Access and National Treatment

Market access commitments involve individual countries' commitments to open markets in specific sectors. The commitments appear in "schedules" that list the sectors being opened, the extent of market access being given in those sectors (e.g. whether there are any restrictions on foreign ownership), and any limitations on national treatment (whether some rights granted to local companies will not be granted to foreign companies).

If a government commits itself to allow foreign banks to operate in its domestic market, that is a 'market-access commitment'. And if the government limits the number of licences it will issue, then that is a 'market-access limitation'. If it also says foreign banks are only allowed one branch while domestic banks are allowed numerous branches, that is an 'exception to the national treatment' principle.

These clearly defined commitments are 'bound'; like bound tariffs for trade in goods, they can only be modified after negotiations with affected countries. Governmental services are explicitly carved out of the agreement. Governmental services are defined in the agreement as those that are not supplied commercially and do not compete with other suppliers. These services are not subject to any GATS disciplines, they are not covered by the negotiations, and commitments on market access and national treatment (treating foreign and domestic companies equally) do not apply to them.

The market access provisions of GATS (Article XVI) cover six types of restrictions that must be maintained. The restrictions are related to:

- (i) the number of service supplies
- (ii) the value of service transactions or assets
- (iii) the number of operations or quantity of output
- (iv) the number of natural persons supplying a service
- (v) the type of legal entity or joint venture
- (vi) the participation of foreign capital

National treatment (Article XVII) implies the absence of all discriminatory measures to competing countries, i.e. commitment to treat foreign services or service supplies the same as domestic suppliers.

5.5 Structure of the Agreement

The GATS has three elements: 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.

Table 5.1 Text of GATS Agreement

1. Text of the Agreement	(i) A Preamble.
	(ii) 29 Article in six Parts: Part I : Article I Part II : Articles II to XV Part III : Articles XVI to XVIII Part IV : Articles XIX to XXI Part V : Articles XXII to XXVI Part VI : Articles XXVII to XXIX
	(iii) Annexes covering sector or policy related issues
2. Schedule of Specific Commitments	Each member has to submit a schedule detailing (i) the commitments on market access and national treatment (ii) any additional commitments it undertakes in individual sectors

Source: WTO Website www.wto.org

5.5.1 Provision of the GATS

Part I (Article I)

Outlines the scope of the Agreement, its sectoral coverage and defines trade in services.

Part II (Articles II to XV)

Sets out Members' general obligations which apply either conditionally, i.e. contingent on the existence of specific commitments, or unconditionally to all sectors.

Part III (Articles XVI to XVIII)

Specifies the scope of the specific commitments governing market access and national treatment and any additional commitments which Members may undertake in scheduled sectors.

Part IV (Articles XIX to XXI)

Provides a framework for future services rounds, specifies the structure of schedules, and the procedures governing modification or withdrawal of commitments.

Part V (Articles XXII to XXVI)

Clarifies institutional and procedural issues, including the mandate of the GATS Council for Trade in Services, and recourse to dispute settlement.

Part VI (Articles XXVII to XXIX)

Includes final provisions and definitions.

5.6 Obligations under GATS

There are two types of obligations for member countries

- (i) General obligations: unconditional and conditional.
- (ii) Specific Obligation.

5.6.1 Unconditional General Obligations

Each member has to respect certain general obligations regardless of the existence of specific commitments. These include:

- a) MFN treatment (Article II)
- b) Some basic transparency provision (Article III)
- c) Compliance of monopolies and exclusive providers with the MFN obligation (Article VIII: 1)
- d) Consultations on business practices (Article IX)
- e) Consultations on subsidies that affect trade (Article XV: 2)

5.6.2 Conditional General Obligations

- Domestic regulation (Article VI)
- Monopolies (Article V)
- Payments and Transfers (Article XI)
- Economic Integration Agreements (Article XXIV)
- Recognition (Article VII)
- Exceptions (Article XII)

5.6.3 Specific Obligations

- Each member is required to assume specific commitments related to market access (Article XVI) and national treatment (Article XVII) in designated sectors.

5.6.4 Additional Commitments

- Members may also undertake additional commitments with respect to measure not falling under the market access and national treatment provisions of the Agreement.
- Such commitments may relate to the use of standard, qualifications or licenses (Article XVIII).
- Additional commitments are particularly frequent in the telecommunications sector where they have been used by members to incorporate into their schedules certain competition and regulatory discipline.

5.6.5 Transparency

The GATS says governments must publish all relevant laws and regulations, and set up enquiry points within their bureaucracies. Foreign companies and governments can then use these inquiry points to obtain information about regulations in any service sector. And they have to notify the WTO of any changes in regulations that apply to the services that come under specific commitments.

5.6.6 Regulations

Since domestic regulations are the most significant means of exercising influence or control over services trade, the agreement says governments should regulate services reasonably, objectively and impartially. The GATS does not require any service to be deregulated. Commitments to liberalise do not affect governments' right to set levels of quality, safety, or price, or to introduce regulations to pursue any other policy objective they see fit. Governments naturally retain their right to set qualification requirements for doctors or lawyers, and to set standards to ensure consumer health and safety.

5.6.7 Recognition

When two (or more) governments have agreements recognising each other's qualifications (for example, the licensing or certification of service suppliers), GATS says other members must also be given a chance to negotiate comparable pacts. The recognition of other countries' qualifications must not be discriminatory, and it must not amount to protectionism in disguise. These recognition agreements have to be notified to the WTO.

5.6.8 International Payments and Transfers

Once a government has made a commitment to open a service sector to foreign competition, it must not normally restrict money being transferred out of the country as payment for services supplied ('current transactions') in that sector. The only exception is when there are balance-of-payments difficulties, and even then the restrictions must be temporary and subject to other limits and conditions.

5.6.9 Progressive Liberalisation

The Uruguay Round was only the beginning. The GATS requires more negotiations, which began in early 2000 and are now part of the Doha Development Agenda. The goal is to take the liberalisation process further by increasing the level of commitments in schedules.

5.7 Methods of Negotiations

5.7.1 Negotiating Approaches for Requests and Offers

In the Uruguay Round schedules, many Members confined commitments to binding

status quo conditions in a limited range of sectors. The number of services included, and the levels of access bound, remained modest in general. This may have been due to a variety of factors: governments' preference to play it safe, i.e. to avoid tensions over the interpretation and application of a completely new set of rules; reticence on the part of services-related Ministries and agencies, which had no prior experience with international trade negotiations; difficulties of small administrations, short of resources, to keep pace with the negotiating process in Geneva, and the instincts of seasoned negotiators who, in the absence of requests from large trading partners, may have preferred to keep silent.

In order to benefit from GATS negotiations, however, it is necessary for governments to reconsider old habits. As noted above, unlike traditional trade agreements for goods, the GATS extends to consumer movements (mode 2) and the movement of production factors – in the form of investment flows intended to establish a commercial presence (mode 3) and of natural persons entering markets to supply a service (mode 4). Commitments under the relevant modes may enhance an economy's attractiveness for internationally mobile resources (human and/or physical capital) which, in turn, could help to overcome domestic supply shortages. It cannot be taken for granted that the requests received from trading partners, if any, coincide with an economy's developmental needs in attracting such resources.

The scope of GATS allows for broad-based interaction with, and integration into, international product and factor markets. Focal areas of interest, from a developmental perspective, might include infrastructural services, such as transport, distribution, finance and communication that have economy-wide growth and efficiency implications. This implies, in turn, that in the definition of negotiating positions any defensive interests of sector incumbents, and the possible cost of adjustment, would need to be balanced with such wider economic benefits.

5.7.2 Technical Aspects of Requests

Requests may be addressed to a group of participants or to an individual Member. There are possibly four relevant targets, which are not mutually exclusive:

- (i) Addition of sectors that are not included in the relevant schedule;
- (ii) Removal of existing limitations or reductions in their restrictiveness (e.g. increases in the number of admitted suppliers or the levels of foreign equity participation). A request may also seek to transform an 'unbound' into a commitment with or without limitations.

Such requests always relate to measures affecting market access (Article XVI), or national treatment (Article XVII);

- (iii) Inscription of additional commitments (Article XVIII) relating to matters not falling within the scope of Articles XVI and XVII. A case in point is the Reference Paper on regulatory principles in basic telecommunications; where a relatively high number of such requests were made and implemented during the extended negotiations under the Fourth Protocol;

- (iv) Removal of MFN exemptions. Paragraph 6 of the Annex on MFN Exemptions provides that existing exemptions be subject to negotiations in successive rounds of negotiations.

A request may be presented in the format of a simple letter. Thus, if a participant seeks a full commitment under Articles XVI or XVII, it would simply request 'none' be inscribed in its trading partner(s) schedule.

Additional commitments under Article XVIII may need to be technically more specific. The Article merely provides a framework for scheduling commitments on matters not falling under market access or national treatment. As evidenced by the telecommunications Reference Paper, such commitments may extend to areas not even addressed within the GATS itself, such as the establishment of an independent regulator. If a request is made to undertake such obligations not defined in the GATS, these must be described in accurate legal terms.

The process of exchanging requests is mostly bilateral in nature, but twenty or so plurilateral requests were also tabled in 2006 following the provisions agreed to in the Hong Kong Ministerial Declaration. The WTO Secretariat tends not to be involved in the process. There was a suggestion at one stage in the Uruguay Round that when a request was made, a copy should also be sent to the Secretariat for its records. However, that practice was followed only for a short period of time and has not been continued in the current negotiations.

5.7.3 Technical Aspects of Offers

Offers would normally address the same issues as listed above, i.e. the addition of new sectors; the removal of existing limitations or the binding of modes not currently committed; the undertaking of additional commitments under Article XVIII; and the termination of MFN Exemptions. Participants would take into account all requests received; after careful assessment of the growth, developmental and other relevant policy implications.

While requests are usually presented in the form of a letter, an offer normally consists of a draft schedule of commitments. Therefore, offers do require considerable technical preparation. In the Uruguay Round, in the absence of pre-existing schedules of commitments, participants started the negotiating process with the submission of offers. These were followed by requests, amended offers, and so forth.

In the new Round, offers have been submitted against the backdrop of existing schedules. Members have used, as a starting-point, consolidated schedules that incorporate not only the Uruguay Round outcome, but any later amendments and extensions, including those resulting from the negotiations on basic telecommunications and financial services. The modifications offered in current negotiations have been indicated through strikeouts and bolded insertions, highlighted in the case of revised initial offers. Members have also used the offers to

introduce technical clarifications to their existing commitments, which have been indicated in italics. The draft offers constitute negotiating documents with no legal status and have no binding effects on the participant concerned.

In the course of the negotiations, a succession of requests and offers takes place. Initial offers are subjected to revisions, in response mainly to new or renewed requests. Offers are circulated multilaterally which is not only useful for transparency purposes, but also from a functional point of view. While offers reflect the requests received (and, possibly, autonomous policy choices), they need to be open to consultation and negotiation by all partners.

With the submission of offers, participants enter a decisive stage of the negotiating process. Many governments send delegations to Geneva to conduct a long schedule of discussions with other delegations. Less time is, usually, spent in the Council or Committee meetings.

As an off-shoot from the request-offer process, substantive issues of common interest might arise and require further multilateral discussion. For example, participants may want to address regulatory issues via Article XVIII, further clarify concepts and disciplines contained in the GATS, or improve existing sector classifications. The Reference Paper in basic telecommunications, inscribed under Article XVIII, may stimulate work in other sectors facing similar problems of network access and market dominance, such as rail transport or electricity distribution. Other regulatory issues, e.g. transparency requirements, may be addressed as well. The development of a reference paper should essentially be open to all participants. Of course, once adopted or agreed upon, the paper only takes legal effect if it is incorporated in a Member's schedule.

5.8 State of the GATS Negotiations

5.8.1 Unsettled Issues in GATS

A number of issues remained unsettled in case of liberalisation of services sector which was due by January 2000. The unsettled issues were:

- (i) Article X: Emergency Safeguard Mechanisms
- (ii) Article XII: Public procurement
- (iii) Article XV: Subsidies

These issues had to be resolved before liberalisation of service sector. However, most deadlines were missed.

The GATS sets a heavy work programme covering a wide range of subjects. Work on some of the subjects started in 1995 soon after coming into force. Negotiations to further liberalise international trade in services started in early 2000 as mandated by GATS (Article 19).

The first phase of the negotiations ended successfully in March 2001 when members agreed on the guidelines and procedures for the negotiations, a key element in the negotiating mandate. By agreeing these guidelines, members set the objectives, scope and method for the negotiations in a clear and balanced manner.

Members also unequivocally endorsed some of GATS' fundamental principles — as members' right to regulate and to introduce new regulations on the supply of services in pursuit of national policy objectives; their right to specify which services they wish to open to foreign suppliers and under which conditions; and the overarching principle of flexibility for developing and least developed countries.

The guidelines are therefore sensitive to public policy concerns in important sectors such as health care, public education and cultural industries; while stressing the importance of liberalisation in general, and ensuring that foreign service providers have effective access to domestic markets.

5.8.2 Doha Mandate and Developments in the Negotiations

After the first stage of the negotiations (till 18 March 2001), the Services Council established negotiating guidelines and procedures (Article XIX: 3; Code: S/L/93). The main method of market access negotiation under the GATS was decided to be the request-offer approach.

Doha Ministerial Meeting endorsed the work already done under the built-in agenda. Members agreed that negotiations on trade in services shall be conducted with a view to promoting the economic growth of all trading partners and the development of developing and least developed countries. The paragraph 15 of the Doha Declaration reaffirmed the request-offer approach as the main method for the negotiations, establishing that the current national schedules should be the starting point of the process, without any prejudice regarding the content of the requests. It established some key elements of the timetable including the deadline for the conclusion of the negotiations as part of a single undertaking.

- The market access negotiations started in early 2002. According to the schedule countries were to make request for liberalisation by June 30, 2002. The deadline for initial offers of market access to be made by individual countries was scheduled for March 31, 2003. The deadline for concluding the negotiations has been fixed at December 31, 2004. Before that, a stock taking of the developments in the negotiations ought to take place in the fifth Ministerial in Cancun, Mexico, 2003.
- More than 160 proposals had been submitted since 2000. Bangladesh prepared a request to submit it to some developed countries in the mode 4 across the sector, which finally was not submitted. A number of countries submitted requests to Bangladesh to open some sectors.
- At the aggregate level, the interests of the countries (in descending order) in

opening sectors were: tourism, financial services, business services, communications, transport, construction, recreation, environment, distribution, health and education.

- At the third stage of negotiations, countries raised the questions regarding the benefits of liberalisation and its speed and extent. The need for assessment of liberalisation was reiterated by many countries. However, problems in classification of services, its application in countries and lack of statistics limited the progress in this regard. A draft of modalities for the treatment of autonomous liberalisation was adopted at this stage.
- The issues of treatment of autonomous liberalisation was of special interest to developing countries, specifically for Bangladesh which liberalised autonomously its services trade during 1980s and 1990s, often by the dictation of IMF and the World Bank and in many cases with devastating consequences. The modalities do not create any legal obligations nor do they establish any automatic right to credit or recognition.
- On 3 September 2003 "Modalities for the Special Treatment for Least Developed Country Members in the Negotiations on the Trade in Services" (WTO, TN/S/13) was adopted before Cancun Ministerial Meeting.

5.8.3 LDC Modalities

The market access negotiations had been launched before the adoption of LDC modalities. LDC modalities were adopted before the Cancun Ministerial Meeting.

- GATS Article XIX: 3 stipulated that modalities for special treatment of the LDCs must be established prior to market access negotiations.
- LDCs proposed that, offering national treatment to foreign services providers is not mandatory for LDCs, and they should not be requested to make 'additional commitments' on regulatory issues – e.g. qualifications, standards and licensing requirements.
- 'Preferential market access mechanism' should be created for achieving effective market access for LDCs to the developed market.
- Members should open their markets to 'all categories of natural persons from LDCs, particularly unskilled and semi-skilled persons' without applying a so-called Economic Needs Test.

5.8.4 Cancun Ministerial

The issues of service sector liberalisation did not get adequate attention in Cancun as they did not receive due priority in the whole DDR Agenda and the negotiations suffered as a result of wrong sequencing and missed deadlines. The provisions of special modalities for LDCs did not get proper reflection in the Cancun Draft Text (Revision 2) except some improvements in the text related to mode 4.

5.8.5 July Package of 2004 and Progress in Negotiations

The Doha Round was back on track in 1 August 2004 in Geneva through adoption of the July package. The July text emphasised on the submission of initial offers by the Members who are yet to make one (Box 5.2). The new deadline of May 2005 was fixed for completion of the offer-request process.

5.8.6 GATS in the Hong Kong Ministerial

The Hong Kong Ministerial Declaration of December 2005 is intended to provide new impetus. The negotiating objectives contained in its services-related sections, in particular Annex C, are far more detailed than those listed in any preceding declaration. The new elements include a statement that least developed countries are not expected to undertake new commitments, an obligation to develop methods for the implementation of LDC modalities, new provisions for governing plurilateral request-offer negotiations (in addition to the bilateral approach), and mode-specific objectives for the continuation of these negotiations. Also, considerable emphasis is placed on achieving more clarity and certainty in the scheduling and classification of commitments. A second round of revised offers was due to be submitted by 31 July 2006, while the final draft schedules were to be tabled by 31 October 2006.

The Hong Kong Declaration urges all Members to participate actively in service negotiations towards achieving a progressively higher level of liberalisation of trade in services, with appropriate flexibility for individual developing countries as provided for in Article XIX of the GATS. Recognising the particular economic situation of LDCs, including the difficulties they face, LDCs are not expected to undertake new commitments (Paragraph 26).

Annex C of the Declaration lays out the objectives for negotiations under the four modes of supply and other disciplines. Members agree to pursue the request-offer negotiations as the main method of negotiation on both bilateral and plurilateral basis (Paragraph 6 and 7 of Annex C). Members are also to develop methods for the full and effective implementation of the LDC Modalities. These include, developing appropriate mechanisms for according special priority including to sectors and modes of supply of interest to LDCs (in accordance with Article IV: 3 of the GATS and paragraph 7 of the LDC Modalities); LDCs to undertake commitments, to the extent possible, considering priority in their development policies; and providing targeted and effective technical assistance and capacity building for LDCs in accordance with the LDC Modalities, particularly paragraphs 8 and 12.

In March 2006, the Chairman of the Council for Trade in Services summarised a general sense amid Members that the "Hong Kong Ministerial Declaration, including Annex C, establishes a clear set of negotiating objectives for services and a timeline to achieve them, providing the essential guidance for the negotiations to conclude by

the end of this year". It was also recognised that "as the Hong Kong Declaration does not define or provide a formula for the outcome of the negotiations, much will depend on the early and intense engagement by Members, particularly in the request-offer process" (document TN/S/25).

Box 5.2 Annex C of the July Text Recommendations of the Special Session of the Council for Trade in Services

- a) Members who have not yet submitted their initial offers must do so as soon as possible.
- b) A date for the submission of a round of revised offers should be established as soon as feasible.
- c) With a view to providing effective market access to all Members and in order to ensure a substantive outcome, Members shall strive to ensure a high quality of offers, particularly in sectors and modes of supply of export interest to developing countries, with special attention to be given to least developed countries.
- d) Members shall aim to achieve progressively higher levels of liberalisation with no a priori exclusion of any service sector or mode of supply and shall give special attention to sectors and modes of supply of export interest to developing countries. Members note the interest of developing countries, as well as other Members, in Mode 4.
- e) Members must intensify their efforts to conclude the negotiations on rule-making under GATS Articles VI:4, X, XIII and XV in accordance with their respective mandates and deadlines.
- f) Targeted technical assistance should be provided with a view to enabling developing countries to participate effectively in the negotiations.
- g) For the purpose of the Sixth Ministerial meeting, the Special Session of the Council for Trade in Services shall review progress in these negotiations and provide a full report to the Trade Negotiations Committee, including possible recommendations.

5.8.7 Implication of Hong Kong Declaration on Service for Bangladesh and other LDCs

In paragraph 25, 26, and 27 and in Annex C of the Hong Kong Declaration, decisions on services trade have been laid out. Service sector (including Mode 4) was not slated for negotiation at Hong Kong and the Annex C of the Declaration was adopted without much amendments. Hong Kong Declaration (Article 3 of Annex C) calls for full and effective implementation of the LDC Modalities for the Special Treatment for Least Developed Country Members in the Negotiations on Trade in Services with a view to the beneficial and meaningful integration of LDCs into multilateral trading system and also for expeditiously developing appropriate mechanisms for according special priority, including to sectors and modes of supply of interests to LDCs [Article 9 (a)].

There is very low probability for LDCs to reap real benefits out of this declaration. In highly populated LDCs like Bangladesh, semi-skilled workers comprise a major part

of the workforce and also of exportable manpower. Though the Hong Kong Declaration speaks of giving priority to service sectors of export interest to LDCs, the Mode 4 of GATS covering movement of natural persons, mentions about export of skilled workers and professionals only. The possibility of Bangladesh gaining from such an arrangement is of suspect.

However, the Hong Kong Declaration is very important on the part of the LDCs because LDCs will have to analyse requests from other members for any specific sector, determine probable impacts in that sector with liberalisation, and negotiate with others in quick time. With the service sector emerging as a major contributor in the economy, Bangladesh will have to consider policies pertaining to this sector with care. So far though Bangladesh has received requests from many countries including USA, EU, Singapore and Japan for liberalising some important sectors like professional services, audio-visual services, construction and related architectural services, recreation, transport, law and accounting services, software and information services, e-commerce services, infrastructural and distribution services etc., it has not submitted request and offer proposal for negotiation.

5.8.8 Post Hong Kong Developments on GATS Negotiations

Members agreed on that the negotiations shall adhere to the following dates:

- Any outstanding initial offers shall be submitted as soon as possible.
- Groups of Members presenting plurilateral requests to other Members should submit such requests by 28 February 2006 or as soon as possible thereafter.
- Revised market access offers was to happen at the end of July 2006 according to the Hong Kong Ministerial.
- Final draft schedules of commitments shall be submitted by 31 October 2006.
- Members shall strive to complete the requirements in 9(a) before the date in 11(c).

5.8.9 Current State of Negotiations

- Current Chair of the Committee on Trade in Services Ambassador Fernando de Mateo of Mexico is eager to have a draft text setting out parameters to guide the process of liberalisation.
- Bolivia, Cuba and Venezuela argued in December 2007 that there was no need for a services modalities text since the Hong Kong services annex and the in-built flexibility for developing countries in the GATS already provided sufficient parameters to conclude the negotiations.
- The African and ASEAN groups, as well as Brazil and India have also questioned the usefulness of developing a modalities paper. They indicated that they would participate in the exercise provided that their issues and concerns are adequately reflected in the paper.

- Developed countries are keen to see a draft text emerge as soon as possible. Developing countries are not in favour of speeding up the services negotiations until the outcome in agriculture and NAMA is better defined.
- Many Members have also made it clear that improved market access commitments would depend on how far developed countries would be willing to open their markets to providers of services from developing countries.
- Some developing countries, notably India complained that developed countries have done little to respond to their demands for certain kinds of services liberalisation.
- Developing countries have stressed that any new text must not be limited to market access, and should reflect developments in the rule making aspect of the talks as well as domestic regulations.
- Members asked the Chair of the working party on domestic regulation to table a revised text for a potential agreement.
- Developing countries have been trying to use the rule making negotiations to secure new disciplines on subsidies to the services industry as well as a services safeguard.
- Limited progress on rules would provide them jurisdiction for scaling back potential market access concessions.
- India, Pakistan, Peru and Thailand highlighted developing countries' concerns about the lack of positive signals in response to their plurilateral and bilateral requests for market access commitments for Mode 4 of services supply. They strongly pointed out that both developed and developing countries would gain from liberal Mode 4 commitments. They wanted smooth temporary entry for service providers who had received a contract to supply a service in a scheduled sector, so as to enable them to execute the contract efficiently.
- The African Group also stressed that a meaningful outcome in Mode 4 was necessary, both to reflect the development dimension of the Doha Round and to ensure agreement on the overall final deal.
- The group of LDCs has focused more specifically on the Hong Kong Declaration's call for Members to "give priority to the sectors and modes of supply of export interest to LDCs, particularly with regard to movement of service providers under Mode 4". The group has also requested that developed country Members establish 'appropriate mechanisms' to facilitate the effective access of LDCs' services and service suppliers to foreign markets before presenting their final market access offers.
- Developed countries have offered limited improvements in a few sectors only involving skilled workers, and there is not much change in their attitude towards Mode 4 market access.

- It is anticipated that service text would probably be delayed until the issuance of the revised agriculture and NAMA modalities.

5.8.10 Granting "Special Priority"

An LDC text circulated on 28 March 2006 focused on a mechanism requiring developed country Members to grant permanent, non-reciprocal, special priority solely to LDCs, notwithstanding any provisions of the GATS obligation, as well as require existing GATS obligation (MFN) to be waived.

The legal effect of the elements of the LDC proposal is being examined in view of the WTO procedures. How a mechanism could be developed to create, modify or waive obligations at the level of GATS agreement, which do not have the 'Enabling Clause', is a matter of contention. The current Chair of the committee on Trade in services Ambassador Ferando de Mateo of Mexico will hold a dedicated session on 'special priority', to be precise on LDC Modality. A signaling conference will be held to indicate the offers by countries and push forward the liberalisation issue further.

The Maseru Declaration of the LDC Trade Ministries' meeting held in Lesotho during 27-29 February 2008 reiterated the LDC interest in services, including special priority.

5.9 Services Sector in Bangladesh

5.9.1 Importance of the Service Sector

Constitution of the service sectors in the Bangladesh economy has increased over time. Currently (FY 2006-07) the share of services in total GDP is about 60 per cent. More than 40 per cent of the labour force is employed by the services sectors, and

Table 5.2 Sectoral Distribution of Services Sector GDP 2006-07

Sub-Sectors	Sectoral Share of GDP (%)	Sectoral Growth Rate of GDP (%)
Electricity, Gas & Water Supply	1.63	5.37
Construction	9.16	7.05
Wholesale and Retail Trade	14.17	7.44
Hotel & Restaurant	0.70	8.15
Transport, Storage & Communication	10.21	8.24
Financial Intermediations	1.73	7.54
Real Estate, Renting & Business Activities	7.65	3.77
Public Administration & Defence	2.75	8.51
Education	2.54	9.01
Health & Social Work	2.29	7.56
Community, Social & Personal Services	7.09	4.51
Total	59.92	

Source: BBS (2006-07).

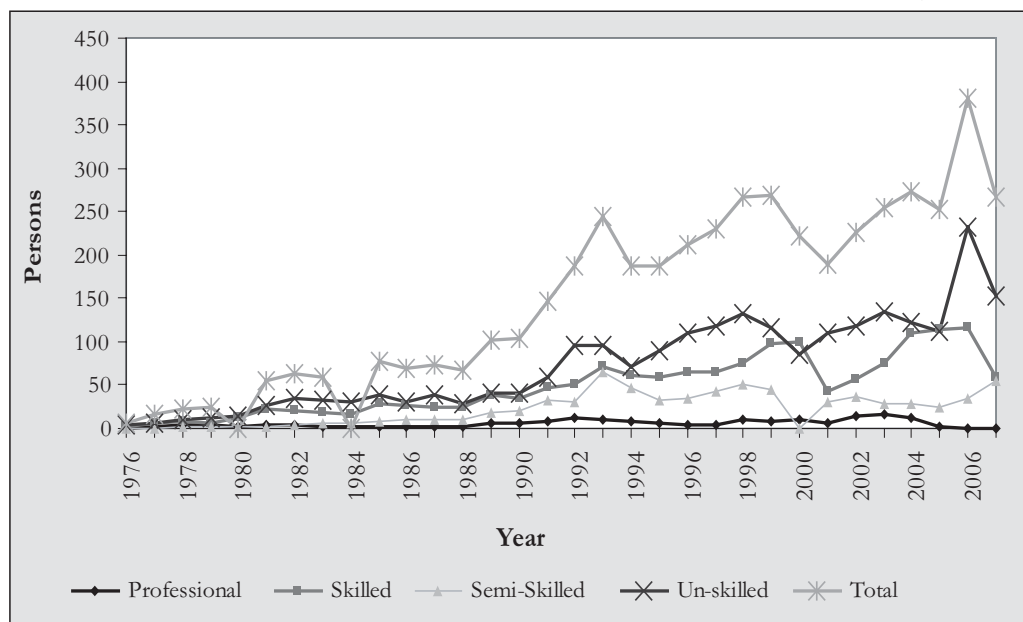
Table 5.3 Employment in the Services Sector Labour Force Survey (in Million)

Sectors	1999-2000	2002-03	2005-06
Electricity, Gas & Water Supply	0.1	0.1	0.1
Construction	1.1	1.5	1.5
Trade, Hotel & Restaurant	6.1	6.3	7.8
Transport, Storage & Communication	2.5	0.7	4.0
Finance & Business Services and Real Estate	0.4	0.3	0.7
Health, Education, Public Administration and Defence	-	2.5	2.6
Community and Personal Services	5.1	2.7	2.6
Total Services Sector	15.3	16.8	19.3
Total Employment	39.0	44.3	47.4
% of Services Employment in Total Employment	39.2	37.9	40.7

Source: Labour Force Survey 2005-06, BBS.

the sector is more important for employment creation than the manufacturing sector. Remittances from abroad have become a significant part of the export income. However, although services capture about 60 per cent in national GDP, trade in services, particularly trade in commercial services is not significant compared to merchandise trade.

Figure 5.1 Flow of Labour Migration from Bangladesh under Different Categories 1976-2006 (in thousands)



Source: Ministry of Expatriates Welfare and Overseas Employment.

The GATS regime is important for the developing countries, particularly for the least developed countries (LDCs) like Bangladesh, since the countries are suffering from severe constraints in economic development due to poor infrastructure, institutional and human capacities to cope with the challenges emanating from the liberalisation of Trade in Services. Trade in Services has become a significant component in individual economies, and without necessary precautions and adequate readiness, LDCs including Bangladesh will be lucrative targets for strong market players which might jeopardise the growth potential of the domestic service market. However, liberalisation steps in the trade in services might open areas of opportunities as well. From the viewpoint of developing countries, the importance of Trade in Services has increased for three fundamental reasons:

- *Retaining and deepening competitiveness in goods export:* For many developing and least developed countries including Bangladesh, overall economic growth and development largely depend on the export of goods, while the retention of competitiveness of goods exports significantly depends on how the service providers facilitate the process with their continuous support in the areas of banking and insurance, port facilities, transport, logistics, consulting, telecommunications, etc.
- *Opportunities through increased tradability of services:* With the advent of Information and Communication Technology (ICT) coupled with growing global demand for services, presently the delivery of services cannot be restricted to a particular geographical location. As the structure of labour market of large economies is going to evolve during next few decades, there will be growing demand for service providers in these economies from human resource surplus countries either in the form of permanent migration or in the form of temporary movement of service providers.
- *Improvement of quality of services in domestic market:* Trade in services also enhances scope for improving quality of services consumed domestically through technology transfer and increased competition.

The GATS Article IV stipulates developed members to facilitate increased participation of developing countries in world trade by negotiating specific commitments relating to:

- a) strengthening domestic services capacity, efficiency and competitiveness in developing countries;
- b) improving access for developing country services suppliers to distribution channels and information networks; and
- c) liberalised market access in sectors of export interest to developing countries.

5.10 Bangladesh in Services Negotiation

5.10.1 Request to Bangladesh

Bangladesh received a number of requests for liberalisation of various sectors from many countries (Table 5.4 and 5.5)

Table 5.4 Requests for Opening Fully (None) in All Modes

Modes	Sectors and Subsectors
Mode 1 None	None insurance, banking and other financial services, environmental services
Mode 2 None	Maritime transport, computer and related services, services auxiliary to all modes of transport, environmental services
Mode 3 None	Maritime transport, computer and related services, general construction work for buildings, general construction work for civil engineering water for human use and wastewater management, insurance, banking and other financial services, services auxiliary to all modes of transport, environmental services
Mode 4 None	Telecommunication services

Source: WTO Website www.wto.org

Table 5.5 Countries for Negotiations with Current List of Request to Bangladesh

Sectors	Countries for Negotiations
Temporary Movement of Natural Persons	EC, USA, Japan, Norway, Singapore, Malaysia, Hong Kong
Communication Services	EC, USA, Japan, Norway
Transport Services	EC, Japan
Tourism and Travel Related Services	Sri Lanka
Construction and Related Engineering Services	EC, Japan
Financial Services	EC, USA, Japan
Business Services	EC, USA

Source: WTO Website www.wto.org

5.10.2 Offer and Request by Bangladesh

- During the conclusion of the Uruguay Round, Bangladesh committed to liberalise basic telecommunications and tourism sector. Specifically, the offer was limited to only voice telecommunications through government operators' circuit and five star hotels.
- Bangladesh has not made any request so far. Bangladesh prepared a request to submit it to some developed countries in the mode 4 across the sector. But, this was not submitted finally.

5.10.3 Barriers for Temporary Movement of Natural Persons

- Wage-parity requirement discourages import of cheap labour
- Strict visa procedures
- Economic Needs Tests
- Non-recognition of professional qualifications
- Imposition of discriminatory standards or burdensome licensing requirements
- Payment of social security without corresponding benefits like medical and pension insurance schemes
- Requirements of registration with or membership of professional organisations.

5.10.4 Provision of Mutual Recognition Agreement

- Mutual recognition of qualification is considered to be the main obstacle affecting trade in professional services.
- Commitments on market access and national treatment are not always sufficient for a foreign service supplier to be able to supply a market because if a profession is regulated, no one can practice it without a license.
- Some professions—such as law, health care, engineering, architecture, and accountancy—fall into the category of "accredited" or "regulated" professions in most countries.

5.10.5 Gains to the USA and the EU from Mode 4

Changing Demographic Conditions

- By 2050 labour supply is expected to go down substantially due to early retirement, aging population, falling birth rates, increasing affluence and time spent in higher education of young population.
- According to the UN, France, Germany, Italy, and the UK have to increase immigration 37-fold, to almost 9 million a year to "save social security," to keep the ratio of persons 18 to 64 years old to persons 65 and older stable.
- Given the demand conditions scope for trade in services is substantive for labour surplus countries.

5.10.6 Gains to the World Economy from Mode 4

World welfare gains from liberalisation of the movement of workers could amount to \$US 156 billion per year if developed countries increase their quota for the entry of workers from developing and least developed countries by 3 per cent (Winters, 2003). Multilateral liberalisation of temporary movement through commercially meaningful

GATS commitments could be one of the best ways to the permanent solution of illegal migration.

5.10.7 Negotiating Strategy for Bangladesh

There are two mutually beneficial strategies to adopt for Bangladesh, firstly, lowering of restrictions of movement in Mode 4, and secondly under plurilateral approach, making requests to developed countries under Mode 4.

Bangladesh must ask for expansion of commitments in categories de-linked with commercial presence (Mode 3). Elimination of economic needs tests will help low-skilled and independent professionals. Alongside, development of some multilateral standards to reduce arbitrariness and discriminatory scope of ENTs is required. Additionally, Bangladesh should use the provisions of the special modalities for LDCs, identify sectors of export and import interest and protection, and specify the development objectives of individual sectors. By using the experience of current liberalisation in individual sector and building partnership with country groups Bangladesh is likely to reap benefits in services negotiations. When plurilateral requests are made, Bangladesh should examine those in view of her interest and priority.

However, Bangladesh needs to analyse the probable impacts of these requests before deciding on them. Bangladesh must also negotiate for export of workers and professionals under Mode 4. Research suggests that Bangladesh can earn huge amount of foreign exchange through service exports under GATS Mode 4; through exporting additional 2 lakhs of service providers, Bangladesh can earn additional US\$ 3.5 billion from unskilled workers, US\$ 381 million from skilled workers, and US\$ 11.57 billion from professionals (Raihan and Mahmood, 2004).

5.11 Summary

- The General Agreement on Trade in Services (GATS) entered into force in January 1995 as a result of the Uruguay Round negotiations to provide for the extension of the multilateral trading system to services. Services represent the fastest growing sector of the global economy and account for two thirds of global output, one third of global employment and nearly 20 per cent of global trade.
- The GATS is one of 28 World Trade Organization (WTO) agreements and the first multilateral agreement which provides legally enforceable rights to trade in all services. The agreement included built-in commitment for continuous liberalisation through periodic negotiations.
- Under the GATS, four modes of supply of services in international trade have been identified. These are; Mode 1: Cross-Border Supply; Mode 2: Consumption Abroad; Mode 3: Commercial Presence; and Mode 4: Presence of Natural Persons.

- The GATS is intended to contribute to trade expansion "under conditions of transparency and progressive liberalisation and as a means of promoting the economic growth of all trading partners and the development of developing countries".
- The GATS' contribution to world services trade rests on two main pillars: (a) ensuring increased transparency and predictability of relevant rules and regulations, and (b) promoting progressive liberalisation through successive rounds of negotiations.
- The market access provisions of GATS (Article XVI) cover six types of restrictions that must be maintained. The restrictions are related to: (i) the number of service supplies; (ii) the value of service transactions or assets; (iii) the number of operations or quantity of output; (iv) the number of natural persons supplying a service; (v) the type of legal entity or joint venture; (vi) the participation of foreign capital.
- The GATS provides legally enforceable rights to trade in all services incorporating 12 major service sectors and 160 sub-sectors under them.
- Doha Ministerial Meeting endorsed the work already done under the built-in agenda. Members agreed that negotiations on trade in services shall be conducted with a view to promoting the economic growth of all trading partners and the development of developing and least developed countries.
- The main method of market access negotiation under the GATS is the request-offer approach. Bangladesh prepared a request to submit it to some developed countries in the mode 4 across the sector, which finally was not submitted.
- A number of countries submitted requests to Bangladesh to open some sectors like tourism, financial services, business services, communications, transport, construction, recreation, environment, distribution, health and education. Bangladesh needs to analyse the probable impacts of the requests before taking a decision
- On 3 September 2003 "Modalities for the Special Treatment for Least Developed Country Members in the Negotiations on the Trade in Services" (WTO, TN/S/13) was adopted before Cancun Ministerial Meeting. The July text adopted on 1 August 2004 in Geneva emphasised submission of initial offers by the Members who are yet to make one (Box 5.2). The new deadline of May 2005 was fixed for completion of the offer-request process.
- At the Hong Kong Ministerial (December 2005), members agreed to develop methods for the full and effective implementation of the LDC Modalities.
- World welfare gains from liberalisation of the movement of workers could amount to \$US 156 billion per year if developed countries increase their quota for the entry of workers from developing and least developed countries by 3 per cent.

- There are two mutually beneficial strategies to adopt for Bangladesh, firstly, lowering of restrictions of movement in Mode 4, and secondly under plurilateral approach, making requests to developed countries under Mode 4.
- Temporary movement of natural persons, that is, Mode 4 of GATS is especially important for Bangladesh since remittance inflows from the citizens working abroad has contributed significantly to the macroeconomic stability through the country's balance of payment in recent periods. Thus Bangladesh must negotiate for export of workers and professionals under Mode 4.

5.12 Questions for Discussion

1. What are the modes of GATS?
2. What are the concepts of GATS?
3. What are the provisions of GATS?
4. Discuss method and present state of GATS negotiation.
5. Which Mode is important for Bangladesh and why?

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Training Manual on **WTO and Bangladesh Trade Policy**

Module

6

Dispute

Settlement

Mechanism in the

WTO

Dispute Settlement Mechanism in the WTO

Learning Objectives

- The module will explain the participants to the issue of dispute settlement system under international trade agreements.
- It will thoroughly discuss dispute settlement mechanism under the WTO, especially nature and trends of the cases filed, the complainants

and respondents of these cases etc.

- It will also describe a case on India's anti-dumping duties on lead acid battery import from Bangladesh to appreciate the complexities and challenges for LDCs to participate in the DSM process.
- Finally, it will explain current state of negotiations on dispute settlement under the Doha Development Round.

6.1 Disputes in International Trade

International Trade Agreements' (ITAs) obligation brings about adjustments for each party as these agreements are implemented into domestic regulatory frameworks. Such adjustments often present formidable challenges to commercial enterprises as they must adapt to new conditions of competition. Consequently, the interpretation and enforcement of rule becomes major pre-occupations in the administration of ITAs. A dispute arises when a member government believes that another member government is violating an agreement or a commitment that it has made in the international trade agreement, as ultimate responsibility for settling disputes lies with member governments, through the Dispute Settlement Body. When a dispute arises between governments participating in an ITA, the focus falls on the measures adopted by the concerned governments that whether such measures are beyond the limits set by an agreement or fall short of the commitments under the agreement.

6.2 Dispute Settlement Procedure Under the GATT 1947

Dispute settlement procedures are generally based either on the respective power of the disputants (power based) or on a set of rules that applies to the subject matter of the dispute between them (rules based). An effective multilateral dispute resolution procedure is particularly important for small states, as they seldom have the clout or

capacity to enforce the agreements by themselves. They also usually find it difficult to oppose the unilateral actions by larger trading nations that would arise in the absence of multilateral dispute settlement mechanisms.

The basis for dispute settlement under the GATT 1947 is found in *GATT Article XXII: Consultation* and *Article XXIII: Nullification or Impairment*.

Article XXII: Each contracting party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by another contracting party with respect to any matter affecting the operation of this agreement.

Article XXIII: If any contracting party should consider that any benefit accruing to it directly or indirectly under this agreement is being nullified or impaired or that the attainment of any objective of the agreement is being impeded as the result of: a) the failure of another contracting party to carry out its obligations under this agreement, or b) the application by another contracting party of any measure, whether or not it conflicts with the provisions of this agreement, or c) the existence of any other situation.

Dispute settlement under the GATT was based on consensus principle, which ensured that both parties to a dispute had to agree on the outcome. It also created opportunities for parties to a dispute to block either the initiation or the completion of the process. In practice though, contracting parties did not employ blocking tactics extensively. The conventional wisdom is that the GATT dispute mechanism worked much better than was generally recognised.

In the GATT's early history, the panel procedure was quite informal. Disputes were simply referred to the chair of the plenary meeting of the contracting parties, who would then issue a ruling to the parties. However, as the volume of complaints grew, the practice of referring a dispute to a 'working party' composed of the disputants and other interested parties developed. Consequently, from 1952 onward the procedure became more formalised, with disputes being referred to a panel of independent experts acting in their own capacities, and not as representatives of the Member states. These panels issued rulings based on a legal interpretation and examination of evidence submitted by the disputants, and could make policy recommendations about what steps, if any, should be taken to bring the offending policies into compliance with GATT rules, or what compensatory measures would be sufficient to make restitution to the complainant. Under the old GATT system, any state, including the defendant, could exercise a veto power over the decision to establish a panel to hear a case, as well as the decision to adopt a panel report.

Of some 278 complaints considered under general dispute settlement provisions between 1948 and 1994, 110 led to legal rulings by panels, the others being settled before a report was produced. Of the 88 cases where the panel found that a violation had occurred, the majority were adopted. Many of those not adopted did lead to a satisfactory outcome, with a success rate well over 90% (Hudec, 1993).

6.3 Dispute Settlement Procedure Under the WTO

The Dispute Settlement Understanding in the WTO Agreement establishes procedures for dispute settlement under a new entity, the Dispute Settlement Body (DSB) which is composed of representatives of all the Member states. *The WTO Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) further expanded and codified dispute settlement procedures that had been in effect under the GATT 1947. DSU is legalised in the WTO framework under Annex 2 of WTO Agreement.

In contrast to the previous system, strict time limits for consultations have been set, and all consultations must be notified to the DSB. When consultations fail to resolve a dispute, a complaining party has a right to the establishment of a panel to adjudicate its case, barring a consensus by the DSB not to establish it. Unless a party to the dispute formally notifies the DSB that it wishes to appeal, adoption of panel reports is virtually automatic, since a 'reverse' consensus by the DSB to not adopt the report is required for rejection. In the case of an appeal, a standing Appellate Body will review the case and issue its own report, which is to be adopted by the DSB unless, once again, there is a consensus not to adopt.

The DSU sets out specific time periods for each phase of dispute settlement and further elaborates sections on implementation and surveillance. It is evident that WTO Members wish to retain possibilities of diplomatic resolution of disputes as a principle of the organisation and as an alternative to legal adjudication.

6.3.1 Different Stages of the Settlement of Disputes

There are five stages in the settlement of disputes under WTO (see Chart 6.1).

- | | |
|---------|---|
| Stage 1 | Consultation and mediation (based on Articles 4 and 5 of DSU) |
| Stage 2 | Request of a panel (based on Article 6 of DSU) |
| Stage 3 | The panel at work (based on Articles 7, 8, 9, 10, 11, 12, 13, 14 and 15 of DSU) |
| Stage 4 | Adoption decision or appeal (based on Articles 16, 17, 18, 19, and 20 of DSU) |
| Stage 5 | Implementation (based on Article 21 and 22 of DSU) |

Stage 1: Consultation and Mediation

Members must initially attempt to solve their disputes through bilateral consultations. The good offices, conciliation or mediation by the WTO Director General may also be sought, although this is optional. The goal of the consultation stage is to enable the disputing parties to understand the factual situation and the legal claims and hopefully to settle the matter bilaterally. Usually there is a period of 60 days for consultation.

Stage 2: Request for a Panel

If parties are not able to secure a solution to their dispute through consultations within 60 days, the establishment of a panel may be requested. The DSB establishes a

panel, drafts terms of reference and determines its composition and the WTO Secretariat suggests the names of three or four potential panelists to the parties to the dispute. The parties have the right to object to a proposed panelist. Panelists serve in their individual capacity, may not be subjected to government instructions, and are usually members of delegations or retired civil servants (academics) knowledgeable in trade matters. The WTO Secretariat provides administrative support and generally prepares the background documentation regarding the facts of the case. The whole process is usually completed by 45 days.

Stage 3: The Panel at Work

The panel usually goes through the following steps: examination of facts and arguments; meetings with the parties and interested third parties; interim review—descriptive and interim reports are sent to the parties who may request a review meeting with the panel; drafting of conclusions and recommendations; panel report issued to the parties and circulated to the DSB; Final panel report issued to the parties. The whole process is usually completed by 6 months.

Stage 4: Adoption Decision or Appeal

The panel report must be adopted by the DSB within 60 days, unless a consensus exists not to adopt, or a party appeals the findings of the panel. Appeals are limited to issues of law or the legal interpretation developed by the panel. An Appellate Body, composed of seven persons who are broadly representative of the WTO's membership, deals with such appeals. Appeal proceedings should not exceed 60 days and must be completed within 90 days (Box 6.1).

Stage 5: Implementation

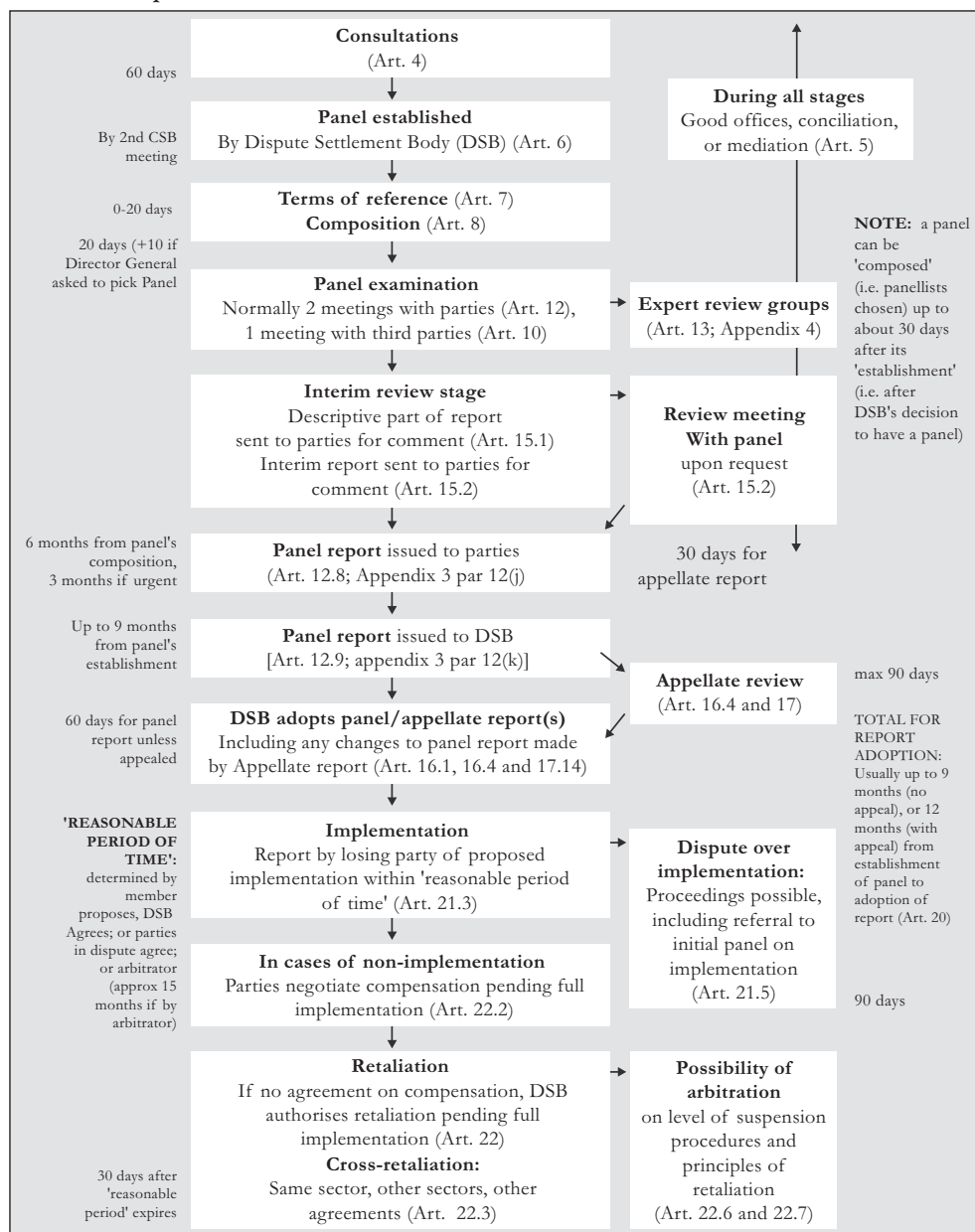
The Appellate Body report is final and is adopted by the DSB. If it is impracticable to comply immediately, the offending country is given a 'reasonable period of time' to do so (Article 21.3 DSU). The length of this period can, at the request of the parties, be determined through binding arbitration. If the respondent fails to act within this period, parties are to negotiate for compensation pending full implementation (Article 22.2 DSU). If this cannot be agreed, the complainant may request authorisation from the DSB to suspend equivalent concessions against the offending country. This authorisation is automatic as a consensus is required to refuse it. The magnitude of the retaliation is determined by the DSB, generally on the recommendation of the original panel. Arbitration may be sought on the level of suspension, the procedures and principles of retaliation (Article 22.6).

6.3.2 Special Procedures Involving Least Developed Country Members

Particular consideration is given to the special situation of LDCs. Members are to exercise due restraint in raising matters under these procedures involving an LDC. If nullification or impairment is found to result from a measure taken by an LDC,

complaining parties are expected to exercise due restraint in asking for compensation or seeking authorisation to suspend the application of concessions or other obligations pursuant to these procedures. In dispute settlement cases involving an LDC member, when a satisfactory solution has not been found in the course of consultations, the Director General or the Chairman of the DSB, upon request by an

Chart 6.1 Dispute Settlement Procedure Under the WTO



Source: WTO Website www.wto.org

Box 6.1 How Long to Settle a Dispute?

Consultations, mediation, etc	60 days
Panel set up and panellists appointed	45 days
Final panel report to parties	6 months
Final panel report to WTO members	3 weeks
Dispute Settlement Body adopts report (if no appeal)	60 days
(Without appeal)	Total = 1 year
Appeals report	60-90 days
Dispute Settlement Body adopts appeals report	30 days
(With appeal)	Total = 1y 3m

Source: WTO Website www.wto.org

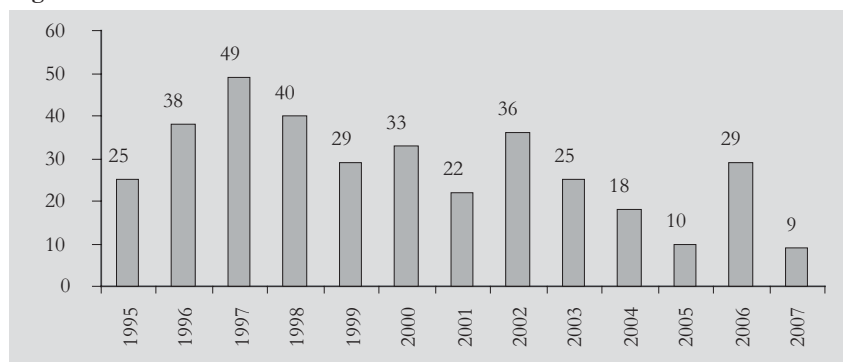
LDC Member, offer their good offices, conciliation and mediation with a view to assisting the parties to settle the dispute, before a request for a panel is made.

6.4 Complainants and Respondents at the DSB

6.4.1 Trends of Cases Filed

A total of 363 cases have been filed till October, 2007 (Figure 6.1). The number of cases filed in each year varies within a range of 10 to 50. The highest number of cases was filed in 1997 (49), while the lowest number of cases was filed in 2007 (upto October). Relatively less number of cases was filed after 2002. It is interesting to note that number of cases filed under the DSB of the WTO since its inception in 1995 has already exceeded the total number of cases filed under GATT dispute settlement process between 1948 to 1994.

Figure 6.1 Number of Cases Filed in the DSB



Source: Horn and Mavroidis, 2006.

The following discussions (under sections 6.4.2 to 6.4.5) are based on the data set covering all 311 WTO disputes initiated through the official filing of a *Request for Consultations* from 1 January 1995 until 31 July 2004, and for events occurred till 28 February 2005. Following discussions (6.4.2 to 6.4.5) are based on Horn and Mavroidis, 2006.

6.4.2 Who are Complainants?

The USA and EU (herein after referred as G2) have complained 242 times, that is, 28.3% of all bilateral disputes (Table 6.1). They are the third most active group. Industrialised countries (herein after referred as IND) leads with 334 bilateral complaints, that is, 39% of all disputes, followed by developing countries (herein after referred as DEV) with 272 bilateral disputes, or 31.8%. Least developed countries (LDCs) have complained only 8 times, that is, in 0.9% of all bilateral disputes.

G2 is the most active respondent of the cases filed against different trading nations. The practices of the G2 have been challenged 481 times, which accounts for 56.2% of all bilateral disputes. DEV follows with 226, that is, 26.4%. IND acted as respondent on 149 occasions, that is 17.4% of all bilateral disputes. LDCs never acted as respondent. When comparing participation as complainant and respondent, G2 is roughly twice as often appearing as respondent than as complainant (481/242). IND has been twice as often a complainant (334/149). In DEV's case, the discrepancy is not so pronounced, although DEV still is more active as complainant than as respondent (272/226).

Table 6.1 Distribution of Bilateral Complaints

Comp.	Respondent			Total
	G2	IND	DEV	
G2	9.2	8.2	10.9	28.3
IND	23.1	6.1	9.8	39.0
DEV	23.0	3.2	5.6	31.8
LDC	0.8	0.0	0.1	0.9
Total	56.2	17.4	26.4	100.0

Source: Horn and Mavroidis, 2006.

6.4.3 Who Targets Whom?

G2 targets evenly G2, IND and DEV; G2 complaints against G2 constitute 32.6% of its total complaints (79/242), against IND, 29% (70/242), and against DEV 38.4% (93/242). The other three groups target G2 much more often than any other group -- 59.2% of all IND complaints are directed against G2 (198/334); 72.4% of all DEV complaints concern G2 practices (197/272), and finally, 90% of all LDC complaints aim at the G2 countries (7/8). Any pairing that is not involving G2, without taking into account the scarce LDC participation, is relatively infrequent.

Information as regards different groups' action as complainants by either participating in the original Request for Consultations, or by joining in at a later stage shows that there is an asymmetry between G2 and the other groups. In complaints against G2 or IND, G2 will more often act as original complainant: only 32.9% of all G2 complaints against G2 or against IND are cases where G2 joined in consultations. However, in the case of complaints against DEV, G2 has joined in 53.8% of its total cases against this group. On the other hand, DEV shows a high propensity to join in when the target is

the G2 (in 71.1% of all their complaints against G2, DEV joined in consultations). DEV, however, acts more often as an original complainant when targeting practices of either IND or DEV. IND consistently joins in consultations more frequently than it acts as original complainant, no matter what the target group is. Hence, in conclusion, it can be said that IND and DEV prefer to join in, whereas G2 acts as original complainant. Most of the complaints of LDCs, though small in number, are against G2 (Table 6.2)

Table 6.2 LDC's Complaints against Other Groups

Complaint	Respondent			Total
	G2	IND	DEV	
Bangladesh	1		1	2
Congo	2			2
Madagascar	2			2
Malawi	2			2
Total	7		1	8

Source: Horn and Mavroidis, 2006.

As regards the participation of WTO Members as third parties, DEV emerges as the highest represented group, with 354/726, or 48.8% of all appearances as third parties in all disputes. IND comes second, with 260 appearances (35.8%), followed by G2 with 101 appearances (13.9%), and LDC with 11 appearances (1.5%). More interestingly, 72 WTO Members appeared as third parties, that is 5 more than the 67 complainants. On the other hand, there is no complete overlap between the two categories: 12 Members appeared as third parties without having appeared as complainants. Importantly, all of them belong to the DEV/LDC groups (Dominica, Egypt, Ghana, Grenada, Nigeria, Paraguay, Saint Vincent & the Grenadines, Suriname, Tanzania, Benin, Chad and Senegal). DEV and LDC have appeared more often as third parties rather than as complainants. The respective numbers are for DEV 368/272, and for LDC 11/8. The opposite is true for IND and G2, where the numbers respectively are: 260/334 and 101/242.

6.4.4 Which Agreements and Provisions have been Invoked?

GATT with Annexes stands for the vast majority of invocations, or almost 94% of the

Table 6.3 GATT, GATS and TRIPS (their Annexes) Invoked in Requests for Consultations

	Agreement Number of Disputes	% of Total
GATT and Annexes	575	93.6
GATS and Annexes	14	2.3
TRIPS	25	4.1
Total	614	100.0

Source: Horn and Mavroidis, 2006.

total number (Table 6.3). The number of TRIPS invocations is almost twice that of GATS invocations, but they both dwindle in comparison to the invocations of the agreements governing trade in goods. This *might prima facie* look surprising. However, the fact that developing countries enjoyed a long transitional period to implement TRIPS, probably explains the few invocations of this agreement. On the other hand, the GATS is still largely a *terra incognita* for most trading nations. Also, empirical evidence suggests that it did not generate any meaningful trade liberalisation beyond the status quo in 1995, which could be part of the explanation for how rarely it has been invoked.

Not surprisingly, GATT completely dominates as the most frequently invoked agreement, accounting for roughly a third of all instances (Tables 6.4 and 6.5). There are then three agreements that between themselves are invoked roughly as frequently, all of them GATT Annexes: Anti-dumping (AD), Agriculture (AG) and Subsidies and

Table 6.4 Agreements Invoked in Requests for Consultations

	Number of Times Invoked	% of Total no of Invoked
GATT	232	35.6
SCM	58	8.9
AD	54	8.3
AG	52	8.0
TBT	33	5.1
SG	31	4.8
ILA	31	4.8
SPS	30	4.6
WTO Agreement	25	3.8
TRIPS	25	3.8
TRIMS	19	2.9
ATC	16	2.5
GATS	14	2.1
CV	11	1.7
DSU	8	1.2
ROO	4	0.6
GPA	4	0.6
Enabling Clause	4	0.6
1979 Understanding	1	0.2
ALL	652	100.0

Source: Horn and Mavroidis, 2006.

Table 6.5 Invocations of Select Agreements by Complainant and Respondents Groups (number)*

Complainant Agreements	G2					IND					DEV					LDC				
	Vs.					Vs.					Vs.					Vs.				
	G2	IND	DEV	LDC	Tot.	G2	IND	DEV	LDC	Tot.	G2	IND	DEV	LDC	Tot.	G2	IND	DEV	LDC	Tot.
GATT	51	45	75	0	171	178	41	78	0	297	183	18	43	0	244	6	0	1	0	719
AD	12	7	5	0	24	33	2	10	0	45	25	2	8	0	35	0	0	1	0	105
SCM	17	8	14	0	39	36	3	14	0	53	54	3	1	0	58	6	0	0	0	156
GATS	5	5	3	0	13	3	1	2	0	6	24	1	2	0	27	0	0	0	0	46
TRIPS	13	7	12	0	32	35	2	5	0	42	8	0	0	0	8	0	0	0	0	82

Source: Horn and Mavroidis, 2006.

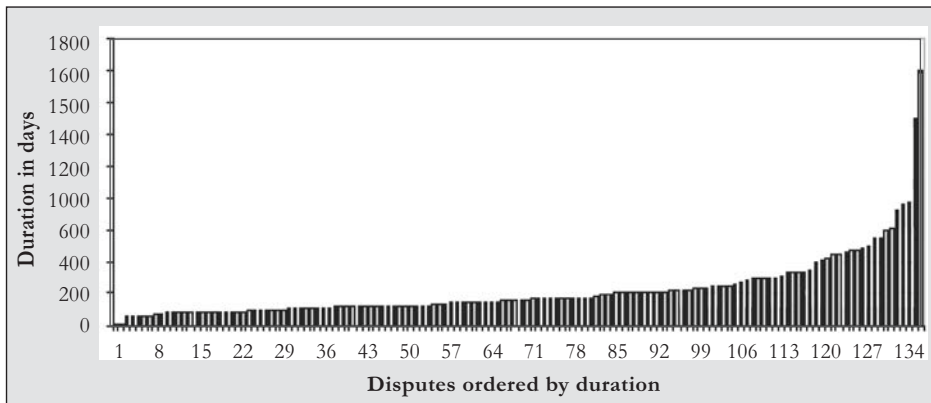
*Includes all bilateral disputes with both original and joining member countries.

Countervailing Measures (SCM). But with 8.3%, 8.0% and 8.9%, they jointly do not stand for more than a quarter of all invocations.

6.4.5 The Duration of the Process

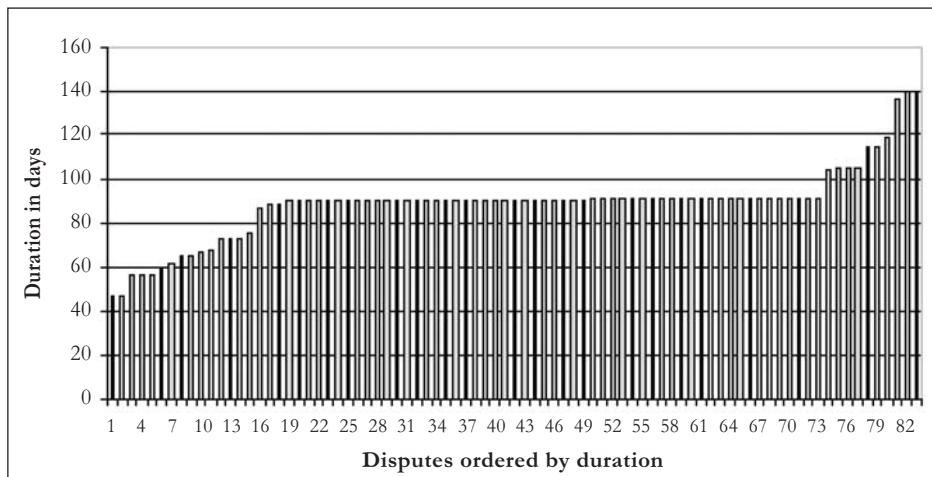
Starting with the bilateral leg of the process – consultations – it is observed that their average length is 221.8 days (Box 6.2). Since the length of the consultations process depends solely on the will of the consulting parties, one cannot talk of delays here. However, with regard to the other DS stages, one can compare the statutory deadlines and the *de facto* duration and draw such conclusions (Figure 6.2 and 6.3). One should be careful, nevertheless, to not too easily attribute responsibility for delays to the institution: the process can slow down because of the will of the parties as well.

Figure 6.2 Duration of the Consultation Stage



Source: Horn and Mavroidis, 2006.

Figure 6.3 Duration of the Appellate Body Stage



Source: Horn and Mavroidis, 2006.

Box 6.2 Duration of the Process

Proceeding	Average Length of the Process
Circulations	221.78 days
Panel 303	9 days
Appellate Body	88.73 days
RPT when awarded by the arbitrator	12.13 months
RPT when agreed bilaterally	8.18 months
Compliance panel	203.82 days
Appellate Body (compliance)	83 days

Source: Horn and Mavroidis, 2006.

6.5 Participation of LDCs in the DSM of WTO: The Case of India's Anti-Dumping Duties on Lead Acid Battery Import from Bangladesh*

6.5.1 The Dispute

On 28 January 2004, Bangladesh requested consultations with India concerning a certain anti-dumping measure imposed by India on imports of lead acid batteries from Bangladesh. Bangladesh was particularly concerned about the following aspects:

- Initiation of the investigation and failure to immediately terminate the investigation, notwithstanding the negligible volume of imports from Bangladesh;
- Determination of margin (determination of normal value, apparent adoption of constructed value, determination of export price, and comparison between normal value and export price);
- Determination of injury and causation (examination of import volume, the effect on prices, and the impact on domestic producers of like products; inclusion of imports from Bangladesh in the assessment of the effects of imports; evaluation and examination of relevant factors, and examination of the causal link between the imports and the alleged injury);
- Treatment of evidence (failure to consider information submitted by the interested parties from Bangladesh; treatment of information submitted by the applicants as confidential; failure to disclose to the interested parties the "essential facts under consideration which form the basis for the decision to apply definitive measures" and other relevant information);
- Failure to provide the parties and give public notice of "all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures".

Bangladesh considered that the foregoing Indian measure was inconsistent with: Article

*This section is based on Taslim, 2006.

VI of GATT 1994, including Articles VI:1, VI:2 and VI:6(a); Articles 1, 2.1, 2.2, 2.4, 3.1, 3.2, 3.3, 3.4, 3.5, 3.7, 5.4, 5.8, 6.2, 6.4, 6.5, 6.8 (including para. 3 of Annex II), 6.9 and 12.2 of the Anti-Dumping Agreement. Bangladesh considered that, as a result of the imposition of the anti-dumping duties, India may be acting inconsistently with its obligations under Articles I:1 and II:1 of GATT 1994. Bangladesh also considered that the benefits accruing to it directly or indirectly under the WTO Agreement are being nullified or impaired pursuant to Articles XXIII:1(a) and XXIII:1(b), respectively, of GATT 1994. On 20 February 2006, the parties informed the DSB of a mutually satisfactory solution to the matter raised by Bangladesh. The measure which was addressed in the request for consultations has been terminated by India's Customs Notification No. 01/2005 dated 4 January 2005

6.5.2 Trade Dispute with India: Allegation of Dumping Batteries

The export of lead acid battery from Bangladesh to India resumed after India agreed during the third round of negotiations under SAPTA to include HS8507 commodities in the list of products originating from LDC Member countries of SAARC to be given preferential tariff treatment.

Table 6.6 Tariff Concessions Given by India on Lead Acid Battery Import Under SAPTA (3rd Round)

HS Code	Basic Tariff Rate	Tariff Concession Under SAPTA		Effective Tariff Rate for LDCs
		For LDCs	For Others	
8507.10 Lead acid of a kind used for starting piston engines	40%	60%	0%	16%
8507.20 Other lead acid accumulators	40%	60%	0%	16%

Source: Taslim, 2006.

Table 6.7 Export of Lead Acid Batteries from Bangladesh to India

	1998-99	1999-2000	2000-01	2001-02	2002-2003
Export Value (US\$)	541,181	1,060,905	1,281,240	0	0

Source: Bangladesh Battery Manufacturers Association (BABMA).

The MFN tariff rate on lead acid batteries was 40 per cent which made any imports of this particular item from Bangladesh uncompetitive in the Indian market (Table 6.6). But, the tariff concession given under SAPTA reduced the applicable tariff on lead acid batteries from Bangladesh to 16 per cent, which allowed a leading battery manufacturer of Bangladesh – Rahimafrooz - to export small quantities of lead acid batteries to India. Rahimafrooz exported slightly over half a million dollar worth of batteries to India in 1998-99. Its exports nearly doubled the next year to more than a million dollar, and increased further to about 1.3 million dollars in 2000-01, the year when dumping investigation was initiated (Table 6.7). The investigation and the subsequent anti-dumping duties totally stopped export of lead acid batteries to India.

6.5.3 Dumping Investigation

Two battery manufacturers of India viz. Exide Industries Ltd. and Amara Raja Batteries Ltd. took the initiative to prevent the import of lead acid batteries from Bangladesh. They petitioned the Directorate General of Anti-Dumping (DGAD) of India claiming that batteries exported from Bangladesh (as well as from China, Korea and Japan) were being dumped into the Indian market. Accordingly DGAD initiated an investigation on 12 January 2001 into the alleged dumping of batteries. The period of investigation was specified to be 1 January to 30 September 2000.

The preliminary findings of DGAD were made public on 21 March 2001. The volume of import of lead acid batteries from Bangladesh was determined to be less than 3 per cent of the total imports of India. Such a finding of negligible imports required India to terminate the investigation immediately under WTO anti-dumping rules. But inexplicably, DGAD decided to continue with the investigation despite its own findings.

The investigation on dumping caught the sole domestic firm exporting batteries to India, Rahimafrooz, by surprise. They had no experience or knowledge of contesting dumping allegations and neither were there any competent people or institutions in the country that could be consulted on the matter. It approached the Ministry of Commerce and Bangladesh Tariff Commission that looked after the trade matters of the country for resolving this dispute. But quite understandably, the enormous amount of data required to be disclosed to DGAD for the investigation worried Rahimafrooz. Some of the data were of confidential nature, while the company did not have documents of some of the information sought by DGAD. It was further understandably nervous that the confidential data, if provided, would find way to its competitors in India; and this could be harmful to its business strategy in both India and Bangladesh. Nevertheless, Rahimafrooz did complete the DGAD's questionnaire as well as it could and submitted it through Bangladesh Battery Manufacturers Association (BABMA) on 31 May 2001. However, DGAD was not satisfied with the information provided by Rahimafrooz and asked for a large amount of additional data on profit and sales, balance sheet, transactional details of the sales in the domestic market and details of costs etc. It also demanded on-site spot investigation of the company. Rahimafrooz demurred and requested that such a demand be placed through the Government of Bangladesh for its consent. The reluctance of Rahimafrooz to promptly provide access to its premises and to all the information sought, was interpreted by DGAD as 'non-cooperation'. Having thus satisfied itself of the non-cooperative behaviour of Rahimafrooz, DGAD went ahead with its dumping investigation resorting to Article 6.8 to decide on the case on the basis of what it considered 'the facts' or 'best information available'. Much of it actually came from the complainant Indian companies.

It seemed that the Bangladesh side might not have fully appreciated the seriousness of launching of an anti-dumping investigation against its export products by a

statutory authority of the importing country. Initially it tried to solve the problem by directly approaching the Commerce Minister of India when the investigation was launched by DGAD of India. The then Commerce Minister of Bangladesh raised the issue with his Indian counterpart during his visit to Delhi in March 2001. Whether the Indian Minister could have intervened in a quasi-judicial process initiated by a statutory authority on the basis of a specific legal complaint (without substantial political risk) is not clear, but in the end he did not halt the investigation process. Meanwhile in Bangladesh a new Commerce Minister took over the Ministry after a change in Government in October 2001 following a general election. He wrote a letter to his Indian counterpart after DGAD had released the findings of its investigation in an attempt to seek a resolution of the dispute. The Indian Minister suggested a way around the problem; he advised that the Bangladesh exporter give a price undertaking. Article 8 allows suspension or termination of investigation without the imposition of provisional measures or anti-dumping duties upon receipt of such an undertaking. However, the Bangladeshi exporter was reluctant to give such an undertaking since they were convinced that they had not dumped in the Indian market, and giving an undertaking would be tantamount to an admission of dumping.

The final findings of the investigation were made public on 7 December 2001. DGAD made a complete turnaround on its earlier findings and determined that import of lead acid batteries from Bangladesh was actually above the 'negligible' level. The investigation did not make use of the substantial information provided by Rahimafrooz because of its determination that the exporter was non-cooperative (but the data on export value which apparently strengthened DGAD's case was selectively used). The findings of DGAD supported the complainants' claim of dumping by exporters of Bangladesh (and the other three countries). Accordingly, it recommended the imposition of anti-dumping duties on all lead acid battery exports from Bangladesh. It is found that the anti-dumping duties were not imposed either on the batteries (per piece) or on the value of the batteries. Instead, the duties were imposed on the weight of the batteries. This was a clever act as the value per unit of weight tends to be quite low for batteries, which are very heavy items. The effective *ad valorem* duty for even a small duty per unit of weight could be quite large. A local newspaper reported that the effective *ad valorem* duty imposed by India on batteries was as high as 131 per cent. Such punitive duties killed off all exports of lead acid batteries from Bangladesh to India. A small window of opportunity that had opened for Bangladesh for diversifying the export basket and increasing export to India was nipped in the bud

6.5.4 Response of Bangladesh

The statutory authority in Bangladesh to deal with dumping matters at home and abroad is Bangladesh Tariff Commission (BTC) – an arm of the Ministry of Commerce, which looks after the country's foreign trade policies among other

matters. BTC has a Wing headed by a Member that deals with all trade remedial measures including dumping allegations made by local business. It is not clearly specified if BTC is also the sole authority to hear complaints from local businesses concerning dumping charges and investigations against domestic enterprises made by foreign authorities. But the expectation seems to be that BTC should also deal with such allegations made against local exporters and help them to contest the imposition of any anti-dumping duty.

By the time India imposed anti-dumping measures, Bangladesh had developed certain minimal capacity in respect of dumping issues. The experience gathered in the course of dealing with the case contributed to strengthening further this capacity. It became clear that certain conditions had to be obtained if an LDC were to effectively challenge an anti-dumping measure against its exporters.

First, there should be ideally a single statutory authority to deal with the matter. If responsibility is not clearly defined, or more than one government department are involved, the victims of the anti-dumping measure will run into difficulties to even initiate the process of contesting the measure since there could be territorial squabbles, rivalries or differences of opinion among the departments resulting in long delays and inaction.

Second, the victims (exporters) of the anti-dumping measures must be willing to fully cooperate with the statutory authority in resolving the dispute.

Third, there must be a modicum of expertise in anti-dumping matters within the statutory authority or in the country to ascertain the merit of a dumping case and to mount a legal challenge.

Fourth, there must be political will to pursue the dispute to the end. Since, only government designated officers or people can participate in WTO deliberations, any complaint lodged with the WTO must be made by the government on behalf of the aggrieved enterprises, and hence, must have its full backing.

Finally, adequate funds must be made available to pursue the case to the end. These five conditions can be summarised as follows: administrative structure, private-public cooperation, local expertise, political will and financing. But these are not easy to meet, and LDCs will be hard pressed to satisfy all of them, particularly the last three i.e. local expertise, political will and financing. Bangladesh could not challenge the anti-dumping duties imposed by the USA and Brazil precisely because these three conditions, as well as private-public cooperation, were not fully met.

However, the situation was different in the case of the anti-dumping duties imposed by India. An important factor that permitted Bangladesh to successfully contest the decision was the dogged pursuit of the case by the victim of the anti-dumping duties, i.e. Rahimafrooz. Quite independently of the government, Rahimafrooz sought redress from the unfair imposition on its export products in India's High Court and also at CEGAT (Custom, Excise and Gold Appellate

Tribunal) of India. Unfortunately, both ended in failure as these Indian institutions upheld the decision of their designated authority on dumping matters. Rahimafrooz also lobbied the Government of Bangladesh to take up its case directly with the Indian Commerce Ministry. As mentioned earlier, two successive Commerce Ministers of Bangladesh did take up the matter with their counterparts in India, but without much success.

Finally, Rahimafrooz lobbied the Government for taking the case to the dispute settlement body of the WTO. Most importantly, it gave an undertaking to bear all financial costs of the dispute settlement process and cooperate fully with BTC to prepare for and pursue the case. BTC conducted a detailed study of the battery dumping case. It arrived at the conclusion that the imposition of the anti-dumping duties by India was inconsistent with the provisions of the *WTO Agreement on the Implementation of Article VI of GATT*. It also identified several procedural flaws in the case. The brief that it prepared for the Ministry strongly advised it to seek redress of the Indian anti-dumping measure at the WTO.

Another important factor that allowed Bangladesh to go to the WTO is the support provided by the Advisory Centre on WTO Law in Geneva. The legal experts of this Centre provide legal support to LDCs on any disputes in the dispute settlement body of the WTO at only 10 per cent of the full cost. From the information it received from Geneva, BTC estimated that if the anti-dumping case went through all the processes of dispute settlement in the WTO, the legal fees would be about US\$150,000. Hence, Bangladesh, as an LDC, would be required to pay only US\$15,000 to retain the services of the Advisory Centre. Rahimafrooz found this amount affordable. The concessionary service provided by the Advisory Centre thus made it possible for Bangladesh to seek its assistance to prepare the legal case and engage India before the dispute settlement body of the WTO. Although BTC's brief given to the Advisory Centre had spotted many inconsistencies and legal breaches in India's conduct of the dumping investigation and the imposition of the anti-dumping duties, BTC did not have in-house legal expertise. It had neither any staff with legal background nor any experience of judicial challenge in the WTO or elsewhere. The Advisory Centre helped with the preparation of Bangladesh's 'request for consultations' served on India at the WTO. It also provided two lawyers to assist the Bangladeshi team during the consultation with India under the provisions of WTO dispute settlement. Without the generous assistance of the Advisory Centre, it would have been very difficult for Bangladesh to seek redress in the WTO.

6.5.5 Political Considerations

In deciding to contest India at the WTO on the anti-dumping dispute, Bangladesh had to overcome a psychological barrier in its diplomatic thinking. Bangladesh Tariff Commission is only an advisory body; the implementation of its recommendations depends on the Ministry of Commerce. While BTC was forthright in its recommendation to take the dispute to the WTO, the Ministry

officials were more circumspect. Bangladesh was in the midst of delicate trade negotiations with India with a series of planned meetings with Indian officials. The Ministry felt that their efforts might come to naught if India were annoyed by Bangladesh's move to push a bilateral trade dispute to the multilateral arena. The Commerce Ministry also received some support from the Ministry of Foreign Affairs in this matter that such a course of action could have untoward diplomatic ramifications and hence, needs to be cautiously viewed in the broader perspective of the overall relation with India. BTC, on the other hand, argued that the dispute was essentially between two rival companies, and it was most unlikely that the outcome of the dispute would spill over to diplomatic relations. This view also received support of the Permanent Mission of Bangladesh in Geneva that looked after WTO matters. It had earlier advised the Ministry that such legal challenges between trading nations, rich and poor, large and small, are a common occurrence in the WTO dispute settlement body; and these did not have a significant effect on the diplomatic relations between the disputants.

The onus of the decision in this difficult situation rested squarely on the Minister of Commerce. While the Ministry officials were in every day contact with him, BTC had only occasional access as it was housed outside of the Ministry and the Secretariat complex. BTC made its case carefully by pointing out both the positive and negative aspects of pursuing the case. On the positive side, BTC argued that India had made some serious errors in conducting the investigation and some of their actions clearly breached the WTO rules on anti-dumping measures. It was most unlikely that a neutral adjudicator such as WTO dispute settlement panel would sustain their decision. In other words, the chances of winning a favourable decision were very high. Even in the unlikely event of an unfavourable decision, Bangladesh would not suffer any additional loss, as it would only mean the continuation of the status quo. Since the entire financial cost of the dispute settlement was to be borne by Advisory Centre on WTO Law and Rahimafrooz, there was also no financial involvement for the government.

However, regardless of the outcome of the deliberations in the WTO, Bangladesh side would gain knowledge and experience in handling anti-dumping disputes. The benefits of such knowledge and experience were well worth taking whatever risks there were. A successful outcome would not only open the door for the resumption of export of lead acid batteries to India, it would also make India more circumspect in resorting to such actions in the future. This would be a substantial and tangible achievement on part of the Ministry of Commerce. Against these positive points, the negative point was the risk of retaliation by India in some other fronts. BTC argued that such an outcome was unlikely as India's political and administrative machinery would foresee that it would most likely do more harm than good to their longer term interests. Bangladesh was one of the largest export markets of India and bordered on several volatile states of India. It was in Indian interest not to blow up any issue that was of limited significance.

The Minister had a tough choice to make. He finally decided in favour of taking the dumping dispute with India to the WTO for settlement. BTC was instructed to prepare for the case. With this decision Bangladesh broke through a significant psychological barrier in its understanding of trade and diplomatic relations. It became aware of the possibility of using the multilateral trade forum for resolving bilateral trade disputes with powerful trading partners. BTC had anticipated that India would take steps to settle the anti-dumping dispute soon after Bangladesh moved the case to the WTO. This would likely mean that the case would be resolved at the consultation stage where the meetings and submissions could be restricted to the disputants only.

Since India had most likely acted in violation of the WTO rules, it was unlikely that the India's Geneva team would want to let a weak case go to the panel stage that would necessarily involve jurors and observers from several countries and probably receive much publicity as the first case to be brought to the WTO by an LDC. India was seriously engaged in raising its profile in trade negotiations and presenting itself as a champion of the trade interests of the developing nations. It wanted to ensure that it was not sidelined in any trade negotiations at WTO, for which it needed a good image and the support of the developing nations to achieve its objectives. A trade dispute of dubious merit with one of the poorest countries of the world was hardly conducive to improving the image of the country as a champion of the cause of the poorer countries, especially when its case was weak and could be easily construed as bullying.

As it turned out, India's WTO team had no appetite for such an irritant to the achievement of their larger objectives. They indicated to the Bangladeshi team immediately after the consultation meeting in the WTO, which was conducted in a surprisingly friendly manner, that their government would initiate the process to withdraw the anti-dumping duties and made a request that Bangladesh not proceed any further with the case. The Bangladesh side assured them that Bangladesh also wanted to resolve the dispute quickly so that no further action would be necessary; but it would not abandon the dispute settlement process at WTO at this stage. India still had a few months before the dispute went to the panel stage and if the anti-dumping duties were withdrawn within this period, the case could be terminated. India withdrew the anti-dumping duties before Bangladesh proceeded to the panel stage in dispute settlement. An undesirable irritant in the trade relations between the two countries was thus expeditiously removed through the good offices of the dispute settlement mechanism of the WTO.

6.6 Current State of Negotiations on Dispute Settlement Under the Doha Development Round

There are number of areas where dispute settlement understanding needs further clarification. These changes would further improve the system and ensure better participation of all trading countries. Under the Doha Development Round, it has been agreed that Member countries will work for the improvement and clarification

of the dispute settlement process. A number of special sessions were held in 2007 on the DSB where Chairman of the special session to the General Council, Ambassador Ronald Saborío Soto presented reports. Chairman's reports mainly mentioned about progress made on various proposals submitted by different countries.

In order to improve the system, LDCs submitted a proposal (TN/DS/W/17) on October 2002 to modify the Dispute Settlement Understanding (DSU). It is found in the earlier discussions that LDCs' participation in the DSB is rather rare. This does not necessarily imply that LDCs do not have any issue that needs to be placed in the DSB. LDCs find the DSB system complex, lengthy and expensive. More importantly, LDCs lack institutional capacity to raise their issues in the DSB. According to Advisory Centre on WTO Law (ACWL), LDCs proposal to change disciplines under S&D treatment would not ensure their increasing presence in the DSB, since major weaknesses are not in the DSB process. Lack of awareness about rights on the part of industrialists of LDCs is a major weakness. Besides, some of the proposed changes are not compatible with the basic principles of DSB.

LDC's proposals include modification of following articles:

- Article 4.10 of the DSU should be changed to read as follows: "During consultations, Members should give special attention to the particular problems and interests of developing countries Members especially those of least developed country Members".
- Where a LDC is involved in the consultations, due consideration should be given to the possibility of holding such consultations and other meetings in the capitals of LDCs.
- Modification of Article 8.10 to the effect that in any dispute involving a developing country, there must be at least one panelist from a developing country.
- Dissenting judgments should be allowed in the DS system through a rule that the Members of the panel or Appellate Body should each deliver a judgment and the final decision be taken on the basis of a majority.
- Compensation under Article 22.2 of the DSU should be made mandatory and a strong case for monetary compensation can be made.

However, the proposal submitted by the LDCs is already considered outdated by major negotiating countries. Hence LDCs have to either revive the proposal or submit a fresh proposal to negotiate for ensuring better participation in the DSB. In order to enhance LDCs participation in the DSB, there needs to be more support to strengthen the ACWL in order to enhance their capacity to deal exclusively with LDC complaints. However, till now neither developing countries nor LDCs have proposed for enhancement of the capacity of the ACWL. A proposal could be submitted by Bangladesh in this respect.

Implications for Bangladesh and Negotiating Strategy

Bangladesh lodged complaints in the DSB only once. The case involved India's anti-dumping duties on lead acid battery import from Bangladesh, as discussed in the previous section. It was not an easy task for Bangladesh to lodge complaint in the DSB because of limited expertise in anti-dumping matters within the statutory authority or in the country to ascertain the merit of a dumping case, lack of adequate funds to pursue the case to the end, and constraints in terms of taking political decision.

Private sector of Bangladesh should play a more proactive role in raising complaints about trade distorting practices of other countries. Private sector, with support of the government, may make use of the services of the ACWL regarding their queries on trade practices and trade related matters involving other countries. Government should take necessary measures to raise awareness among local industrialists as regards their rights in the WTO, and opportunities and scope of raising issues related to trade distorting practices of other countries.

6.7 Summary

- *The WTO Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) further expanded and codified dispute settlement procedures that had been in effect under the GATT 1947. DSU is legalised in the WTO framework under Annex 2 of WTO Agreement.
- Particular consideration is given to the special situation of LDCs. Members are to exercise due restraint in raising matters under these procedures involving an LDC. If nullification or impairment is found to result from a measure taken by an LDC, complaining parties are expected to exercise due restraint in asking for compensation or seeking authorisation to suspend the application of concessions or other obligations pursuant to these procedures.
- The establishment of the WTO with a dispute settlement body has opened up a new avenue for redress of trade related disputes among nations. This is a welcome development for the smaller and weaker trading nations who find themselves in a highly unequal position in trade disputes with larger and more powerful nations.
- GATT completely dominates as the most frequently invoked agreement, accounting for roughly a third of all instances (Tables 6.4 and 6.5). There are then three agreements that between themselves are invoked roughly as frequently, all of them GATT Annexes: Anti dumping (AD), Agriculture (AG) and Subsidies and Countervailing Measures (SCM). But with 8.3%, 8.0% and 8.9%, they jointly do not stand for more than a quarter of all invocations.
- Average length of the consultations process is about 222 days. Since the

length of the consultations process depends solely on the will of the consulting parties, one cannot talk of delays here.

- The superior negotiating strength of the large and powerful nations do not produce a fair outcome for the weaker countries in bilateral negotiations. The opportunity to refer the dispute to the WTO for settlement where experts and observers from several countries become involved can tilt the balance toward a more level playing field.
- There are many instances in which the weaker countries have won decisions in their favour against the mighty trade powers - an outcome most unlikely to have emerged from bilateral negotiations conducted without the potential of resorting to a WTO legal case.
- Despite these advantages, no LDC has been able to take their disputes to the WTO during the first nine years of its existence.
- Bangladesh was the first LDC to formally approach the WTO (during the tenth year) to settle a trade dispute it had with its powerful neighbour i.e. India, regarding the imposition of an anti-dumping duty on lead acid battery. For two long years, Bangladesh tried to settle the dispute amicably through bilateral efforts, but without any success.
- The decision to move the dispute to the WTO was not taken easily or without internal resistance. The difficulties and the psychological barriers that Bangladesh had to overcome in order to seek redress of the unfair trade imposition on its exports by a powerful trading partner provide a good indication of the predicaments that other LDCs will face in moving their trade disputes to the WTO.
- The experience of Bangladesh could provide important lessons for other LDCs should they contemplate utilising the dispute settlement mechanism of WTO.
- The services provided by the Advisory Centre on WTO Law on concessionary terms were absolutely essential in preparing for and conducting the case against the unfair anti-dumping measure imposed on Bangladesh. Other LDCs that suffer from similar capacity constraints would certainly need the legal services of the Advisory Centre on WTO Law in seeking redress of unfair trade impositions of more powerful countries. It is essential that the Centre is sustained.

6.8 Questions for Discussion

1. What are the stages of the Dispute Settlement Process under the WTO? Please discuss about these stages.
2. What are the special procedures in dispute settlements for the least developed country members?

3. Who are the major complainant and respondents in the DSB? What are the major areas of disputes?
4. Discuss the duration of the Dispute Settlement Process in different stages.
5. Discuss the case of 'India's Anti-Dumping Duties on Lead Acid Battery Import from Bangladesh'.
6. What are the major proposals of LDCs in the DSB to enhance their participation in the system?

Documents/Sources Used in Preparation of this Module

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Training Manual on **WTO and Bangladesh Trade Policy**

Module

7

Trade Related _____

Intellectual _____

Property Rights _____

(TRIPS) _____

Trade Related Intellectual Property Rights (TRIPS)

Learning Objectives

- The aim of this particular lecture is to provide a clear idea about the Trade Related Intellectual Property Rights (TRIPS) of the WTO.
- It is expected that at the end of the session, participants would have a clear understanding about: (i) TRIPS and its relevance for Bangladesh; (ii) the WTO Agreement on TRIPS;

and (iii) current status of the TRIPS negotiations at the WTO and their implications on Bangladesh.

7.1 Introduction

Innovation, ideas and creations are necessary for developments of the economy and society. Inventions and creations not only improve the living standards of the society, but also bring out opportunities for financial benefits. To encourage the innovators and investment for innovation, it is required to provide legal protection to the persons and organisations engaged in such activities. In fact, the concept of protection of intellectual property (IP) is not new rather it existed for centuries in many developed and developing countries. However, IP protection drew new attention and dimension since the early 1990s due to its inclusion in the WTO, and has now become an economically and politically contentious issue. The conceptual basis of IP right protection pre-supposes a balance between the right granted to inventors, and the total benefits to the society as a result of their inventive activity. It is expected that protection of IPR will encourage creativity and innovation, encourage investment and technology transfer, ensure fair competition and protect consumers.

Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time. Depending upon the nature of the innovation and creation different types of protection are provided to the innovators and creators, and the organisations and communities invested on those.

7.2 Categories of Intellectual Property Rights

There are at least nine different categories of intellectual property rights (IPR). These are: (1) Copyright and related rights; (2) Trademarks; (3) Geographical indications; (4) Industrial designs; (5) Patents; (6) Layout-designs (topographies) of integrated circuits; (7) Trade secrets; (8) Breeders' rights; and (9) Utility models. South Centre (1997) has provided a thorough discussion on different categories of IPR, as reported below.

Copyright and Related Rights: Copyright protection is provided to the authors of original works of authorship, including literary, artistic and scientific works. Copyright has also been extended to protect computer software and databases. "Neighbouring rights", that is, rights which are related to copyright, are accorded to phonogram producers, performers and broadcasting organisations. The owners of copyright can generally prevent the unauthorised reproduction, distribution (including rental), sale and adaptation of an original work. Protection generally lasts for the life of the author plus fifty years or for fifty years or more in the case of works belonging to corporate bodies. Unlike a patent, copyright protects the expression of an idea, not the idea itself. This means that, in principle, protection is only extended to the form in which an idea is expressed (e.g. the particular writing of instructions in a computer programme), but not to the concepts, methods and ideas that are expressed.

Trademarks: Trademarks are signs or symbols (including logos and names), registered by a manufacturer or merchant, to identify goods and services. A valid trademark allows the owner to exclude from commerce imitations likely to mislead the public. Protection is usually granted for ten years, and is renewable as long as the trademark continues to be used.

Geographical Indications: These are signs or expressions used to indicate that a product or service originates in a particular country, region or place. There are different types of geographical indications. They are called 'appellations of origin' if the characteristics of the products or services can be attributed exclusively or essentially to natural and human factors of the place in which the products or services originate.

Industrial Designs: An industrial design normally protects the ornamental or aesthetic aspect of an industrial article. Industrial designs are characterised by their appeal to the eye. There is a wide variety of requirements and modalities of protection pertaining to industrial designs. In some countries, protection is based on novelty, while in others on originality. Further, in some countries specific protection for an industrial design co-exists with or can be 'accumulated to' copyright or trademark protection for the same design. The term of protection generally ranges between five and 15 years (including renewal).

Patents: Patents are granted by a government authority conferring the exclusive right to make, use or sell an invention generally for a period of 20 years (counted from the date on which the application for the patent was filed). In order to be patentable, an

invention usually needs to meet the requirements of absolute novelty (previously unknown to the public), non-obviousness (containing sufficient innovativeness to merit protection) and industrial applicability (or usefulness). Patents may be granted for all types of processes and products, including those related to the primary sector of production, namely agriculture, fishing or mining, etc. Patent-like protection is conferred for functional models and other 'minor' innovations under utility models (see definition below).

Layout Designs of Integrated Circuits: The protection of the layout (or topography) of integrated circuits is conferred in most industrialised countries. It is a sui generis form of protection introduced for the first time in the USA in 1984 -- limited, like copyright, to the design as such -- that allows the owner of the design to prevent the unauthorised reproduction and distribution of such designs. Reverse engineering¹ is generally allowed, in accordance with the industry's practice. The duration of protection is shorter than under copyright (typically ten years).

Trade Secrets: Confidential business information, such as lists of clients or recipes, can be an enterprise's most valued asset. Civil and criminal actions are provided for in most legislation against the unauthorised disclosure or use of confidential information (of a technical or commercial nature). In this case, there is no exclusive right, but an indirect type of protection based on a factual characteristic of the information (its secret nature) and its business value. Unlike patents, trade secrets are protected as long as the information is kept secret.

Breeders' Rights: This is a sui generis form of protection conferred on plant varieties that are new, stable, homogeneous and distinguishable. Exclusive rights, as a minimum, include the sale and distribution of the propagating materials for around 20 years. Unlike patents, breeders' rights permit the use by other breeders of a protected variety as a basis for the development of a new variety (the "breeders' exemption") and for the re-use by farmers of seeds obtained from their own harvests (the "farmer's privilege").

Utility Models: Protection is given to the functional aspect of models and designs, generally in the mechanical field. Though novelty and inventiveness are generally required, the criteria for conferring protection are less strict than for patents. The term of protection also is shorter (typically up to 10 years). Utility models -- which are concerned with the way in which a particular configuration of an article works -- are distinct from industrial designs, which are only concerned with the aesthetic character of an article.

There are differences on the nature and extent of innovative activities and the degree

¹Reverse engineering (RE) is the process of discovering the technological principles of a device, object or system through analysis of its structure, function and operation. It often involves taking something (e.g. a mechanical device, electronic component or software program) apart and analysing its workings in detail, usually to try to make a new device or programme that does the same thing without copying anything from the original (http://en.wikipedia.org/wiki/Reverse_engineering).

Table 7.1 Subject Matter and Main Fields of Application of Intellectual Property Rights

Types of Intellectual Property Rights	Subject Matter	Main Fields
Copyright	Original works of authorship	Printing, entertainment (audio, video, motion pictures), software, broadcasting
Trademarks	Signs or symbols to identify goods and services	All industries
Geographical indications	Geographical origin of goods and services	Wines, spirits, cheese and other food products
Industrial designs	Ornamental designs	Clothing, automobiles, electronics, etc.
Patents	New, non-obvious, industrially applicable inventions	Chemicals, drugs, plastics, engines, turbines, electronics, industrial control and scientific equipment
Original layout designs	Integrated circuits	Micro-electronics industry
Trade secrets	Secret business information	All industries
Breeders' rights	New, stable, homogeneous, distinguishable varieties	Agriculture and food industry
Utility models	Functional models/designs	Mechanical industry

Source: South Centre (1997).

of R&D intensity among sectors. South Centre (1997) summarised the subject matter of various categories of intellectual property rights and main fields of their application (Table 7.1).

7.3 The WTO Agreement on TRIPS

The WTO Agreement on TRIPS came into effect on 1 January 1995. It was negotiated during the Uruguay Round (1986 to 1994). The TRIPS Agreement is Annex 1C of the Marrakesh Agreement which has established the WTO, signed in Marrakesh, Morocco on 15 April 1994. It is the most comprehensive multilateral agreement on intellectual property. It covers many areas of IPR such as copyright and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organisations); trademarks including service marks; geographical indications including appellations of origin; industrial designs; patents including the protection of new varieties of plants; the layout-designs of integrated circuits; and undisclosed information including trade secrets and test data. In short, the WTO Agreement on TRIPS has included all categories of intellectual property rights mentioned in the previous section with the exception of utility models and breeders' rights.

The Agreement attempts to narrow the gaps in the way the rights are protected around the world, and brings them under common international rules. It establishes minimum levels of protection that each government has to give to the intellectual property of fellow WTO members. In doing so, it strikes a balance between the long

term benefits and possible short term costs to society. Society benefits in the long term when intellectual property protection encourages creation and invention, especially when the period of protection expires and the creations and inventions enter the public domain. Governments are allowed to reduce any short term costs through various exceptions, for example to tackle public health problems. And when there are trade disputes over intellectual property rights, the WTO's dispute settlement system is available.

The Agreement has seven parts and it covers five broad issues:

- How basic principles of the trading system and other international intellectual property agreements should be applied
- How to give adequate protection to intellectual property rights
- How countries should enforce those rights adequately in their own territories
- How to settle disputes on intellectual property between members of the WTO
- Special transitional arrangements during the period when the new system is being introduced.

Part I deals with general provisions and basic principles, Part II deals with standards concerning the availability, scope and use of IPR, and Part III focuses on enforcement of intellectual property rights. Acquisition and maintenance of intellectual property rights and related *inter-partes* procedures are discussed in Part IV of the TRIPS Agreement. Part V deals with dispute preservation and settlements while transitional arrangements are discussed in Part VI. Institutional arrangements and final provisions are mentioned in Part VII of the TRIPS Agreement.

7.3.1 Main Features of the TRIPS Agreement

The Agreement on TRIPS has three main features:

Standards: In respect to each of the main areas of intellectual property covered by the TRIPS Agreement, the Agreement sets out the minimum standards of protection to be provided by each Member. Each of the main elements of protection is defined, namely the subject matter to be protected, the rights to be conferred and permissible exceptions to those rights, and the minimum duration of protection. The Agreement sets these standards by requiring, first, that the substantive obligations of the main conventions of the World Intellectual Property Organization (WIPO), the Paris Convention for the Protection of Industrial Property (Paris Convention) and the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) in their most recent versions, must be complied with. With the exception of the provisions of the Berne Convention on moral rights, all the main substantive provisions of these conventions are incorporated by reference, and thus become obligations under the TRIPS Agreement between TRIPS Member countries. The relevant provisions are to be found in Articles 2.1 and 9.1 of the TRIPS Agreement,

which relate respectively to the Paris Convention and to the Berne Convention. Secondly, the TRIPS Agreement adds a substantial number of additional obligations on matters where the pre-existing conventions are silent or were seen as being inadequate. The TRIPS Agreement is thus sometimes referred to as a Berne and Paris-plus agreement.

Enforcement: The second main set of provisions deals with domestic procedures and remedies for the enforcement of intellectual property rights. The Agreement lays down certain general principles applicable to all IPR enforcement procedures. In addition, it contains provisions on civil and administrative procedures and remedies, provisional measures, special requirements related to border measures and criminal procedures, which specify, in a certain amount of detail, the procedures and remedies that must be available so that right holders can effectively enforce their rights.

Dispute settlement: The Agreement has provisions to solve disputes between WTO Members on the TRIPS obligations subject to the WTO's dispute settlement procedures.

The TRIPS Agreement is a minimum standards agreement, which allows Members to provide more extensive protection of intellectual property if they so wish. Members are left free to determine the appropriate method of implementing the provisions of the Agreement within their own legal system and practice.

7.3.2 Basic Principles

The WTO Agreement on TRIPS has three basic principles. These are:

- (i) *National treatment:* Equal treatment for foreign and domestic individuals and companies (Article 3). National treatment is also a key principle in other intellectual property agreements outside the WTO.
- (ii) *Most-favoured nation treatment:* Equal treatment for nationals of all trading partners in the WTO (Article 4).
- (iii) *Balanced Protection:* Intellectual property protection should benefit both producers and users, and enhance economic and social welfare. The WTO Agreement on TRIPS states, "The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations" (Article 7).

7.3.3 Timetable for Implementing TRIPS

The TRIPS Agreement is applicable to all WTO members, but the agreement allows differential transition period (delay in implementation). The main transition periods are:

- Developed countries: one year (i.e. until 1 January 1996).
- Developing countries: five years (i.e. up to 1 January 2000) to apply the provisions of the agreement other than Articles 3, 4 and 5 which deal with general principles such as non-discrimination.
- Transition economies (members in the process of transformation from centrally-planned into market economies): five years (until 1 January 2000) if they met certain additional conditions.
- Least developed countries (LDCs): initially 11 years (until 1 January 2006), with the possibility of an extension. In the Hong Kong Ministerial (December 2005), this period was further extended by another seven and half years up to July, 2013 with a possibility for further extension. For pharmaceutical patents, this has been extended to 1 January 2016, under a decision taken by Ministers at the Fourth Ministerial Conference (held in Doha) in November 2001.

Chart 7.1 Transition Periods

1996	2000	2005	2013	2016
↓	↓	↓	↓	↓
Industrialised Countries	DCs and Economies in Transition ¹	DCs products not previously patented	LDCs ¹	LDCs -- pharma (patents & test data) -- EMRs (exclusive marketing rights) waived

¹National treatment and MFN treatment obligations apply as of 1996.

The general transitional periods apply to the original members of the WTO, i.e. governments that were members on 1 January 1995. For new Members (who joined after the establishment of WTO), transition periods are decided as per their membership agreements (their "accession protocols") which very often applies for the TRIPS Agreement from the date when they officially became WTO members (i.e. without the benefit of any transition period).

WTO Members can make use of the general transition periods and notification to the WTO and fellow members are not required during the transition period. The TRIPS Council will review the legislation of members after their transition periods have expired.

Obligation of members during the transition period

All Members (including members with longer transitional periods) have to implement the principles of national treatment and most-favoured-nation treatment from 1 January 1996.

Special transition rules apply in the situation where a developing country does not provide product patent protection in a given area of technology.

More specifically, if a developing country did not provide product patent protection in a particular area of technology when the TRIPS Agreement came into force (1 January 1995), it has up to 10 years (to 1 January 2005) to introduce the protection (Art 65.4).

But for pharmaceutical and agricultural chemical products, the country must accept the filing of patent applications from the beginning of the transitional period, even though the decision on whether or not to grant any patent itself need not be taken until the end of this period (Art 70.8). This is sometimes called the "mailbox" provision.

If the government allows the relevant pharmaceutical or agricultural chemical product to be marketed during the transition period, it must — subject to certain conditions — provide the patent applicant an exclusive marketing right for the product for five years, or until a decision on granting a product patent is taken, whichever is shorter (Art 70.9).

In addition, Article 65.5 of the TRIPS Agreement says countries using the transition period should not backslide — members availing themselves of a transitional period (under paragraphs 1, 2, 3 or 4 of Article 65) must ensure that any changes in their laws, regulations and practice made during the transition period do not result in a lesser degree of consistency with the provisions of the agreement.

7.3.4 Technical Cooperation and Technology Transfer

Technical Cooperation: Technical cooperation is one of the three main areas covered by the Agreement between the World Intellectual Property Organization and the World Trade Organization. The cooperation agreement provides that the International Bureau of WIPO and the WTO Secretariat shall enhance cooperation in their legal-technical assistance and technical cooperation activities relating to the TRIPS Agreement for developing countries, so as to maximise the usefulness of those activities and ensure their mutually supportive nature. The assistance made available by each Secretariat to the Members of its own organisation will be made available also to the members of the other organisations. The General Assembly of the WIPO has also agreed that the International Bureau should make arrangements so as to be able to respond to requests from developing countries for WIPO legal and technical assistance relating to the TRIPS Agreement and that it should expand the coverage of the TRIPS Agreement in existing WIPO development cooperation activities.

Technology transfer: Developing countries in particular, see technology transfer as part of the bargain in which they have agreed to protect intellectual property rights. The TRIPS Agreement includes a number of provisions on this. For example, it requires developed countries' governments to provide incentives for their companies to transfer technology to least developed countries.

Curbing anti-competitive licensing contracts: The owner of a copyright, patent or other form of intellectual property right is allowed to issue a licence for someone else to produce or copy the protected trademark, work, invention, design, etc. The agreement

recognises that the terms of a licensing contract could restrict competition or impede technology transfer. It says that under certain conditions, governments have the right to take action to prevent anti-competitive licensing that abuses intellectual property rights. It also says governments must be prepared to consult each other on controlling anti-competitive licensing.

7.3.5 Enforcement of TRIPS

Part III of the TRIPS Agreement deals with the enforcement related issues. The agreement says governments have to ensure that intellectual property rights can be enforced under their laws, and that the penalties for infringement are tough enough to deter further violations. It adds that the procedures must be fair and equitable, and not unnecessarily complicated or costly. They should not entail unreasonable time-limits or unwarranted delays. People involved should be able to ask a court to review an administrative decision or to appeal a lower court's ruling.

The agreement describes in some detail how enforcement should be handled, including rules for obtaining evidence, provisional measures, injunctions, damages and other penalties. It says courts should have the right, under certain conditions, to order the disposal or destruction of pirated or counterfeit goods. Wilful trademark counterfeiting or copyright piracy on a commercial scale should be criminal offences. Governments should make sure that intellectual property rights owners can receive the assistance of customs authorities to prevent imports of counterfeit and pirated goods.

The Council for TRIPS administers the TRIPS Agreement, in particular monitoring the operation of the Agreement (Article 68). It consists of all WTO members. The current Chairperson is Ambassador Manzoor Ahmad (Pakistan). The TRIPS Council monitors the operation of the agreement and promotes transparency by receiving notifications from members. All Members have to notify the TRIPS Council about their relevant laws and regulations. This helps the Council review the agreement's operation. The TRIPS Council also meets in "special sessions".

7.3.6 Dispute Settlement

Disputes arising from the obligations under the TRIPS Agreement are subject to the WTO's dispute settlement procedures.

7.3.7 Review of the TRIPS Agreement

The TRIPS Agreement is to be reviewed for the first time five years from the date of its entry into force, and at two-yearly intervals thereafter (Article 71). The Council for TRIPS may also undertake reviews when new developments warrant modifications.

7.4 Doha Round Work Programme on TRIPS

The Doha Ministerial Declaration has provided utmost importance to the negotiation

on TRIPS Agreement. Agenda for TRIPS negotiation was set through Doha Ministerial Declaration and also through Doha Declaration on the TRIPS Agreement and public health. The Members agreed: to interpret and implement the TRIPS Agreement in a manner supportive to members' right to protect public health; to promote access to medicines for all through ensuring availability of existing medicines and development of new medicines; to establish a multilateral system of notification and registration of geographical indications for wines and spirits; to analyse the patent system for animals except micro organisms; to determine relationship between TRIPS and Convention on Biological Diversity (CBD); to preserve heritage and culture (WT/MIN(01)/DEC/W/1).

Doha Ministerial Declarations and Decisions are documented in various documents of the WTO. GI (geographical indication) extension, "bio" issues, new developments pursuant to Art 71.1 are available in WT/MIN(01)/DEC/1 while public health related decisions are documented in WT/MIN(01)/DEC/2. Implementation-related issues are documented WT/MIN(01)/17. Implementation related issues include extension of moratorium relating to non-violation complaints and monitoring full implementation of technology transfer. A compilation of outstanding issues are available in JOB(01)/152/Rev.1.

7.4.1 The TRIPS Agreement and Public Health

In the Doha Declaration, Ministers stressed that it is important to implement and interpret the TRIPS Agreement in a way that supports public health — by promoting both access to existing medicines and the creation of new medicines. They referred to their separate declaration on this subject. This separate declaration on TRIPS and public health was designed to respond to concerns about the possible implications of the TRIPS Agreement for access to medicines. It emphasises that the TRIPS Agreement does not and should not prevent member governments from acting to protect public health. It affirms governments' right to use the agreement's flexibilities in order to avoid any reticence the governments may feel.

The separate declaration clarified some of the forms of flexibility available, in particular compulsory licensing and parallel importing. For the Doha Agenda, this separate declaration sets two specific tasks. The TRIPS Council has to find a solution to the problems countries may face in making use of compulsory licensing if they have too little or no pharmaceutical manufacturing capacity, reporting to the General Council on this by the end of 2002 (this was achieved in August 2003). The declaration also extended the deadline for least developed countries to apply provisions on pharmaceutical patents until 1 January 2016.

7.4.2 Geographical Indications

Geographical Indications (GIs) are place (location or country) names used to identify products with particular characteristics because they come from specific places. The

Doha Declaration mentions three issues related to GIs: registration system, extending higher level of protection, and review of article 24.2.

The Register: Negotiations on the establishment of multilateral system of notification and registrations of geographical indications for wines and spirits.

Extension: Examination to the possibility of extending the additional protection required for wines and spirits (Article 23) to other products.

Article 24.2 Review: TRIPS Council shall keep under review the application of the provisions of the Sections on geographical indications (Articles 22, 23 and 24).

7.4.3 Biotechnology and the CBD

The TRIPS Agreement requires a review of Article 27.3(b) which deals with patentability or non-patentability of plant and animal inventions, and the protection of plant varieties. Paragraph 19 of the 2001 Doha Declaration has broadened the discussion. It says the TRIPS Council should also look at the relationship between the TRIPS Agreement and the UN Convention on Biological Diversity, 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.

7.4.4 Implementation Issues

Implementation of Article 66.2 and Transfer of Technology: This article obliges developed country Members to provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to LDC Members.

Review of National Implementing Legislation: Article 63.2 of the TRIPS Agreement requires all Members to notify implementing laws and regulations to the TRIPS Council. The Council has agreed on certain procedures to review this legislation.

Outstanding Implementation Issues: Transitional periods for developing countries under Article 65.2 and extension of the transition period for LDCs so long as they retain the status of an LDC.

7.4.5 Other Issues

Technical Cooperation and Capacity Building: The Council for TRIPS has included technical cooperation as part of its regular agenda. It should be noted that many of the general technical cooperation activities of the Secretariat also cover intellectual property. WTO website provides information on technical cooperation specifically related to intellectual property, in particular on the commitments by the developed country Members on technical cooperation contained in the TRIPS Agreement and the implementation thereof, and the work of the Council for TRIPS in this area.

Electronic Commerce: The growing importance of electronic commerce in global trade led WTO members to adopt a declaration on global electronic commerce on 20 May 1998 at their Second Ministerial Conference in Geneva, Switzerland.

Under the work programme, issues related to electronic commerce have been examined by the Council for Trade in Services, the Council for Trade in Goods, the Council for TRIPS and the Committee on Trade and Development. During the course of the work programme a number of background notes on the issues have been produced by the WTO Secretariat and many member governments have submitted documents outlining their own thoughts.

Non-violation and Situation Complaints: In general, disputes in the WTO involve allegations that a country has violated an agreement or broken a commitment. But in some situations a government can go to the Dispute Settlement Body even when an agreement has not been violated. This is called a non-violation complaint. It is allowed if one government can show that it has been deprived of an expected benefit because of another government's action, or because of any other situation that exists.

Non-violation complaints are possible for goods and services (under GATT for goods and market-opening commitments in services in the WTO). However, for the time being, members have agreed not to use them under the TRIPS Agreement. Under Article 64.2 this "moratorium" (i.e. the agreement not to use TRIPS non-violation cases) was to last for the first five years of the WTO (i.e. 1995–99). It has been extended since then.

At the same time, the TRIPS Council has discussed whether non-violation complaints should be allowed in intellectual property, and if so, to what extent and how ("scope and modalities") they could be brought to the WTO's dispute settlement procedures.

At least two countries (the US and Switzerland) say non-violation cases should be allowed in order to discourage members from engaging in "creative legislative activity" that would allow them to get around their TRIPS commitments. Most would like to see the moratorium continued or made permanent. Some have suggested additional safeguards.

WTO continues its examination of the scope and modalities for complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994.

7.5 Current State of Negotiations on TRIPS

7.5.1 From Doha to Hong Kong

In March 2002, TRIPS Council met for a discussion on TRIPS Article 31(f) continued where members urged that compulsory licensing can be given mainly for local market, not for exporting medicines. This was debated because, for example, if India implements TRIPS it can give compulsory license only for its own health problem,

but not for other countries. Therefore, African countries proposed to exclude TRIPS Article 31(f), and hence, no decision was made. On 30 August 2003, a decision to implement paragraph 6 of the Doha Declaration on compulsory licensing was made which provided flexibility to the implementation of TRIPS Article 31(f). Due to this decision, countries lacking manufacturing capacity will be able to import patented medicine.

An International Seminar on Systems for the Protection and Commercialisation of Traditional knowledge, in particular traditional medicines, held in New Delhi on 3-5 April 2002, organised by UNCTAD and the Government of India argued that the protection and appropriate commercialisation of traditional knowledge is essential for the sustainable use of biodiversity.

Brazil on behalf of the delegations of Brazil, China, Cuba, Dominican Republic, Ecuador, India, Pakistan, Peru, Thailand, Venezuela, Zambia and Zimbabwe made a submission (IP/C/W/356) to the WTO demanding that TRIPS Agreement should be amended. An applicant for a patent relating to biological materials or to traditional knowledge shall: (a) disclose the source and country of origin of the biological resource and of the traditional knowledge used in the invention, (b) provide evidence of prior informed consent through approval of authorities under the relevant national regimes, and (c) evidence of fair and equitable benefit sharing under the national regime of the country of origin.

The General Council Decision of 1 August 2004 took note of TRIPS Council / Special Session report, requests continuation of work on outstanding implementation- related issues, extends moratorium for non-violation complaints.

The General Council of WTO on 6 December 2005 approved amendment in Article 31 of the intellectual property agreement. Article 31(f) of the TRIPS Agreement says that production under compulsory licensing must be predominantly for the domestic market. The concern was that this could limit the ability of countries that cannot make pharmaceutical products from importing cheaper generics from countries where pharmaceuticals are patented. As demanded by the member countries the General Council of WTO set aside this provision temporarily to make it easier for poorer countries to obtain cheaper generic versions of patented medicines. The Hong Kong Declaration (paragraph 40) welcomed this decision of the General Council.

7.5.2 Hong Kong Declaration

According to the Marrakech Agreement that established the WTO, LDCs were given 10 years to implement the TRIPS Agreement. This extension was to expire on 1 January 2006. In the Hong Kong Ministerial (December 2005), this period was further extended by another seven and half years up to July, 2013 with a possibility for further extension. LDCs have been asked to provide plans, within next two years, for implementation of the IP regime by their respective countries. Development partners are to provide the necessary support for implementation of this plan.

Hong Kong, China Ministerial Conference, December 2005 requested to intensify negotiations on multilateral GI register, requests to intensify consultative process on GI extension and TRIPS-CBD relationship and progress review by July 2006. Hong Kong Ministerial also welcomed work on TRIPS amendment to implement August 2003 Decision on TRIPS and Public Health. It may be recalled that the WTO General Council, on 30 August 2003, had a Decision on the implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health. The Decision allowed "waivers" which removes limitations on exports under compulsory license to countries that cannot manufacture the pharmaceuticals themselves, extends moratorium for non-violation complaints, welcomes extension of transition period for LDCs.

7.5.3 Developments after Hong Kong Ministerial

WTO Members resumed discussion on the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD) at the regular session of the Council for TRIPS on 14 and 15 March 2006.

Mainly developing countries believe that harmonisation of the objectives of biodiversity conservation and intellectual property protection would best be achieved by amending the TRIPS Agreement to require patent applicants to disclose the origin of genetic resources and associated traditional knowledge used in their invention, along with evidence of prior informed consent and benefit-sharing. Developed countries, mainly, believe that patents need not require such disclosure. Paragraph 39 of the Hong Kong Declaration called for progress on this issue by no later than July 2006.

The major issue of current debate on TRIPS is disclosure proposal. Under the TRIPS Agreement, countries have no obligation to examine whether there is misappropriation of genetic resources and traditional knowledge in patent applications. Hence developing countries made a proposal (IP/C/W/474) for an amendment to the TRIPS Agreement so that it would be mandatory for countries to have in their national patent laws a requirement for patent applicants to disclose the countries of origin of biological materials and traditional knowledge used in their inventions, as well as evidence of prior informed consent and benefit sharing arrangements with the countries of origin and relevant local communities.

The disclosure proposal was discussed in the TRIPS Council under the agenda items of the review of Article 27.3 (b) of TRIPS, the relation between the TRIPS agreement and the Convention on Biological Diversity (CBD), and the protection of traditional knowledge and folklore. It is also being negotiated under the "implementation issues" of the Doha negotiations.

Though originally advocated by mainly India and Brazil, the disclosure requirement for patent applications relating to genetic resources and traditional knowledge is being supported by majority of WTO members including Peru, the ACP Group, the Africa

Group and the LDC Group. They demand that the issue should be included in the current negotiations in the 'horizontal process' of the Doha Round negotiation.

However, developed countries such as Japan, South Korea, the US, Australia, New Zealand and others continued to argue that amending the TRIPS Agreement would not solve the problems of bio-piracy and erroneous patenting.

7.5.4 Maseru Declaration

Trade Ministers of the least developed countries (LDCs) participated in a meeting in Maseru, Lesotho on 27 – 29 February 2008 and adopted the *Maseru Declaration* with a view to advancing and promoting the interests of LDCs in the Doha Development Round of multilateral trade negotiations at the WTO. The Maseru Declaration demanded the following as regards TRIPS.

Mandatory Disclosure of Source and Origin: Amendment to the TRIPS Agreement to require, in accordance with the proposals contained in IP/C/W/474, mandatory disclosure of source and origin of biological resources and associated traditional knowledge and proof of prior consent to address misappropriation and erroneous granting of patents in order to enhance the developmental aspects and benefits that could accrue to the LDCs.

Incentives for Technology Transfer to LDCs: Commitments by developed WTO Members to provide incentives to enterprises and institutions within their territories that achieve effective technology transfer to LDCs in accordance with Article 66.2 of the TRIPS Agreement. Such measures must go beyond workshops and seminars to include measures that provide incentives to enterprises and institutions in developed WTO Members to work in direct conjunction with enterprises and institutions in LDCs in a manner that result in technology transfer.

Monitoring Mechanism: Establishment of a monitoring mechanism to review the situations where enterprises and institutions within developed WTO Members have provided technology transfer to LDCs as a result of such incentives and their effectiveness at creating a viable technological base in the LDC.

Expedite the Process of Ratifying the Protocol: A commitment to expedite the process of ratifying the Protocol amending the TRIPS Agreement attached to the Decision of 6 December 2005 (WT/L/641) within the two year extension period agreed to in WT/L/711.

Provide Financial and Technical Assistance: A commitment by development partners to provide financial and technical assistance for need assessments and implementation of bankable project identified by LDCs.

Compatibility between CBD and TRIPS: Explore the Convention on Biological Diversity (CBD) and its relations with the TRIPS Agreement with a view to incorporating the LDCs concerns embedded in the CBD, but not covered in TRIPS.

7.6 Implications and Strategies for Bangladesh

TRIPS agreement is very important for Bangladesh. The existing intellectual property rights and laws in Bangladesh are not adequate to preserve Biological Diversity, herbal medicines and knowledge, heritage and culture, and domestic natural resources. Research is also needed to develop new plant species and preserve the existing plant and animal species. Bangladesh needs to take timely measures toward amendment of the existing laws, initiatives for notification and registration of geographical indications, finding ways to use modern technology and knowledge in agriculture, industry and other sectors within the TRIPS agreement. The pharmaceutical sector in Bangladesh is much more developed compared to many other developing nations. Thus using the waiver on compulsory licenses Bangladesh can export pharmaceutical products to other countries.

The Doha Mandate provides that negotiations on outstanding implementation issues shall be an integral part of the Work Programme. The relationship between the TRIPS Agreement and CBD is a critical implementation issue for developing countries. Bangladesh along with developing countries should also reiterate that in order to make the Doha Round a 'Development Round' complete, it is crucial to correct the imbalance in the TRIPS agreement caused by its failure to protect genetic resources and traditional knowledge.

In order to meet the obligations under TRIPS agreement Bangladesh should also identify its priority needs for technical assistance. TRIPS Council set a deadline for providing information on technical and financial assistance needs, preferably before 1 January 2008. It is important that Bangladesh immediately takes steps to identify its needs to meet the compliance deadline of 2013.

7.7 Summary

- Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.
- The WTO's Agreement on TRIPS was negotiated in the Uruguay Round (1986 to 1994). It was signed in Marrakesh, Morocco on 15 April 1994. It came into effect from 1 January 1995.
- The TRIPS Agreement establishes minimum levels of protection that each government has to give to the intellectual property of fellow WTO members.
- The TRIPS Agreement covers the following categories of IP: copyright and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organisations); trademarks including service marks; geographical indications including appellations of origin; industrial designs; patents including the protection of new varieties of plants; the layout-designs of integrated circuits; and undisclosed information including trade secrets and test data.

- The TRIPS Agreement has three basic principles: national treatment, most-favoured nation treatment: and balanced protection.
- Negotiation on TRIPS Agreement got much importance in the Doha Declaration. Agenda for TRIPS negotiation was set through Doha Ministerial Declaration and also through Doha Declaration on the TRIPS agreement and public health. Members agreed to interpret and implement the TRIPS agreement in a manner supportive to members' right to protect public health, promote access to medicines for all through ensuring availability of existing medicines and development of new medicines; establish a multilateral system of notification and registration of geographical indications for wines and spirits; analyse the patent system for animals except micro organisms; to determine relationship between TRIPS and Convention on Biological Diversity (CBD); preserve heritage and culture.
- Least developed countries such as Bangladesh were initially granted a transition period of 11 years (until 1 January 2006), with the possibility of an extension. In the Hong Kong Ministerial (December 2005), this period was further extended by another seven and half years up to July, 2013 with a possibility for further extension. For pharmaceutical patents, this has been extended to 1 January 2016, under a decision taken by ministers at the Fourth Ministerial Conference in November 2001.
- The existing intellectual property rights and laws in Bangladesh are not adequate to preserve Biological Diversity, herbal medicines and knowledge, heritage and culture, and domestic natural resources. Bangladesh needs to take timely measures toward amendment to the existing laws, initiatives for notification and registration of geographical indications, finding ways to use modern technology and knowledge in agriculture, industry and other sectors within the TRIPS agreement.

7.8 Questions for Discussion

1. What are "intellectual property rights"?
2. Does the TRIPS Agreement apply to all members?
3. What is the allowed general transition periods for different countries?
4. What is the relationship between the TRIPS Agreement and the pre-existing international conventions that it refers to?
5. Does the TRIPS Agreement require all members' rules on protection of intellectual property to be identical?
6. What is the role of the TRIPS Council?
7. What are the major mandates on TRIPS under the Doha Works Programme?

8. What should be the strategies for Bangladesh to gain the most from the WTO negotiation on TRIPS?

Documents/Sources Used in Preparation of this Module

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Training Manual on **WTO and Bangladesh Trade Policy**

Module

8

**WTO and Regional
Trade Agreements
(RTAs)**

WTO and Regional Trade Agreements (RTAs)

Learning Objectives

- This particular lecture module will provide an overall idea about how Regional Trade Agreements (RTAs) are being dealt in the WTO
- It also highlights the evolution of RTAs in the multilateral trading system. .
- The module will enable participants to track the ongoing negotiations on RTAs along with the relevant issues and concerns as regards the RTAs.

8.1 Background on Regional Trade Agreements

Regional Trade Agreements (RTAs) have become a prominent feature of the multilateral trading system (MTS) in recent years. Lately, there has been a surge of RTAs; a total of 55 RTAs were notified to the WTO between January 2005 and December 2006, increasing the total number of RTAs notified and in force to 214¹. The WTO further estimates that over 300 RTAs will be in effect by 2007 (see Figure 8.1).

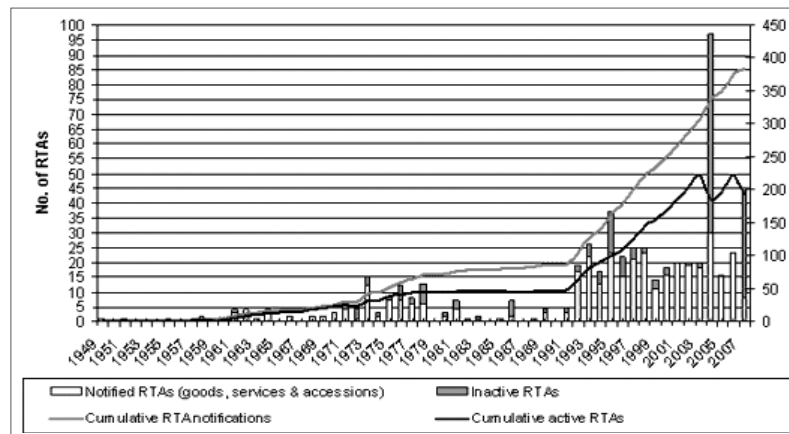
RTAs increase opportunities for economics of scale by creating a larger market for goods and services, removing trade barriers and engendering a more competitive environment, whereby it raises efficiencies in business and ensure more economic development for the citizens. For explaining this increasing popularity of RTAs, in its recent report the WTO Secretariat mentions two reasons why standard economic analysis would justify a country's decision to pursue preferential trade agreements – *first*, in a world of second-best, a case may be made for an individual country to reduce trade barriers on a selective basis; *second*, some countries may be able, through trade diversion, to secure gains that they could not otherwise achieve. Perhaps more importantly, although governments may prefer a multilateral approach, ultimately they conclude that a regional or preferential approach is far more viable. Such an approach may be considered more practical for a number of reasons; for example, because further integration under the multilateral approach is generally stymied by the opposition of some countries which make it very time consuming. A regional approach, in such a scenario, thus may be deemed more pragmatic in order to signal a commitment to market liberalisation and/or to attract foreign direct investment.

¹For a complete list of RTAs notified to the GATT/WTO, see http://www.wto.org/english/tratop_e/region_e.htm.

Apart from those core economic benefits, WTO Secretariat also cites various political reasons for pursuing RTAs. Free trade blocs formed by agreements such as the North American Free Trade Agreement (NAFTA) and custom unions such as the European Union (EU), have allowed countries to lower trade barriers among neighbours and political allies while retaining flexible over the issues of negotiations, including liberalisation of various sectors.

RTAs continue to proliferate as progress on the Doha Round has slowed. The collapse of the Cancun Ministerial Conference has underscored the inherent difficulties in hammering out the multilateral agreements. Consequently, many countries have focused on RTAs as the primary means of opening up international trade. As a result, the question of whether the WTO system deal with the new phenomenon – rise in the number of RTAs globally – has become particularly significant. This concern was also carried forward during the WTO Hong Kong Ministerial.

Figure 8.1 Number of RTAs from (1949-2001)



Source: WTO, 2007.

8.2 Major Features of RTAs

RTAs define different aspects of economic integration between economies. As economic integration increases, the barriers of trade between markets diminish. The most integrated economy today between independent nations is the European Union and its euro zone. The degree of economic integration can be categorised into following stages: preferential trading area; free trade area; customs union; common market; economic and monetary union and complete economic integration. Just as one bit leads to another, customs union leads to the creation of a common market, followed with economic union and finally, complete economic integration. The EU is the prominent example in this regard.

Preferential trading area is a trading bloc which gives preferential access to certain products from certain countries. This is done by reducing tariffs, but does not abolish them completely. Examples of SAPTA, APTA can be put forward here. In difference,

Free trade area (FTA) is a designated group of countries that have agreed to eliminate tariffs, quotas and preferences on most (if not all) goods between them. Unlike a customs union, members of a FTA do not have the same policies with respect to non-members, meaning different quotas and customs by different countries. "FTAs afford their parties ample flexibility in terms of the desired trade policy scope and choice of partners; the latter consideration appears to be particularly relevant to the current wave of cross-regional FTAs where the focus is often on strategic market access or strategic political alliances, unbound by geographical considerations. Most significantly, FTAs allow for ambitious preferential regimes while safeguarding a country's sovereignty over its commercial policy since each FTA party maintains its own trade policy vis-à-vis third parties" (Fiorentino, R.V. et.al, 2007).

Customs Union (CU) is a free trade area with a common external tariff. It reflects the traditional objective of regional integration among geographically contiguous countries. The participant countries set up common external trade policy, but in some cases they use different import quotas. Common competition policy is also helpful to avoid competition deficiency. Purposes for establishing a CU normally include increasing economic efficiency and establishing closer political and cultural ties between the member countries. "Besides this, CUs are often flanked, and in most cases driven, by considerations that reach beyond the realm of trade (i.e. political integration, economic and monetary unions, supranational institutions etc.) On the technical side, a CU requires the establishment of a common external tariff and harmonisation of external trade policies; this implies a much higher degree of policy coordination among the parties compared to FTAs and, unquestionably, loss of autonomy over the parties' national commercial policies. As a result, CUs entail longer and more complex negotiations and implementation periods. Furthermore, while the parties to an FTA have, in principle, full flexibility with regards to their individual choice of future FTA partners, participation in CUs, if played by the rules, limits the individual parties' choice for future RTA memberships since a proper functioning of the union requires that any agreement with a third party includes the CUs as a whole. In the current trading climate of flexible and speedy RTAs, the preference of FTAs over CUs seems obvious" (ibid).

The basic difference between a CU and an FTA is that while both eliminate duties and other barriers to trade amongst members, a CU also imposes a common commercial policy toward non-members. The North American Free Trade Agreement – NAFTA – is an example of a free trade agreement, while the European Community is an example of a customs union.

8.3 RTAs' Main Trends and Characteristics

Tracking the proliferation of RTAs in the global trading system has become increasingly more difficult as RTAs trends and characteristics are changing over time. Out of several trends of RTAs, four main trends are considered fundamental. For most countries, firstly, the RTAs have caused a shift of resources from the

multilateral trade objectives to the pursuance of preferential agreements, which has become an attraction of countries commercial policy. Secondly, recent trends of RTAs are sophisticated enough to include liberalisation of trade in services and their regulatory regimes extend to trade policy areas not regulated multilaterally, and they are spreading to areas which are not geographically bound and are innovative, at the same time. Thirdly, the settings of the RTAs indicate an increase in the North-South trading, marking a fall in the trade discrepancies that rose due to preferential non-reciprocal trading. While this shift is being catalysed generally by the WTO rules and requirements, in most cases it is the developing countries that are willing to give up previous unilateral preferences in favour of a more secure reciprocal arrangement. Another significant factor is the rise of South-South RTAs, which have been mainly due to the establishment of several RTAs hubs in the developing world. The final significant trend leads to a process of expansion and consolidation of regional integration schemes. This has been possible mainly due to an increasing number of intra-regional RTAs into continent wide regional trading blocks.

8.4 Evolution of RTAs in the Multilateral Trading System (MTS)¹

In 1947, the co-existence of preferential and multilateral (i.e. GATT MFN) tracks to trade liberalisation was viewed as ultimately positive in international trade relations. The then prevailing perception was that genuine regional initiatives promoting extensive trade liberalisation among sub-sets of the Members could be congruent with multilaterally-agreed trade liberalisation, and could contribute to the development of global trade and of the MTS. Thus, from the inception of the GATT, Members have been allowed to further the market access by concluding RTAs, albeit subject to a certain number of criteria. These are contained, in particular, in GATT Article XXIV, for agreements in trade in goods, and in GATS Article V, for agreements in the area of trade in services. The criteria are: (a) transparency, (b) commitment to deep intra-region trade liberalisation, and (c) neutrality vis-à-vis non-parties' trade. Paragraph 2(c) of the 1979 Decision of the GATT Council on Differential and More Favourable Treatment (Enabling Clause) waives developing countries' obligations under GATT Article I (MFN) when concluding preferential arrangements among themselves. In practice, however, only a limited degree of transparency is the only requirement attached to RTAs concluded under the Enabling Clause.

One of the basic obligations in the WTO/GATT system is the most favoured nation (MFN) principle, which requires that tariff and other trading advantages given to one country must be given unconditionally to all WTO/GATT members. The MFN rule would have precluded RTAs, a few of which did exist at the time GATT was

¹Substantial part of this section has been taken from: WTO, 2003. "The Changing Landscape of RTAs". Paper presented at the Seminar on Regional Trade Agreements and the WTO by the Trade Policies Review Division, WTO Secretariat. Source: http://www.wto.org/english/tratop_e/region_e/sem_nov03_e/boonckamp_paper_e.doc.

negotiated. Probably to reflect that fact, the original US proposal for an international trade organisation, which ultimately led to GATT, included an exception for CUs. During the course of the negotiations, the exception for CU was broadened so as to include also free trade areas.

The expansion of the Article XXIV exception to include free trade areas meant that it would potentially be used more frequently, as it is much easier to negotiate a free trade area than a customs union since it does not require creating a common commercial policy. However, at the time that the Article XXIV exception was negotiated it was not apparent that this would be, in fact, used extensively. Indeed, only a few regional trading agreements were notified to GATT in the 1940s and 1950s. The idea of RTAs was not particularly controversial at that time and in fact, it was easy to view the RTAs as a major step in trade liberalisation in a world of 40% tariffs. Moreover, the theoretical concerns of trade diverting versus trade creating effects of such agreements were not explored by experts – the most prominent being Viner - until some years after Article XXIV was negotiated.

GATT Article XXIV provisions confronted their first real test with the notification of the Treaty of Rome in 1957. The Working Group that had been set up to consider the agreement could not reach a clear-cut conclusion with respect to the consistency of the agreement with the GATT relevant rules (GATT Article XXIV). A first major crisis in the GATT was avoided, thanks to the launching of a round of MFN negotiations. A weakness had however been introduced in the multilateral legal framework with a *de facto* recognition of the inoperability of the conditions contained in GATT Article XXIV. The examination of CUs and free-trade areas subsequently notified to the GATT did not either lead to any clear assessments of full consistency with the rules 60, and frictions arising among GATT's Members in this regard were dealt pragmatically. During the Uruguay Round, in an endeavour to clarify GATT Article XXIV, Members came up with the Understanding on the Interpretation of Article XXIV of the GATT 1994. The Understanding shed some light on certain issues (of a rather procedural nature), however, it did not provide any substantive clarification or interpretation of the essential requirements contained in the Article.

The increase in the number of RTAs during the late 1980s and early 90s started to create administrative bottlenecks in the newly established WTO. To deal with this situation, in February 1996, the Committee on Regional Trade Agreements (CRTA) was established with the mandate to verify the compliance of notified RTAs with the relevant WTO provisions and, among others, to consider the systemic implications of such agreements and regional initiatives for the MTS and the relationship between them. At the time of the launch of the Doha Round in November 2001, the CRTA had made no further progress on its mandate of consistency assessment due to the endemic questions of interpretation of the provisions contained in Article XXIV of the GATT 1994. 61 Members had not been able to reach consensus on the format nor the substance of the reports on any of the examinations entrusted to the CRTA.

Stalemate in that area had also resulted in little or no progress in the other areas falling under the CRTA mandate. Concerns over the increasing number of RTAs and a malfunctioning multilateral surveillance mechanism prompted Ministers meeting at the Fourth Ministerial Conference in Doha in November 2001 to include RTA rules under the Doha Development Agenda (DDA).

8.5 The Organisation of RTAs in the WTO/GATT System²

WTO members (as, previously, GATT contracting parties) are bound to notify the regional trade agreements (RTAs) in which they participate. Nearly all of the WTO's Members have notified participation in one or more RTAs (some Members are party to twenty or more). Notifications may also refer to the accession of new parties to an agreement that already exists, e.g. the notification of the accession of Bulgaria and Romania to the European Union Customs Union. In the period between 1948-1994, the GATT received 124 notifications of RTAs (relating to trade in goods), but since the creation of the WTO in 1995, over 380 (upto July 2007) additional arrangements covering trade in goods or services have been notified.

GATT Article XXIV and GATS Article V specify conditions that must be met for an RTA to qualify as an exception to the overriding MFN principle that is normally applicable. In addition, for developing countries, the so-called Enabling Clause allows the formation of regional or global arrangements amongst developing WTO Members. In this regard, GATT Article XXIV: 4 follows: '(WTO) members recognise the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognise that the purpose of customs union or of a free trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other (WTO) members with such territories'.

Paragraph 5 is essentially concerned with the level of restrictions applied to non-members, before and after the RTA is brought into effect. For CU, paragraph 5(a) specifies that "the duties and other regulations of commerce imposed at the institution of any such (customs) union ... in respect of trade with (WTO) Members not parties to such union ... shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of the union ..."

The same result is required of free trade areas, where the duties and other regulations of commerce of each of the constituent members of the area are not to be higher or more restrictive than the corresponding duties and regulations existing in the member prior to formation of the area. Paragraph 5(c) in this regard specifies that if the CU

²ibid.

or FTA is implemented over time, which is the usual case, then the ultimate formation of the union or area should occur within a reasonable period of time.

The 1994 understanding specifies that the reasonable period of time should exceed ten years only in exceptional cases. However, some RTAs historically have had very long transition periods. Paragraph 8 of Article XXIV also provides substantive control of the formation of RTAs, through its definition of what qualifies as a CU or FTA. It defines a CU as follows: "A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that (i) duties and other restrictive regulations of commerce (except where necessary those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and (ii) ... substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union".

The definition of a FTA is contained in paragraph (i) above. Over the years, the WTO/GATT system has had considerable difficulty in interpreting these terms. Foremost among the problems have been defining the terms "other restrictive regulations of commerce" and "substantially all trade". For example, are anti-dumping rules permitted to exist in free trade areas? Is it possible to exclude a significant sector to a substantial degree, such as agriculture, from the coverage of a free trade agreement? Does it matter that there has traditionally been little trade in that sector? The inability to reach consensus on the meaning of these and other terms has made it difficult for the WTO/GATT system to review and oversee the operation of RTAs.

After considering the current mechanisms for review of RTAs, the WTO CRTAs and Dispute Settlement plans to examine these interpretative problems in more detail and consider the status of the Doha negotiations on RTAs, which are one of the subjects of the so-called "rules" negotiations.

8.6 The Doha Negotiations on RTAs

8.6.1 DDA Negotiations on WTO Rules (on RTAs)

In the Doha Ministerial Declaration, WTO Members recognised that RTAs could play an important role in promoting trade liberalisation and in fostering economic development, and stressed the need for a harmonious relationship between the multilateral and regional processes. On this basis, Ministers agreed to launch negotiations aimed at clarifying and improving the relevant disciplines and procedures under the existing WTO provisions with a view to resolving the impasse in the CRTAs, exercising better control of RTAs' dynamics and minimising the risks related to the proliferation of RTAs. The negotiations on RTAs have been

conducted on two tracks: issues of "procedural" nature, and "systemic" or "legal" issues of a more substantive matter. Negotiations on the latter have made some progress. However, the scope of issues under consideration is wide and complex, given the fact that clarifying or improving WTO rules on RTAs relates to several other regulatory areas which are under negotiation and this adds to further complexity.

Negotiations on procedural issues which are, by nature, less contentious have instead been very fruitful, with Members reaching a formal agreement on a Draft Decision on a Transparency Mechanism for Regional Trade Agreements in July 2006. The decision was applied on a provisional basis in December 2006 while awaiting the conclusion of the Doha Round.

8.6.2 Negotiations Issues³

Paragraph 29 of the Doha Ministerial Declaration states that negotiations aim at clarifying and improving disciplines and procedures under the existing WTO provisions as regards RTAs, and take due account of the developmental aspects of these agreements.

The Negotiation Group have had substantive progress in its work. As regard issue identification, this phase has been completed, where issues being broadly structured as primarily "procedural" and "systemic". Procedural issue particularly "RTAs' transparency", were identified as issues for initial consideration and have been tackled since October 2007 mostly in an informal mode. Systemic issues have been addressed only in formal meetings until now.

As part of procedural issue progress achieved on "RTAs' transparency" indicates that the negotiation is heading to a common understanding on the elements to be included in an early package improving, *inter alia* the procedures relating to the timing and content of RTAs' notification and a revived, more transparent and efficient RTA review process. A number of systemic issues are on the table for discussion: RTAs and development; RTAs coverage (in particular the definition of "substantially all trade" in GATT Article XXIV:8); other (restrictive) regulations of commerce (in particular matters related to preferential rules of origin and safeguards); and the primacy of the multilateral trading system and possible RTA negative effects on third parties.

However, the negotiations on RTAs are complicated by the fact that most WTO Members are members to some RTAs and even those members who have traditionally not participated much in RTAs, have recently started to do so. As a result, the negotiations may well not produce much in the way of change in the current situation, even if transparency is improved somewhat. There has been considerable controversy over the years as to the requirements imposed by the GATT Article XXIV, as well as the other WTO provisions on RTAs, which extend from the

³ibid.

definition of mere procedural requirements to the meaning of key elements of the definitions of free trade areas and custom unions.

On a procedural level, it is not clear when RTAs should be notified to the WTO for review. Obviously, notifications received after the completion of the negotiations of an RTA would seem to preclude any serious input from the WTO review (in the sense that changes would be difficult to implement at that point), even though such input and changes seem to be contemplated by Article XXIV. Similarly, while GATS Article V asks for prompt notification, no time is specified there. Apart from the timing, disagreements are there as to what information should be provided. A further problem arises as regards the comprehensiveness of the review process in the CRTAs, which is designed to gather information on RTAs and to judge their conformity with the applicable rules. In particular, agreements between developing countries, under the authority of the Enabling Clause, are often not reviewed. More significantly, because of the disagreements about the substantive standards that RTAs are expected to meet, the review process is typically inconclusive, as noted above. The Secretariat blames part of this problem on what it calls "dispute-settlement awareness": "Members seem reluctant to provide information or agree to conclusions that could later be used or interpreted by a dispute settlement panel."

On more substantive issues, it is unclear whether paragraph 4 of Article XXIV adds to the other provisions of Article XXIV, or simply states a general principle that is interpreted in the other provisions. This disagreement may be more apparent than real, since at a minimum, the Appellate Body has made it clear that paragraph 4 provides important context for interpreting the other provisions. However, there may be some inconsistencies between paragraphs 5 and 8. Paragraph 8 focuses on the removal of internal trade restrictions, while paragraph 5 focuses on not raising barriers to external trade. One can imagine situations where compliance with one requirement might lead to problems with the other.

The most difficult issues, however, concern the interpretation of the substantive requirements of Article XXIV. Probably the most difficult has been the interpretation of the words "substantially all the trade", as these words are used in the definition of CUs and FTAs. The two basic approaches to interpreting the requirement that an RTA should cover substantially all the trade between the constituent members are: (i) that the requirement is a quantitative one, which is met if the RTA covers actual trade between the parties at an appropriate statistical level (e.g. 90%); and (ii) that the requirement is (or is also) a qualitative one, which is met only if no important economic sector is excluded from the RTA.

There are also some lack of clarity in the requirement that a customs union's constituents impose substantially the same duties and other regulations of commerce. In the Turkey-Textiles case, the panel and the Appellate Body seemed to disagree as to how much flexibility this provision provided to members of a CU. In the view of

the Appellate Body a high degree of "sameness" was required but that requirement obviously is quite imprecise as a practical matter. The requirement that restrictive regulations of commerce be eliminated, contains an exception for "where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX".

It is disputed whether anti-dumping and safeguard measures should be viewed as restrictive regulations or not. If so, it would seem that they should not be used, although many free trade areas permit their usage. In the case of safeguards, the issue is further complicated by the debate over whether selective safeguards should ever be permitted – if not, then it would seem that even regional partners should be subject to any general safeguard measure that is imposed. Panels and the Appellate Body have explicitly avoided these issues thus far. As the foregoing brief synopsis of GATT Article XXIV issues demonstrate, there is much for negotiators to do in the content at clarifying the meaning and procedures for implementing Article XXIV.

8.6.3 Current Negotiations on RTA

Current negotiations on RTA are taking place in the Negotiating Group on Rules (NGR) which reports to the Trade Negotiations Committee (TNC). Regarding the progress, the issue-identification phase of the negotiations on RTAs is about to complete. The negotiating group is pursuing a two-track approach: identifying issues for negotiation in formal meetings; and, holding open-ended informal consultations on more procedural issues related to transparency of RTAs.

8.6.4 Transparency Mechanism on RTAs

The General Council, on 14 December 2006, established on a provisional basis a new transparency mechanism for all RTAs. This mechanism was negotiated in the Negotiating Group on Rules which provides the stipulations for early announcement of any RTA, including notification to the WTO.

The transparency mechanism is implemented on a provisional basis. Members are to review, and if necessary modify the decision, and replace it by a permanent mechanism adopted as part of the overall results of the Doha Round.

Members will consider the notified RTAs on the basis of a factual presentation by the WTO Secretariat. The CRTA will conduct the review of RTAs falling under Article XXIV of the GATT and Article V of the GATS. The Committee on Trade and Development (CDT) will, then, conduct the review of RTAs falling under the Enabling Clause (trade arrangements between developing countries).

8.6.5 Conditions for RTAs

WTO rules say regional trade agreements have to meet certain conditions. But interpreting the wording of these rules have proved controversial, and have been a central element in the work of the Committee on Regional Trade Agreements. As a result, since 1995 the committee has failed to complete its assessments of whether

individual trade agreements conform to WTO provisions. This is now an important challenge, particularly when nearly all member governments are parties to regional agreements, are negotiating, or are considering negotiating such agreements.

8.6.6 Hong Kong Ministerial and Aftermath

The Doha Round has mandated clarification of the rules relating to RTAs. The negotiations aim to clarify and improve disciplines and procedures under the existing WTO provisions, as regards RTAs. These negotiations fell into the general timetable established for virtually all negotiations under the Doha Declaration. The original deadline of 1 January 2005 was, however, missed and at a meeting of the WTO General Council on 14 December, WTO Members voted to adopt the Transparency Mechanism agreed to in the Negotiating Group on RTA Rules before the suspension of negotiations 19 July 2006.

The Transparency Mechanism improves notification procedures and examination of all RTAs (Free Trade Agreements and Customs Unions), including RTAs between developing countries. Increased scrutiny of all RTAs in the CRTAs will ensure that they are WTO consistent and genuinely trade liberalising.

The adoption of the Transparency Mechanism provided renewed impetus for the Negotiating Group on Rules to discuss the substantive WTO rules applicable to RTAs. The group met on 20 December 2007 to re-start discussions on the matter, specifically about the definition of the term "substantially all trade", a key element of the WTO rules on RTAs. Australia is expected to play an active role in these discussions.

8.7 Concerns and Issues Surrounding RTAs

In general, the WTO mandates that each Member accord the Most Favoured Nation (MFN) status to all other WTO Members. However, it allows an exception for regional trade initiatives that extend different terms of trade to participating countries, stipulating that an RTA must comply with two main requirements, as outlined in the GATT Article XXIV. First, the agreement must lower trade barriers within the regional groups; and second, the agreement cannot raise trade barriers for non-participating members.

The CRTA, established by the WTO to examine each agreement, tries to reconcile the rules of the specific RTA with similar rules governing multilateral trade agreements. However, the process becomes difficult in areas where WTO rules are vague and inconsistent, particularly those regarding dispute settlement and retaliation measures. The WTO has placed great emphasis on the need to tighten up its own policies in the face of RTA proliferation.

There are concerns that RTAs are incomplete, unequal, or counter-productive and even those who support the recent proliferation of the agreements believe that the issue must be addressed. The volume of RTAs activity stretches negotiation capacities

to their limit, and in the case of developing countries, prevents them from actively participating in all proceedings. The WTO has partnerships with the United Nations and the World Bank to build capacity in smaller countries and give aid money to support participation in trade negotiations.

Additionally, there is a fear that in agreements formed outside the WTO, developing countries do not have the power of collective bargaining to negotiate RTAs (particularly bilateral agreements) that are in their best interest. For example, Chile recently concluded an agreement with the US in which it committed to lowering tariffs on agriculture products and deregulating investment, but in return, could not gain any concessions from the US regarding farm subsidies. Since developing countries often depend on progress made in the WTO on sensitive issues, it is important that multilateral negotiations retain a top priority.

8.8 Should the WTO Encourage RTAs?

Proponents of RTAs argue that they help nations gradually work towards global free trade by allowing countries to increase the level of competition slowly and give domestic industries time to adjust. In addition, RTAs can be valuable arenas for tackling volatile trade issues such as agricultural subsidies and trade in services. Political pressures and regional diplomacy can resolve issues that cause deadlock in multilateral negotiations. Proponents of RTAs, such as the US trade representative Robert Zoellick, a number of economists and trade policy analysts, describe them as circles of free trade that expand until they finally converge to form expansive multilateral agreements.

Other policy analysts express doubt about the benefit of booming RTAs. Some describe them as a complex web of competing trade interests that hinder multilateral agreements. Because RTAs create preference systems that transcend regional boundaries, some argue that political and economic tensions will lead to hostility and increased retaliation. There is also fear that anti-dumping charges will increase and the dispute settlement process in the WTO will be complicated by unclear and conflicting regional trade laws. Additionally, RTAs may negatively impact global trade because regional preferences and rules of origin distort production by making location of production or source of raw materials the driving incentive. There is further fear that RTAs could prevent complete liberalisation in the multilateral arena and countries that benefit from regional trade agreements, may be reluctant to expose themselves to the risks of opening their markets on a multilateral level if they expect relatively insignificant returns.

8.9 Summary

- Free trade blocs formed by agreements (e.g. NAFTA, EU) have allowed countries to lower trade barriers among neighbours and political allies.
- Some 380 RTAs have been notified to the WTO/GATT upto July 2007. 400 RTAs are scheduled to be implemented by 2010.

- Countries pursue preferential trade agreements because of: *firstly*, in a world of second-best, a case may be made for an individual country to reduce trade barriers on a selective basis; and *secondly*, some countries may be able, through trade diversion, to secure gains that they could not otherwise achieve.
- The collapse of the Cancun Ministerial Conference underscored the difficulties inherent in the multilateral agreements and providing impetus to many countries for focusing on RTAs instead, as the primary means of opening up to international trade.
- The degree of economic integration can be categorised into following stages, Preferential Trading Area; Free Trade Area; Customs Union; Common Market; Economic and Monetary Union; and Complete Economic Integration.
- GATT Article XXIV and GATS Article V specify conditions that must be met for an RTA to qualify as an exception to the overriding MFN principle that is normally applicable.
- For developing countries, the so-called Enabling Clause allows the formation of regional or global arrangements amongst developing WTO Members.
- Paragraph 29 of the Doha Ministerial Declaration states that negotiations aim at clarifying and improving disciplines and procedures under the existing WTO provisions as regards RTAs, and take due account of the developmental aspects of these agreements.
- The negotiations on RTAs are complicated by the fact that most WTO Members are parties to some RTAs and even those members that have traditionally not participated much in RTAs have recently started to do so.
- In general, the WTO mandates that each member accord the Most Favoured Nation (MFN) status to all other WTO Members. However, it allows an exception for regional trade initiatives that extend different terms of trade to participating countries, stipulating that an RTA must comply with two main requirements outlined in the GATT Article XXIV. First, the agreement must lower trade barriers within the regional groups. Second, the agreement cannot raise trade barriers for non-participating members.
- The Committee on Regional Trade Agreements (CRTA), established by the WTO to examine each agreement, tries to reconcile the rules of the specific RTA with similar rules governing multilateral trade agreements.
- RTAs can be valuable arenas for tackling volatile trade issues, such as agricultural subsidies and trade in services.
- Some describe RTAs as a complex web of competing trade interests that hinder multilateral agreement. Others fear that RTAs prevent complete liberalisation in the multilateral arena.

8.10 Questions for Discussion

1. What are the major features of an RTA?
2. What are the stages of economic integration?
3. What are the provisions of the Agreement establishing the WTO that deal with RTAs? What treatment has RTAs been given in GATT and WTO?
4. How do RTAs override the MFN principle?
5. How much progress has the Doha Ministerial Declaration been able to achieve as regards the issue of RTAs?
6. What are the major arguments for and against establishing RTAs?

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Training Manual on **WTO and Bangladesh Trade Policy**

Module

9

**Sanitary and
Phytosanitary (SPS)
Measures in the
WTO**

Sanitary and Phytosanitary (SPS) Measures in the WTO

Learning Objectives

- From this chapter learners will be able to acquire knowledge about the technical standards used in trade to protect animal or plant life or health which often act as a non-tariff barrier.
- Learners will also be able to know about the political economy of standards as how these standards act as technical barriers in trade with practical example.

9.1 What is Standard and Why do Standards Matter for Trade?

9.1.1 What is Standard?

The Agreement on Technical Barriers to Trade (TBT) and the Agreement on Sanitary and Phytosanitary Measures (SPS) together cover issues relating to standards in the WTO. Standard is a means of communication. It represents an object or entity or instructions, for example, name of a product or service (terms), number, quantity, time or money, or symbol (road signs).

Standards in trade stand to convey requirements of customer to supplier, define product or service and to verify or assess products. Standards in industry mean product specification for material components, defining processes and test or inspection method.

9.1.2 Types of Standards

- *Product Standards*: Characteristics that goods must possess, such as minimum nutritional content, maximum toxic or noxious emissions.
- *Production Standards*: Conditions under which products are made.
- *Labeling Requirements*: Informing the consumers about a product's characteristics or its conditions of production.

9.1.3 Why do Standards Matter for Trade?

Government regulations or industry standards for goods can impact trade in at least three ways- firstly, they can facilitate exchange by clearly defining product

characteristics and improving compatibility and usability; secondly, they also advance domestic social goals like public health by establishing minimum standards or prescribing safety requirements; finally, they can hide protectionist policies.

During the Uruguay Round of multilateral trade negotiations, member nations established The Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures and the Agreement on Technical Barriers to Trade (TBT) to address the debate over the use of standards in international trade. The SPS and TBT Agreements can be interpreted as an attempt to balance the application of the first two (above mentioned) standards and to minimise the third. In other words, these Agreements balance the competing demands for domestic regulatory autonomy and the global harmonisation of product standards. At the same time, the agreements attempt to prevent standards from becoming a protectionist device. (GTN, 2004)

9.2 Background of SPS and TBT

In 1947, GATT recognised the need to introduce trade restrictions to protect public health concerns. In this regard, exceptions from GATT rules were allowed for measures necessary to protect human, animal, plant life or health [Article xx(b)]. GATT members had the right to take these measures as long as they were not applied in a manner which would be a means of arbitrary or unjustifiable discrimination between countries, or a disguised restriction on international trade.

Through successive rounds of negotiations while tariffs were reduced, temptation to use non-tariff barriers to protect domestic industries increased. Included in these non-tariff barriers were sanitary and phytosanitary measures. There was thus a growing need to give precision to the exceptions of Article XX of the GATT.

Among many other concerns, sanitary and phytosanitary measures were one of the areas addressed by the Uruguay Round of trade negotiations, which ultimately led to the creation of the WTO in 1995. The Marrakesh Agreement establishing the World Trade Organization contains a number of trade agreements in its annexes, including the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). Another agreement, the Agreement on Technical Barriers to Trade (TBT Agreement), covers technical regulations not covered by the SPS Agreement.

In addition, the WTO Agreement contains, among others, two important mechanisms; a dispute settlement mechanism, and another mechanism through which member's trade policies are regularly reviewed. The implementation of the WTO Agreements is overseen by committees and all Members of the WTO are automatically accepted as Members of these committees. Decisions in the committees, in most of the cases, are taken by consensus. The implementation of the SPS Agreement is overseen by the SPS Committee.

9.2.1 The Basic Goals of the SPS Agreement

The SPS Agreement has a two-fold objective. It aims to both:

- Recognise the sovereign right of Members to provide the level of health protection they deem appropriate; and
- Ensure that SPS measures do not represent unnecessary, arbitrary, scientifically unjustifiable, or disguised restrictions on international trade.

Indeed, the SPS Agreement allows countries to set their own food safety and animal and plant health standards. At the same time, however, the SPS Agreement requires that such regulations be based on science, that they be applied only to the extent necessary to protect health, and that they not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail. (WTO, 2007)

9.2.2 What is an SPS Measure?

According to Annex A of the SPS Agreement, an SPS measure is any measure applied:

- to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;
- to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;
- to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or

Table 9.1 SPS Measures and TBT at a Glance.

SPS Measures at a Glance	
<i>To protect</i>	<i>From</i>
Human or animal life	Risks arising from additives, contaminants, toxins or disease-causing organisms in their food, beverages, feedstuffs
Human life	Plant- or animal-carried diseases (zoonoses)
Animal or plant life	Pests, diseases, or disease-causing organisms
A country	Damage caused by the entry, establishment or spread of pests
TBT at a Glance	
<i>TBT applies to</i>	<i>Does not apply to</i>
All industrial and agricultural products	<ul style="list-style-type: none"> • SPS Measures • Regulations and Standards related to services • Purchasing specifications for production or consumption of governments

Source: WTO Website www.wto.org, 2006.

- to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests.

For the purpose of definitions, "animal" includes fish and wild fauna; "plant" includes forests and wild flora; "pests" include weeds; and "contaminants" include pesticides and veterinary drug residues and extraneous matter. SPS measures can take many forms and include the following:

- requiring animals and animal products to come from disease-free areas;
- inspection of products for microbiological contaminants;
- mandating a specific fumigation treatment for products; and
- setting maximum allowable levels of pesticide residues in food. (WTO, 2007)

9.3 The SPS and TBT Agreements

GATT (1947) specified that countries could take measures to protect human, animal or plant life or health [Article XX(b)]. This forms the basis of the *Agreement on Sanitary and Phytosanitary Measures (SPS)* which was accepted in the Uruguay Round. The SPS agreement allows members to take scientifically based measures to protect public health. The agreement also commits the members to base these measures on internationally established guidelines and risk assessment procedures, with further obligations that in the case of particularly stringent measures, countries must present scientific justification. When existing scientific evidence is insufficient to determine risk, members may adopt measures on the basis of available information, but must obtain additional information to objectively ground their assessment of risk within a reasonable period of time. Generally speaking, the SPS Agreement is a compromise that permits countries to take measures to protect public health within their borders as long as they do so in a manner that restricts trade as little as possible.

Standards Code (Tokyo Round 1973-1979) was revised in the Uruguay Round and the Agreement on Technical Barriers to Trade (TBT) was included in the final act of the round. Like the SPS, the TBT agreement strikes a delicate balance between the policy goals of trade facilitation and national autonomy in technical regulations. The agreement attempts to extricate the trade-facilitating aspects of standards from their trade-distorting potential by obligating countries to ensure that technical regulations and product standards do not unnecessarily restrict international trade. The TBT Agreement works toward this end in three ways. The agreement encourages 'standard equivalence' between countries, in other words, the formal acceptance of the standards of other countries through explicit agreements. It also promotes the use of international standards. Lastly, it mandates that countries establish enquiry points and national notification authorities (the two may be the same body) in order to answer questions about SPS regulations and notify other nations of new regulations respectively. Enquiry points compile all available information in that country on product standards and trade regulations and provide it to other members upon request. The national notification authorities report changes in trade policy to the WTO and receive and take comments on these measures.

9.3.1 Why an Agreement?

The following trends were being observed in global trade:

- Increasing number of technical regulations and standards
- Proliferation of conformity assessment procedures
- Evolution in consumer demand
- Impact on trade

As a result, creation of a framework for the use of technical regulations and standards was necessary, which:

- Provides balance between legitimate political imperatives and trade facilitation
- Tries to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles

9.4 Understanding the WTO Agreement on Sanitary and Phytosanitary Measures

Article XX of the General Agreement on Tariffs and Trade (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 and plant health and safety, and with product standards. The *Agreement on the Application of Sanitary and Phytosanitary Measures* (the "SPS Agreement") entered into force with the establishment of the World Trade Organization on 1 January 1995. It concerns the application of food safety and animal and plant health regulations. The introduction discusses the 'text of the SPS Agreement' as it appears in the 'Final Act of the Uruguay Round of Multilateral Trade Negotiations', signed in Marrakesh on 15 April 1994. This particular agreement and others contained in the Final Act, along with the General Agreement on Tariffs and Trade as amended (GATT 1994), are part of the treaty which established the World Trade Organization (WTO). The WTO superseded the GATT as the umbrella organisation for international trade.

9.4.1 Doha Development Round

In August 2002, the WTO initiated a programme to enhance the capacity of developing countries to participate in negotiations and implement standards. The program, called the Standards and Trade Development Facility, joins the efforts of the WTO, World Health Organization (WHO), the Food and Agriculture Organization (FAO), the World Bank, the Codex Alimentarius, and the World Bank. The principle aims are to increase participation of developing countries in forming international standards and to facilitate the implementation of existing requirements.

At the April 2003 meeting the SPS committee adopted a principle of applying special

and differential treatment for developing countries. This was based on a Canadian proposal whereby members agree to consultations whenever a developing country identifies a problem with an SPS measure. Implementation details were yet to be finalised by March of 2004.

At the March 17-18 2004 meeting, the WTO Committee on Sanitary and Phytosanitary Measures finalised their Decision on Equivalence, whereby equivalence is defined as the mutual acceptance of another Member's standards. The decision is aimed at helping the developing nations to establish that their products are as safe as the developed nations and also aims to speed up recognition of equivalence of SPS measures for products previously traded or those for which information already exists.

9.5 The Content of the Sanitary and Phytosanitary Measures Agreement¹

The Agreement on the Application of Sanitary and Phytosanitary Measures sets out the basic rules for food safety and animal and plant health standards. It allows countries to set their own standards. But it also says that regulations must be based on science and that any such regulations should be applied only to the extent necessary to protect human, animal or plant life or health; and should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail.

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. The agreement, nonetheless, still allows countries to use different standards and different methods of inspecting products and includes relevant provisions on control, inspection and approval procedures in this regard. Governments must provide advance notice of new or changed sanitary and phytosanitary regulations, and establish a national enquiry point to provide information.

9.5.1 Technical Regulations and Standards

Technical regulations and industrial standards are very important for trade. But they vary from country to country and inevitably, such multiplicity of standards has been found to pose tremendous difficulties for producers and exporters. If the standards are set arbitrarily, they could be used as an excuse for protectionism and can easily become obstacles to trade. The Technical Barriers to Trade Agreement (TBT) is meant to ensure that regulations, standards, testing and certification procedures do not create such unnecessary obstacles. However, the agreement also recognises countries' rights to adopt the standards they consider appropriate — for example, for

¹Substantial part of this section has been taken from: WTO, 2007. *SPS Agreement Training Module*. WTO Website www.wto.org

human, animal or plant life or health, and for the protection of the environment or to meet other consumer interests. Furthermore, members are not prevented from taking measures necessary to ensure the conformity of standards within their territories.

9.5.2 SPS vs TBT

It should be noted that health-related trade restrictions are addressed by both the SPS Agreement and the Agreement on Technical Barriers to Trade (TBT Agreement). There are, however, differences in the scopes of the two agreements. While the SPS Agreement covers health protection measures as defined above, the TBT Agreement covers the technical requirements, voluntary standards and the procedures to ensure that these are met (called conformity assessment procedures), with the exception of the measures as defined by the SPS Agreement. However, the TBT measures could also cover a variety of subjects, from car safety to energy-saving devices, to the shape of food packages. To give some examples pertaining to human health, TBT measures could include pharmaceutical restrictions, or the labelling of cigarettes. Most measures related to human disease control are under the TBT Agreement, unless they concern food safety or diseases which are carried by plants or animals (such as rabies). In terms of food, labelling requirements dealing with nutrition claims, quality and packaging regulations are not considered to be SPS measures and hence are normally subject to the TBT Agreement. However, labelling requirements dealing with food safety are considered to be SPS measures.

Table 9.2 Differences Between SPS and TBT Measures

SPS measures typically dealing with:	TBT measures typically dealing with:
<ul style="list-style-type: none"> • additives in food or drink • contaminants in food or drink • toxic substances in food or drink • residues of veterinary drugs or pesticides in food or drink • certification: food safety, animal or plant health • processing methods with implications for food safety • labelling requirements directly related to food safety • plant/animal quarantine • declaring areas free from pests or disease • preventing disease or pests spreading to or in a country • other sanitary requirements for imports (e.g. imported pallets used to transport 	<ul style="list-style-type: none"> • labelling of composition or quality of food, drink and drugs • quality requirements for fresh food • volume, shape and appearance of packaging • packaging and labelling for dangerous chemicals and toxic substances, pesticides and fertiliser • regulations for electrical appliances • regulations for cordless phones, radio equipment etc. • textiles and garments labelling • testing vehicles and accessories • regulations for ships and ship equipment • safety regulations for toys, etc.

Source: WTO Website www.wto.org, 2006.

9.5.3 Example of SPS and TBT Measures

Fruit

- Regulation of treatment of imported fruit to prevent pest spreading - SPS
- Regulation on quality, grading and labeling of imported fruit - TBT

Bottled Water: Specification for Bottles

- Material that can be used because safe for human health - SPS
- Requirement: No residues of disinfectant, so water not contaminated - SPS
- Permitted size to ensure standard volume - TBT
- Permitted shape to allow stocking and displaying - TBT

9.5.4 Similarities between SPS & TBT Agreements

- (i) International standardisation
- (ii) Transparency provisions
- (iii) Provision for developing countries

International Standardisation: Harmonisation

For SPS

- Office Internationale des Epizooties (OIE) è Animal Health
- Secretariats of the Plant Protection Convention (IPPC) è Plant Health
- Codex Alimentarius Commission (Codex) è Food Safety

Transparency

For TBT

- Publication of all measures
- Notification of all measures – if they are new or changed; if they have any effect on trade
- Right to request explanation
- SPS and TBT committee meetings
- Dispute Settlement

Provision for Developing and Least Developed Countries

- To ensure that the technical regulations, standards and conformity assessment procedures maintained by developed countries do not create unnecessary obstacles to market penetration by developing countries (including market expansion and export diversification)

- Developed countries should not expect that developing countries will be in a position to use international standards, because such standards may be inappropriate for the level of their technological development, environmental conditions and resource availability situation of the small scale producers
- Developed countries should take initiatives to ensure that developing countries effectively participate in international standardising bodies and international systems for the conformity assessment.

9.5.5 Special & Differential Treatment (S&DT) for LDCs

Developed countries should help developing countries and LDCs to prepare international standards for products which are of export interest to them. They should also allow developing countries and particularly the LDCs to obtain certain time bound exceptions from obligations. WTO will review the provisions from time to time to address concerns of the LDCs.

9.6 Contents of SPS Measure

9.6.1 Protection or Protectionism?

SPS measures, by their very nature, may result in restrictions on trade. While all governments generally accept the fact that trade restrictions may be necessary to ensure food safety and animal and plant health protection, the governments are also sometimes pressured to go beyond what is necessary for health protection and to use SPS measures in order to shield domestic producers from economic competition. Such pressure is likely to increase in the future as other trade barriers are reduced as a result of the Uruguay Round agreements.

SPS measures which are not actually required for health reasons can be very effective protectionist device; and because of their technical complexity, a particularly deceptive and difficult barrier to challenge.

9.6.2 Scientific Justification

Article 2 of the SPS Agreement stresses that Members have the right to adopt SPS measures to achieve their self-determined health protection level. This level, called the appropriate level of protection (ALOP) or the acceptable level of risk, represents a key feature of the SPS Agreement. The right to adopt SPS measures to achieve a given appropriate level of protection is accompanied by basic obligations. Essentially, countries may adopt SPS measures provided the measures:

- are applied only to the extent necessary to protect life or health;
- are based on scientific principles and not maintained without sufficient scientific evidence (except emergency or provisional measures); and
- do not unjustifiably discriminate between national and foreign, or among foreign sources of supply.

Members have two options to show that their measures are based on science. They may base their measures on either:

- international standards, or
- scientific risk assessment.

Harmonisation - Basing Measures on International Standards

Article 3 of the SPS Agreement encourages Members to base their measures on international standards, guidelines and recommendations, where they exist. This facilitates harmonisation, or the establishment, recognition and application of common SPS measures by different Members. Needless to say, by harmonising SPS measures with international standards, food safety and animal and plant health protection can be achieved without unduly restricting international trade.

The SPS Agreement recognises in particular three international standard-setting bodies (the three sister organisations). For food safety measures; standards, guidelines and recommendations are established by the Codex Alimentarius Commission. Similarly, the Office Internationale des Epizooties addresses animal health measures, and the Secretariat of the International Plant Protection Convention sets norms for plant health measures. It should be noted that the SPS Agreement makes no legal distinction between the 'standards', 'guidelines' and 'recommendations' of these three organisations. All three types of norms have equal status under the SPS Agreement.

Measures based on international standards, guidelines or recommendations developed by the three sister organisations are presumed to be consistent with the SPS Agreement, and Members who base their measures on them can be confident of their compliance with the SPS Agreement, as international standards are sometimes described as providing a 'safe harbour' for governments. However, Members clearly retain the right to challenge all such SPS measures, and particularly if they believe that the claim of being based on an international standard is ill-founded.

The process of harmonisation is monitored by the SPS Committee in cooperation with the three sister organisations and it allows the Members to identify trade-significant problems related to the use or non-use of relevant international standards, guidelines or recommendations, as outlined in WTO document. The WTO Secretariat produces an annual summary report on the monitoring process.

SPS Measures not Based on International Standards

Members do not always base their measures on internationally-agreed standards, for several reasons. For example, the three sister organisations have not elaborated international standards for every aspect of food safety, animal and plant health. Furthermore, Members may desire to adopt SPS measures that achieve a higher level of health protection than that achieved by the relevant international standards.

In this context it is important to note that the encouragement to use international standards does not mean that these constitute a floor or a ceiling on national standards. National measures do not violate the SPS Agreement simply because they differ from international norms.

According to Article 3 and Article 5 of the SPS Agreement, Members are permitted to adopt SPS measures which are more stringent than the relevant international standards or adopt SPS measures when international standards do not exist, provided the measures are:

- based on scientific risk assessment;
- consistently applied; and
- not more trade restrictive than necessary.

Scientific Risk Assessment

The requirement to base SPS measures on a scientific risk assessment (when they are not based on an international standard), articulated in Articles 5.1, 5.2, and 5.3, is a key component of the SPS Agreement's reliance on scientific evidence for the justification of SPS measures.

Article 5.1 requires that SPS measures be based on an assessment of the risks to human, animal or plant life or health. It does not necessarily require that the importing country itself must do the risk assessment — but the importing country must be able to demonstrate that its measure is based on an "appropriate" risk assessment. Members are to take into account the risk assessment techniques developed by the three sister organisations.

Article 5.2 explains what kinds of information shall be taken into account when undertaking a risk assessment:

- available scientific evidence;
- relevant processes and production methods;
- relevant inspection, sampling and testing protocols;
- prevalence of specific diseases or pests;
- existence of pest- or disease-free areas;
- relevant ecological and environmental conditions; and
- quarantine or other treatment.

Article 5.3 identifies the economic factors which shall be taken into account when undertaking a risk assessment for animal or plant health:

- the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease;
- the costs of control or eradication in the territory of the importing Member; and
- the relative cost-effectiveness of alternative approaches to limiting risks.

The SPS Agreement contains two definitions for risk assessment, depending on whether it deals with a pest or disease risk affecting humans, plants and animals, or whether it is a food-related risk to human or animal health. In the case of food-related risk, it is sufficient to evaluate the potential for adverse effects. In the case of pest or disease risk, one must evaluate the likelihood of entry, establishment or spread according to the SPS measures which might be applied, and the associated potential biological and economic consequences.

9.6.3 Risk Analysis

Article 5 refers explicitly to risk assessment. It should be noted that the international organisations recognise risk assessment to be part of a wider process called risk analysis.

Box 9.1 Risk Analysis

Risk analysis is a systematic way of gathering, evaluating, recording and disseminating information leading to recommendations for a position or action in response to an identified hazard. There are some slight variations in the terms used by the three organisations. However, all three sister organisations see risk analysis as a process consisting of four steps:

- Hazard Identification;
- Risk Assessment;
- Risk Management; and
- Risk Communication.

Hazard Identification involves specifying the adverse event which is of concern.

Risk Assessment takes into account the probability (the actual likelihood and not just the possibility) of the hazard occurring, the consequences of that hazard occurring, and the degree of uncertainty involved (note that this description of risk assessment differs from the definition contained in the SPS Agreement).

Risk Management involves identifying and implementing the best option for reducing or eliminating the likelihood of the hazard occurring.

Risk Communication implies the open exchange of explanatory information and opinions that lead to better understanding and decisions.

Source: WTO Website www.wto.org

9.6.4 Consistency

The consistency requirement, articulated in Article 5.5, means that Members must avoid unjustifiable differences in the level of health protection they require in different situations, if such differences result in discrimination or a disguised restriction on international trade. For example, if a Member restricts the importation of one animal product because of disease risks, yet allows the importation of other animals presenting identical or similar risks, there would be a concern that the objective may be protectionism (protection from competition), and not health protection.

9.6.5 Not More Trade Restrictive than Necessary

Article 5.6 requires Members to adopt measures that are not more trade-restrictive

than required to achieve their appropriate level of protection. This implies that when there are alternative ways to achieve that appropriate level of protection, the government should use those measures which are the least trade-restrictive, if technically and economically feasible. For example, if a country wants to avoid the introduction of an insect associated with fruit imports, requiring fumigation might be a less trade-restrictive alternative to an import ban.

9.7 Provisional Measures

Article 5.7 of the SPS Agreement permits the taking of provisional measures when there is insufficient scientific evidence to permit a final decision on the safety of a product or process. In such cases, measures can be adopted on the basis of the available pertinent information about the health risk(s) of a product or process. However, when taking such a provisional measure, a Member must seek the additional information necessary for a more objective assessment of the risk(s), and review the SPS measure within a reasonable period of time. Provisional measures could be taken, for example, as an emergency response to a sudden outbreak of an animal disease suspected of being linked to imports.

Box 9.2 Example — Dairy Products and Foot and Mouth Disease

In 1994, the Scientific Veterinary Committee (Animal Health) of the European Commission (EC) published a document considering the heat treatment of milk originating from foot and mouth disease (FMD) affected areas. The publication recommended specific heat treatments that could be applied to potentially infected milk to destroy the FMD virus.

The recommendations were subsequently incorporated into EC legislation. The EC accepted imports of dairy products from countries that had experienced outbreaks of FMD, provided the milk had been subjected to one of the specified heat treatments.

New Zealand operated a policy of only accepting dairy products from countries that had been free from FMD for at least 12 months.

During negotiations on a New Zealand/EC veterinary agreement in 1996, it was agreed that New Zealand would undertake a risk analysis of dairy products and that the EC would provide information to support their position on accepting dairy products from countries with FMD. New Zealand completed the risk analysis in early 1998 and adopted a similar position to the EC. As a result, New Zealand was able to recognise the relevant EC legislation as being equivalent to New Zealand standards.

Interestingly, the OIE also considered the same information and subsequently adopted the heat treatments recommended by the EC as part of the OIE International Animal Health Code.

Source: WTO Website www.wto.org

9.7.1 Regionalisation — Adapting Measures to Regional Conditions

The existence or spread of pests and diseases is often determined by geographic and

ecological conditions rather than political borders. Article 6 of the SPS Agreement recognises the concepts of pest- or disease-free areas. Such an "area" may be only part of a country, or all or parts of several countries, in which a specific pest or disease is not prevalent.

9.8 Control, Inspection and Approval Procedures

Annex C of the SPS Agreement requires that testing and inspection procedures used by governments to enforce SPS measures do not themselves act as unnecessary trade barriers. The basic requirement is that any such procedures should not be less favourable for imported products than they are for domestic goods, and should be no more than what is necessary to ensure compliance. This applies for time delays, information requirements, fees, sampling procedures, siting of facilities, etc.

9.8.1 Transparency

One of the key goals of the SPS Agreement is to increase the transparency of sanitary and phytosanitary measures. Governments are required to notify other countries of any new or changed SPS measure which affects trade. They also have to set up offices (called "Enquiry Points") to respond to requests for more information on new or existing measures. Such increased transparency protects the interests of consumers, as well as trading partners, from hidden protectionism through unnecessary technical requirements.

The transparency obligations of the Agreement are contained in Article 5.8, Article 7 and Annex B. In addition, the SPS Committee has elaborated recommended procedures for implementing the transparency obligations of the SPS Agreement. These clarify some of the language used in Annex B, and give guidance on how to notify (including how to fill in the notification formats), how to handle comments on notifications, and how to provide documents related to a notification. It also gives some guidance on the operation of National Notification Authorities and Enquiry Points, and on publication of regulations.

Publication of Measures

All SPS measures that have been adopted have to be published promptly, so that interested Members can become acquainted with them. Except in urgent situations, Members have to allow a reasonable period of time between the publication of a measure and its entry into force. This is to allow exporters, particularly developing countries, to adapt their products and methods of production to the new requirements. At the Doha Ministerial Conference in 2001, Members decided that normally a period of six months shall be allowed between the publication of a regulation and its entry into force. However, the entry into force of measures which liberalise trade should not be unnecessarily delayed.

Notification of Measures

Members have the obligation to notify SPS measures if they

- are new or changed;
- are not based on an existing international standard or no relevant international standard does exist; and
- have a significant effect on trade.

The above requirement covers measures that restrict trade as well as trade facilitating measures. Hence, a notification should be made as soon as a complete draft of a proposed regulation is available, and when changes can still be made to take into account any comments received. For the sake of increased transparency, many Members notify even measures that are based on an international standard, or measures where it is not clear if they will have an impact on trade. As of April 2002, about 85 per cent of Members had established an Enquiry Point, and 80 per cent had established National Notification Authorities. The lists of National Notification Authorities and Enquiry Points are regularly updated by the WTO Secretariat. These are publicly available documents. The most recent lists can be requested from the Secretariat, or downloaded from the WTO home page.

Enquiry Points

Each Member has to ensure that an Enquiry Point exists which is responsible for the provision of answers to all reasonable questions from Members. The Enquiry Point also provides the relevant documents regarding:

- all existing and proposed SPS measures;
- control and inspection procedures, production and quarantine treatment, pesticide tolerance and food additive approval procedures;
- risk assessment procedures, factors taken into consideration, as well as the determination of the appropriate level of protection;
- membership and participation in international and regional sanitary and phytosanitary organisations, as well as in bilateral and multilateral agreements and arrangements (including on equivalence), and the texts of such agreements and arrangements.

9.8.2 Implementation — The SPS Committee

The SPS Agreement establishes a Committee on Sanitary and Phytosanitary Measures (the "SPS Committee") to provide a forum for consultations about food safety or animal and plant health measures which affect trade, and to ensure the implementation of the SPS Agreement. It normally meets three times per year at the WTO Headquarters in Geneva and decisions are taken by consensus. At the WTO,

consensus is reached "if no Member, present at the meeting when the decision is taken, formally objects to the proposed decision."

The SPS Committee, like other WTO committees, is open to all WTO Member countries. Governments which have an observer status in higher level WTO bodies (such as the Council for Trade in Goods) are also eligible to be observers in the SPS Committee. Governments may also send whomever they believe appropriate to participate in the meetings of the SPS Committee. Some delegations consist only of Geneva-based representatives, while other Members also include food safety authorities or veterinary or plant health officials from capitals.

The SPS Committee has agreed to invite representatives of several international intergovernmental organizations as observers, including the "three sister organisations" (Codex, OIE, IPPC), WHO, UNCTAD and the International Organization for Standardization (ISO). In addition, several organisations are invited on an ad hoc basis, for one meeting at a time. These ad hoc observers include the OECD, the African, Caribbean and Pacific (ACP) Group of States, and other regional organisations such as the Inter-American Institute for Cooperation on Agriculture (IICA).

Committee Meetings

The SPS Committee normally holds three regular meetings each year. It may also hold special meetings, for example on transparency. The regular meetings of the SPS Committee usually last for one day and a half, and may be preceded by one or several informal meetings to discuss specific topics. In addition, special workshops, such as on risk assessment, are occasionally organised.

At the end of each meeting, the Committee adopts a tentative agenda for the next meeting. Members may request inclusion of specific items on the agenda ten calendar days before the next meeting, when the WTO Secretariat prepares an airgram containing the proposed agenda. This airgram is sent to each Member of the WTO. A typical agenda for a formal meeting of the SPS Committee looks like this:

Agenda for a Typical SPS Committee Meeting

1. Adoption of the agenda
2. Implementation of the Agreement
 - a. Information from Members
 - b. Specific trade concerns
 - c. Consideration of specific notifications received
 - d. Any other matters related to the operation of transparency provisions
3. The SPS Agreement and developing countries
4. Equivalence — Article 4
5. Technical assistance and cooperation

6. Monitoring the use of international standards
7. Matters of interest arising from the work of observer organisations
8. Requests for observer status
9. Other business

9.8.3 Dispute Settlement

The WTO's dispute settlement procedure underscores the rule of law, and it makes the trading system more secure and predictable. It is clearly structured, with strict timetables set for completing a case. First rulings are made by a Panel. Appeals based on points of law are possible. All final rulings or decisions are made by the WTO's full membership.

The SPS Disputes

As of April 2002, over 250 disputes had formally been raised under the WTO's dispute settlement system. Of these, 20 alleged violation of the SPS Agreement, although in four cases this was not the main focus of the dispute. In five cases, panels have been established: two with regard to the EU ban on meat treated with growth-promoting hormones; two with regard to Australia's restrictions on imports of fresh, chilled or frozen salmon; and one to examine Japan's requirement that each variety of certain fruits be tested with regard to the efficacy of fumigation treatment.

9.8.4 Developing Countries

Developing countries take issue with the agreements because they make intensive use of multilaterally established standards that are determined by a process that is both politically and economically skewed. Standard-setting has until recently been the exclusive domain of rich, technologically advanced nations who have dominated the terms of debate in bodies like the International Organization for Standardization (ISO) and the Codex Alimentarius Commission. Thus, implementing the SPS and TBT Agreements often requires developing countries to adhere to standards more appropriate for their industrialised counterparts. The lack of developing country input in the formation of standards translates into what some observers have called techno-imperialism, or the imposition of standards by the rich countries upon the poor ones.

In the negotiations on sanitary and phytosanitary measures, developing countries were active participants, often represented by their national food safety or animal and plant health experts. Both before and during the Uruguay Round negotiations, the GATT Secretariat assisted developing countries to establish effective negotiating positions. The SPS Agreement also calls for assistance to developing countries to enable them to strengthen their food safety and animal and plant health protection systems. FAO and other international organisations already operate programmes for developing countries in these areas.

9.9 Current Issues of Debate²

- These measures are criticised by some who claim the agreements are too invasive and deny them sovereignty of domestic regulation.
- Agreements do not go far enough and domestic regulation is often a form of protectionism.
- Developing countries protest that the standards promoted in the agreements lack their input and are dominated by the interests of developed countries.
- In the highly contentious debate over genetically modified foods, for example, some non-governmental organisations argue that these agreements offer countries inadequate flexibility to manage uncertainty and risks to human health and safety. Others have mounted challenges to the very idea of restricting the national choice of preferred levels of health, risk and safety by subjecting standards to international consensus.
- There is also considerable debate over the extent to which the SPS and TBT Agreements allow trade restrictions based on specifications related to process and production methods.

9.9.1 The "Precautionary Principle"

The "precautionary principle" or precautionary approach has been incorporated into several international environmental agreements, and some claim that it is now recognised as a general principle of international environmental law.

In the fields of food safety, plant and animal health protection, the need for taking precautionary actions in the face of scientific uncertainty has long been widely accepted. There may be instances when a sudden outbreak of an animal disease, for example, is suspected of being linked to imports, and trade restrictions must be immediately imposed while further information about the source of the outbreak and its extent are gathered. The discipline of risk assessment, one of the basic obligations of the SPS Agreement, was developed to guide action in the face of incomplete knowledge about risks to health. It focuses on probabilities of hazards occurring, and the probable consequences, because complete knowledge is very rare. Furthermore, it is virtually impossible to scientifically prove the "safety" of a food or product, which prompts the scientists rather to seek evidence of any harm.

With respect to food safety, the Codex Committee on General Principles is developing general principles for risk analysis, and in this context, is discussing under what conditions precautionary actions may be warranted, and what criteria should be respected in taking such actions.

²This section has been taken from: WTO, 2007. *SPS Agreement Training Module*. WTO Website www.wto.org

9.9.2 The TBT Agreement and Health

Protection of human, animal, plant and environmental health are among the legitimate objectives for which product requirements may be developed. Examples of measures that Members have notified and which include human health as their objective include regulations related to radio communications equipment to reduce human exposure to electromagnetic radiation; regulation to reduce substances used in cosmetics which may instigate allergies; and regulation of chemicals that may cause occupational health hazards. Of all TBT regulations notified to the WTO in 1997, 37 percent had human health as their objective. Measures taken for the protection of animal and plant life or health usually fall under the SPS Agreement, and thus less than 0.5 per cent of all TBT notifications had these objectives.

There is a difference in coverage between the TBT Agreement and the SPS Agreement. The SPS Agreement covers a narrower, or more precisely defined set of measures relating to human, animal and plant life or health than does the TBT Agreement. To assess whether or not a health measure is covered by the TBT Agreement it is best to first figure out if it is an SPS measure. If it is an SPS measure, then it is not a TBT measure.

International Harmonisation

One of the main principles of the TBT Agreement is harmonisation. The TBT Agreement does not contain a list of international organisations whose standards are considered international standards; it leaves the decision up to Members. Members do not have to use an international standard if they consider it ineffective or inappropriate to achieve their objective. They are free to set standards at a level they consider appropriate, but have to be able to justify their decisions if requested to do so by another Member. The Agreement also calls upon Members to play an active role in the process of international standardisation.

9.10 Bangladesh's Concerns

9.10.1 The Shrimp-Turtle Case of Bangladesh

The Shrimp-turtle debate was related to export of shrimp to the USA. In 1997 the US government threatened to ban import of shrimp from countries which do not use turtle-extrude machines in open-water catch of shrimps. This was to protect sea-turtle population which was facing extinction and was declared an 'endangered species'. Bangladesh along with other countries faced the threat of sanction. In the end, the dispute ended up in the dispute settlement body (DSB) of the WTO. At first the DSB upheld the sanction. However, the WTO Appellate Board later decided against the USA.

Decision of the Appellate Board

The US requirement obliging all exporting members to adopt essentially the same

policy as applied in the USA had an unjustifiable 'coercive effect' on policy decisions made by foreign governments. The USA did not assure that its policies were appropriate for the specific local and regional 'conditions prevailing' in other countries. The USA made far greater efforts to transfer the required TED technology to countries in the Caribbean/Western Atlantic region 'than to other exporting countries, including the appellants'. The application of the US measure was 'arbitrary' in that the certification process is not 'transparent' or 'predictable', and does not provide any 'formal opportunity for an applicant country to be heard or to respond to any arguments that may be made against it'.

9.10.2 Ban on Imports of Bangladesh Shrimp by the EU

After an inspection of Bangladesh's seafood processing plants in July 1997, the EU put a ban on imports of shrimp products from Bangladesh into the EU member countries due to failure to meet the stringent provisions of the Hazard Analysis Critical Control Point (HACCP) regulations. The EU ban originated from – (a) concerns regarding standards in areas related to health, quality control, infrastructure and hygiene in the Processing plants; and (b) lack of trust in the efficiency of the controlling measures carried out by the Department of Fisheries (DoF). The ban remained effective for five months, from August to December 1997. The responsibility for the ban was put on both farms and the Government of Bangladesh (GOB).

Reasons for Imposition of the Ban

Lack of satisfaction on the quality of compliance at various phases, such as:

- a) Pre-Processing Phase: at the stage of handling of raw shrimp - harvesting, sorting by size and colour, removal of heads and peeling
- b) Processing Phase: absence of high quality of water and ice, irregular electricity supply, poor infrastructure and transportation facility
- c) Post-Processing Phase: when processed shrimp is packaged for marketing and export

Weak capacity of implementation by the GOB institutions and the doubt regarding the efficiency and reliability of the inspectors of the GOB were responsible for the ban. On the basis of their inspection, the EU determined that "consuming fishery products processed in Bangladesh posed a significant risk to public health in the EU member countries".

Impact of the Ban

The ban by the EU put the country's shrimp export industry under severe strain and led to serious market disruption during which export of shrimp to the EU from Bangladesh was zero. This led to a loss of about \$65 mln in foregone exports (Cato and Lima dos Santos, 1998). The provision of the Agreement on SPS

measures worked against Bangladesh—the provision states, "countries are allowed to maintain higher standards than international relevant standards".

The EU maintains higher standards than the USA and Japan who did not ban the export of shrimp" Shrimp export to the USA and Japan increased to cover up for the loss of export to the EU, but still Bangladesh suffered a loss of about \$14.7 million. Shrimp farms were obliged to make substantial investments to ensure HACCP compliance by their respective farms.

Table 9.3 Estimates of the Net Effect on the Bangladesh's Export-Oriented Frozen Shrimp Sector (August to December 1997) (USD million)

Importing Region	Without Ban	With Ban	Net Effect
United States	73.5	102.2	28.7
European Union	65.1	0	-65.1
Japan	22.7	26.1	3.4
All Others	7.5	25.8	18.3
Total	168.8	154.1	-14.7

Source: Cato and Lima dos Santos, 1998 as cited in Rahman, 2002.

Factors Inhibiting Bangladesh's Compliance Capacity

Major difficulties in terms of ensuring compliance with SPS and TBT regulations are three-fold: *firstly*, inadequacy of the infrastructure; *secondly*, inadequacy of human resources; and *thirdly*, inadequacy of investment in health and hygiene related R&D. Difficulties faced by Bangladesh concerning the SPS and TBT originate in two areas: failures in the domestic front and failures in the global front.

9.11 Strategies for Bangladesh

To address the attendant concerns Bangladesh needs to take a number of steps. The Bangladesh case relate to three main areas of concern:

- Putting in place trade related standards
- Domestic capacity to design appropriate standards, enforce implementation and monitor compliance, and
- Global support for implementation of the trade related standards.

9.12 Summary

- The Agreement on TBT and SPS together cover issues related to standards in the WTO, where Standard represents an object or entity or instructions. Government regulations or industry standards for goods can impact trade as they can facilitate exchange, advance domestic social goals like public health and can hide protectionist policies.

- SPS and TBT Agreements balance the competing demands for domestic regulatory autonomy and the global harmonisation of product standards. At the same time, the agreements attempt to prevent standards from becoming a protectionist device.
- To protect public health concerns, in 1947, GATT recognised the need to introduce trade restrictions and in this regard, exceptions from GATT rules were allowed for measures necessary to protect human, animal, plant life or health [Article XX (b)].
- The SPS Agreement allows members to take scientifically based measures to protect public health and to set their own food safety and animal and plant health standards.
- Like the SPS, the TBT agreement strikes a delicate balance between the policy goals of trade facilitation and national autonomy in technical regulations.
- Article XX of the General Agreement on Tariffs and Trade (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.
- There are differences in the scopes of the SPS and TBT agreements. While the SPS Agreement covers health protection measures as defined above, the TBT Agreement covers the technical requirements, voluntary standards and the procedures to ensure that these are met.
- One of the key goals of the SPS Agreement is to increase the transparency of sanitary and phytosanitary measures. Governments are required to notify other countries of any new or changed SPS measure which affects trade.
- The SPS Agreement establishes a Committee on Sanitary and Phytosanitary Measures (the "SPS Committee") to provide a forum for consultations about food safety or animal and plant health measures which affect trade, and to ensure the implementation of the SPS Agreement.
- Developing countries take issue with the agreements because they make intensive use of multilaterally established standards that are determined by a process that is both politically and economically skewed. Implementing the SPS and TBT Agreements often requires developing countries to adhere to standards more appropriate for their industrialised counterparts.
- One of the main principles of the TBT Agreement is harmonisation. Members do not have to use an international standard if they consider it ineffective or inappropriate to achieve their objective. They are free to set standards at a level they consider appropriate, but have to be able to justify their decisions if requested to do so by another Member.

- In 1997 the US government threatened to ban import of shrimp from countries which do not use turtle-extrude machines in open-water catch of shrimps. Bangladesh along with other countries faced the threat of sanction. In the end, the dispute ended up in the dispute settlement body (DSB) of the WTO.
- In July 1997, the EU put a ban on imports of shrimp products from Bangladesh into the EU member countries due to failure to meet the stringent provisions of the Hazard Analysis Critical Control Point (HACCP) regulations.
- The ban by the EU put the country's shrimp export industry under severe strain and led to serious market disruption during which export of shrimp to the EU from Bangladesh was zero. This led to a loss of about \$65 mln in foregone exports.
- Difficulties faced by Bangladesh concerning the SPS and TBT originate in two areas: failures in the domestic front and failures in the global front.
- The Bangladesh case relate to three main areas of concern - putting in place trade related standards; domestic capacity to design appropriate standards, enforce implementation and monitor compliance; and global support for implementation of the trade related standards.

9.13 Questions for Discussion

1. What is SPS and TBT?
2. What is the difference between SPS and TBT?
3. What is the current issues of debate in WTO regarding SPS and TBT?
4. Discuss the issues of Bangladesh's concern.

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Training Manual on **WTO and Bangladesh Trade Policy**

Module

10

**The Development
Dimension
in the WTO
and Aid for Trade**

The Development Dimension in the WTO and Aid for Trade

Learning Objectives

- The aim of this particular module is to provide a clear idea about the Development Dimensions of the Doha Development Agenda (DDA).
- This module tries to provide a clear understanding about the development issues in the Doha Round, an analysis of Hong Kong Ministerial outcome from the perspective of developmental issues and current state of negotiation on Aid for Trade.

10.1 Introduction

The WTO is currently hosting a series of negotiations under the "Doha Development Agenda" launched in 2001. It is often argued that the global trading system has failed to provide expected benefits to the developing countries in general, and Least Developed Countries (LDCs) in particular. One evident example may be cited, where the share in global trade of the 49 poorest countries fell from 0.8 per cent to 0.4 per cent between 1980 and 1999. This declining trade share is compounded with the fact that areas of export interest to developing countries and LDCs continue to face high tariffs and non-tariff barriers, affecting their economic development and integration into the multilateral trading system (MTS). In this backdrop, drawing lessons from the Seattle Ministerial, the WTO promised "Something for Everybody" under the Single Undertaking towards an attempt to link trade issues with development. Consequently, the WTO Members agreed to launch new negotiations during the fourth Ministerial Conference in Doha, Qatar, in November 2001, and also agreed to work on other issues, including implementation of the present agreements. The subsequent negotiations, called the Doha Development Agenda (DDA), placed development policy at the top of the WTO agenda and interests and needs of the developing countries (together with LDCs) had been put at the heart of the negotiations. The imperative of coherence between trade policy and development policy has thus been made a central issue.

10.2 Development Dimension of the DDA

In the early two years after the Doha Ministerial the general feeling was that the development dimension of the DDA was focused mainly around the implementation

issues, S&DT work programme, technical assistance and capacity building, work programme on Small Economies, and working groups on technology transfer and on trade, debt and finance. But more recently, it is being felt that the development is a much broader cross-cutting issue and must be reflected in the results of all the areas being negotiated, including agriculture, non-agriculture market access (NAMA) and services. The current focus is clearly on improved and real market access, along with a certain degree of flexibility for pursuing appropriate domestic policies. It is now growingly recognised that global trading system has failed to provide prosperity to a number of developing countries, including the LDCs. Moreover the recognition of trade as an engine for growth has also been made and importance of effective and targeted aid to streamline trade has also been recognised. The issues of development dimensions are placed below.

10.2.1 Implementation Related Issues and Concerns

"Implementation" is short-hand for developing countries' problems in implementing the current WTO Agreements, i.e. the agreements arising from the Uruguay Round negotiations. In Paragraph 12 of the Doha Ministerial Declaration, Ministers stated "We shall proceed as follows: (a) where we provide a specific negotiating mandate in this Declaration, the relevant implementation issues shall be addressed under that mandate; (b) the other outstanding implementation issues shall be addressed as a matter of priority by the relevant WTO bodies, which shall report to the TNC by the end of 2002 for appropriate action". The implementation decision includes General Agreement on Tariffs and Trade (GATT), Agriculture, SPS measures, Textiles and Clothing, Technical Barriers to Trade, Trade-Related Investment Measures (TRIMs), Anti-dumping (GATT Article 6), Customs Valuation (GATT Article 7), Rules of Origin, Subsidies and Countervailing Measures, TRIPS and cross-cutting issues, outstanding implementation issues and final provisions.

10.2.2 Special and Differential Treatment

Special and Differential Treatment (S&DT) provisions in the WTO agreement is the recognition of the special problems that developing and LDCs face in integrating with global markets of goods, services, capital and labour due to their weak institutions, inadequate infrastructure, scarce human resource and countless supply side constraints. The WTO agreements contain special provisions which include, for example, longer time periods for implementing agreements, technical assistance and commitments or measures to increase trading opportunities for developing countries and LDCs.

Para 44 of the Doha declaration *reaffirmed* S&DT as integral part of the WTO, *raised concerns* over implementation of S&DT provisions, and *directed* that all S&DT provisions be reviewed to strengthen and to make more precise, effective and operational, and linked this work to the decision on 'Implementation related Issues and concerns'. There are 155 S&DT provisions out of which only 24 are related to the LDCs. However, a number of provisions lack clarity and specificity.

10.2.3 Capacity Building and Technical Assistance

Developing countries and LDCs require technical assistance to adjust to the WTO rules and disciplines, implement obligations, and exercise their rights as members. In Paragraph 41, under this heading (para 38–41), the WTO Member governments reaffirm all technical cooperation and capacity building commitments made throughout the declaration and add general commitments. The WTO Secretariat, in coordination with other relevant agencies, is to encourage developing country Members of the WTO to consider trade as a main element for reducing poverty and to include trade measures in their development strategies. The agenda set out in the Doha Declaration also gives priority to small, vulnerable, and transition economies, as well as to members and observers that do not have permanent delegations in Geneva. It is thus a strong apprehension from LDCs' perspective that technical assistance must be delivered by the WTO and other relevant international organisations within a coherent policy framework.

10.3 Hong Kong Ministerial Declaration: The Issue of Aid for Trade

Since 1940's the international community recognises the trade related challenges of developing countries. Therefore immediate need for trade related aid appeared to be important not only from the perspective of recipients LDCs, but also the donors. The objective behind the aid for trade initiative is to help the LDCs and developing countries to get integrated into the multilateral trading system by taking advantage of the liberalised trade and greater market access. In 2005, Aid for Trade received a big impetus when it was raised as an issue at the G8 meeting, the UN World Summit and at the WTO Hong Kong Ministerial Conference. Paragraph 57 of the Hong Kong Ministerial declaration state:

'...Aid for trade should aim to help developing countries, particularly LDCs, to build the supply-side capacity and trade-related infrastructure that they need to assist them to implement and benefit from WTO agreements and more broadly to expand their trade...' (WT/MIN(05)/DEC).

The Ministers also agreed that Aid for Trade cannot be a substitute for the development benefits that will result from a successful conclusion to the Doha Development Agenda, particularly on market access. Aid for Trade is not part of the Doha negotiating agenda. Hence it can be pursued and implemented independently over the Doha outcome. Both LDCs and developing countries have access to Aid for Trade targeted both to national and regional level projects. The WTO, in close collaboration with the World Bank and the IMF, is the focal point of the Aid for Trade agenda at the international level.

10.3.1 What is Aid for Trade?

Trade has the potential to be an engine for growth that lifts millions of people out of poverty. But many developing countries continues to face trade barriers that prevent them from reaping benefits out of the world trading system. Some of these barriers

including non-tariff barriers and traditional tariff barriers are in export markets which the Doha Round of multilateral trade negotiations aims to reduce or eliminate. Apart from those external barriers, LDCs are also traditionally constrained by their *internal barriers* to take advantage of various agreements of the WTO, such as, lack of supply side capacity, low level of human development and weak institutional and administrative capacities.

10.3.2 Rationale for Aid for Trade: To Address Supply Side Constraints

Targeting aid to overcome "supply side" constraints is what Aid for Trade is all about. Hence, the purpose of Aid for Trade is to help developing countries and LDCs to build infrastructure, stimulate trade, develop trade strategies, negotiate more effectively and implement outcomes. Aid for trade is a part of the overall development aid (ODA) – in a form of grants and concessional loans targeted at trade-related programmes and projects, but with the specific objective of helping both developing countries and LDCs to play an active role in the global trading system.

The typical supply side constraints faced by LDCs such as Bangladesh include the following features:

- (i) *Weak infrastructure*: One of the basic constraints to trade for the LDCs is their weak infrastructure which includes the lack of efficient port, road, warehouses, communications and energy.
- (ii) *Lack of good governance*: A number of LDCs had experienced poor governance which is characterised by corruption, lack of transparency, predictability and the rule of law.
- (iii) *Inefficient trade facilitation measures*: In order to facilitate trade, computerised documentation requirements have now become an inevitable component. Besides, the system of collecting of fees and charges also need to be modernised. LDCs lack this sort of services and their custom formalities are also a cumbersome process to some extent.
- (iv) *Limited support services*: LDCs have experienced limited support service in the form of marketing, freight forwarding, insurance and transportation.
- (v) *Limited access to capital/credit*: Access to credit and capital is vital for successful business as well as trading. LDCs have faced constraints to have these accesses.
- (vi) *Low research and innovation capacity*: Both for diversification and upgradation of products and processes, research and innovation plays key role. However, due to lack of technical and financial assistances, LDCs have a low research and innovation capacity.
- (vii) *Poor human resources and rigid labour regulations*: LDCs often become vulnerable due to poor or unskilled human resources and rigid labour regulations.

Therefore, Aid for Trade is needed to enhance LDC's *Trade policy and regulations* through building capacity to formulate trade policy, participate in negotiations and implement agreements. It will also facilitate to build economic infrastructure including roads, ports, telecommunications, energy networks in order to link products to global markets. One of the main assumptions for introduction of Aid for Trade is that it will build LDCs *productive capacity* in a form of strengthening economic sectors ranging from improved testing laboratories to better supply chains and to increase competitiveness in export markets. Moreover, *adjustment assistance* is placed for helping with any transition costs from liberalisation – preference erosion, loss of fiscal revenue, or declining terms of trade. Assistance is also demanded as a mechanism for the fair redistribution of benefits resulting from trade liberalisation. Market access for poor countries is meaningless if they do not have the opportunities to use this access. Hence, assistance as regards market access for poor countries is also an essential component of Aid for Trade.

10.3.3 Main Components of Aid for Trade

It was difficult to have a consensus about what should be included in the definition of Aid for Trade. The Aid for Trade Task Force makes the following distinction in their recommendations in 27 July 2006:

- Trade policy and regulation
- Trade development
- Trade related infrastructure
- Building productive capacity
- Trade related adjustment
- Other trade related needs

An emerging consensus exists about including *trade policy and regulation and trade development* in Aid for Trade definition. However, much less agreement exists on what should be included in the *trade related infrastructure and building productive capacity categories*. It could be limited to include only trade facilitation or additionally, include support for the private sector. The least amount of agreement exists on the inclusion of *adjustment costs*. This disagreement can be due to fear that inclusion increases the risk of aid used for influencing the positions of countries in negotiations. Another reason for this disagreement is that it multilateralises issues that some would view as bilateral.

10.3.4 Aid for Trade: Operational Modalities

Task Force Mechanism

In the Hong Kong WTO Ministerial in 2005, the WTO Director General was invited to create a task force to make recommendations about how Aid for Trade can be

operationalised. In February 2006, this task force was created with 13 members, comprising: Barbados, Brazil, Canada, China, Colombia, the European Union, Japan, India, Thailand, the United States and the coordinators of the ACP, the African Group and the LDC Group. The Permanent Representative of Sweden, Ambassador Mia Horn Af Rantzien, was appointed as the chair of the Task Force. The WTO Task Force on Aid for Trade concluded that additional, predictable, sustainable and effective financing is fundamental for fulfilling the Aid for Trade mandate. It was also decided that Aid for Trade was to be guided by the Paris Declaration on Aid Effectiveness.

Task Force took a broader definition to include supply side constraints. It recommended that all projects and programmes should be considered as Aid for Trade if these activities have been identified as trade related development priorities in the recipient country's national development strategies. On 27 July 2006, the Task Force distinguished five categories of Aid for Trade; trade policy and regulation, trade development, trade related infrastructure, building productive capacity and trade related adjustment.

But there is no consensus about what mechanism should be used for Aid for Trade. Three options appeared to be possible that includes: (i) use of existing mechanisms for Aid for Trade (three existing mechanisms are: *the enhanced integrated framework (EIF)*, *Joint Integrated Technical Assistance Programme* and *the Trade Integration Mechanism*); (ii) reform of the existing mechanisms; and (iii) creation of a new trade specific fund.

Aid for Trade Monitoring

Monitoring is important to build confidence that Aid for Trade will be delivered and effectively used. Monitoring can be performed by:

- Creating a "National Aid for Trade Committee" that includes recipient countries, donors, and other relevant stakeholders (TF recommendations 27 July 2006).

Box 10.1 Proposed Architecture of the Monitoring Framework

Annual Review

1. Measuring Aid for Trade

- *1st tier: Global Monitoring of Trade-related Aid Flows*
- *2nd tier: Donors' Self-assessment Reports*
- *3rd tier: In-country Assessments*

2. Monitoring the delivery and effectiveness of Aid for Trade

- *2nd tier: Donors' Self-assessment Reports*
- *3rd tier: In-country Assessments*

- The Committee on Trade and Development (CTD) is the logical monitoring body on a global level and an ideal forum in which periodic reviews of Aid for Trade can take place (TF Follow-Up Report 12 December 2006).

Role of the WTO for Monitoring and Evaluation

WTO is not a development agency. Its core function is trade opening, rule making, and dispute settlement. But the WTO does have a role and a responsibility to ensure that relevant agencies and organisations understand the trade needs of WTO Members and work together more effectively to address them. The WTO is well placed to play this role in the following manner:

- Direct interest in ensuring that all its Members benefit from trade and WTO agreements;
- Multilateral, consensus-based organisation where developing and developed countries have equal weight;
- Institutional experience in reviewing complex policy areas through Trade Policy Review Mechanism.

Monitoring and Evaluation will Take Place at Three Levels: Global level, monitoring will be based on the OECD data. The different levels of monitoring will assess whether additional resources are being delivered, identify gaps, highlight where improvements should be made and increase transparency on pledges and disbursements.

Donor level, monitoring will be based on self assessment, which will share information on best practices across countries. This assessment will also identify areas for improvement with a view to increase transparency on pledges and commitments, and extract finer details on Aid for Trade coverage.

Country and regional level monitoring will be also based on self assessment. These levels of monitoring and evaluation will provide a focused, on-the-ground perspective on whether needs are being met, resources are being provided, and subsequently, whatever the Aid for Trade initiative is effective.

10.4 Current State of Negotiations on Aid for Trade

10.4.1 The Current Debate regarding Aid for Trade

One of the issues for debate of aid for trade is the operationalisation of Aid for Trade. But it is not yet clear as to what mechanism should be used for financing, implementation and monitoring; that whether the existing mechanisms like the Enhanced IF would be used, or a new mechanism be created?

The debate is going on management mechanism, in relation to implementation of Aid, includes the role of WTO in these tasks and the inclusion of these agreements in the single undertaking of the Round (including the countries of region having

diverging views), as well as regional mechanism and institution (including the United Nations regional commissions).

Various Government's Stand on Aid for Trade

There have been debates focusing on what should be included in the Aid for Trade initiative? The African Groups at WTO in 2006 argued that Aid for Trade should help to meet trade system costs, including adjustment and implementation cost. It should also include capacity building to address supply side constraints. Finally, the African Group asked for support with regards to trade policy development and participation in rule making. On the other hand, the ACP Group at WTO argued that Aid for Trade should provide support for trade related economic adjustments. Technical assistance has been also demanded by the ACP Group. Lastly, the LDC Group pledged for supply side capacity building support. The EU in 2005 suggested that Aid for Trade must help developing countries to build their capacity to trade with a view to take advantage of market openings.

Availability of Resources

At the G8 Summit (2005), the WTO's Hong Kong Ministerial Conference (2005) and the Singapore Annual Meetings (2005) of the World Bank and the IMF, promises were made to scale up Aid for Trade. In these meetings a pledge was made that Aid for Trade would be financed through new money and not by reshuffling of resources. The Aid for Trade addresses both the need for additional resources and the need for a more effective delivery system. However, availability of additional fund is a challenge ahead. The Task Force emphasises the need to establish a clear baseline measurement of "what is being done today", in order to assess "additionality and the adequacy of funding available to meet Aid-for-Trade needs" (TF Follow-Up Report 12 Dec 2006).

Integrated Framework vs Aid for Trade

Integrated Framework (IF) was adopted in 1997 with the objective of helping LDCs to formulate, negotiate and implement trade policy. It was agreed by six multilateral

Table 10.1 Donors' Commitments on Aid for Trade Upto and During Hong Kong Ministerial

2001-2004	annual average of EUR 2.0 billion
2004	annual average of EUR 2.4 billion
EU Member States	EUR 2 billion per year by 2010
USA	USD 2.7 billion a year by 2010 for: Physical infrastructure and Trade facilitation
Japan	USD 10 billion over the next 3 years for: Trade, Production and Distribution infrastructure

agencies, such as IMF, ITC, UNCTAD, UNDP, the World Bank and the WTO. But IF suffered from shortcomings, such as,

- *Inadequate and Unpredictable Resources*: only US\$ 100 million for all LDCs;
- *Complex Management*: Reliance on multiple donors and agencies complicated the IF process-six agencies had different objectives and working methods;
- *Weak IF Governance*: Lack of coherence, lack of accountability and ineffectiveness in the administration.

Bangladesh was the first country to prepare an assessment of its trade related technical assistance needs in 1999. Thirty-two proposals were made, out of which only one project on leather was implemented by the ITC. In view of the failure of the existing IF, new initiative to adopt an Enhanced IF (EIF) is being proposed. However, EIF also suffers from lack of sufficient funds as only \$400 million is placed for 50 LDCs, and more importantly, full commitment is never materialised.

Box 10.2 How should Aid for Trade Work?

The donors need to take actions on the "supply side", such as:

Provide additional funding : Aid for Trade should not divert resources away from other development priorities, such as health and education

Scale up trade expertise and capacity: Trade and growth issues need to be better integrated in donors' aid programming. Trade expertise needs to be strengthened - both in capitals and in-country

Make trade a priority: Trade needs to be a bigger part of national development strategies. Aid for Trade will only work if countries decide that trade is a priority

Take ownership: Countries need to determine their own Aid for Trade plans, involving all stakeholders

Focus on results-oriented "business plans": Aid for Trade is an investment, not just a transfer. The question is not only how much Aid for Trade is available, but whether it is effective and actually benefits developing countries. On the other hand to bridge the gap between supply and demand both donors and recipients need to take a number of initiatives, including:

Improve cooperation: The challenge of Aid for Trade is to marshal the efforts of many and to create the right incentives so that recipients and donors work together more effectively

Involve the private sector: It is businesses, not governments that trade. Financial resources flowing from increased private investment and trade easily dwarf government aid

Improve transparency and accountability: Best way to ensure that pledges are honoured, needs are met, and financial assistance is used effectively, is to shine a brighter spotlight on Aid for Trade.

10.4.2 Concerns Regarding Aid for Trade

Is Aid for Trade Consolation Prize for a Failed Doha Agenda?

Some would like to see Aid for Trade rather outside the Doha agenda so as not to lose it if the whole Doha package fails. On the other hand, Aid for Trade is increasingly considered as a critical element to successfully complete the DDA, although it is apprehended that Aid for Trade is a miserable prize for the losses the poorest countries are expected to have from the Doha Agenda. Consequently, it is demanded that Aid for Trade must complement a reformed multilateral trading system that meets diverse and diverging interests.

Is the WTO the Best Forum to Operationalise Aid for Trade?

The WTO, in close collaboration with the World Bank and the IMF, is the focal point of the Aid for Trade agenda at the International level. Yet the WTO lacks the necessary expertise to identify and prioritise countries' needs, and assess *aid delivery* and *effectiveness*, and so will not be able to effectively operationalise Aid for Trade.

What are other Potential Consequences of Bringing Aid for Trade into the WTO?

It has been pointed out that introducing aid complicates developing countries negotiating strategies. Aid for Trade task consumes scarce time, resources and negotiation capacity of the LDCs. It is also possible that Aid for Trade may be used to pressure developing countries because developed countries are expected to gain a lot from these open markets. Developed countries can use Aid for Trade as a payment to buy 'progress' in a Doha round or influence the position of aid receiving countries in the Doha negotiations.

10.4.3 General Council Debate

The Task Force (TF follow-up 12 Dec 2006) recommends "an annual debate on Aid for Trade convened in the WTO General Council to give political guidance". This exercise places the general emphasis of the Aid for Trade where it should be, with individual WTO Members as donor and recipients. One option would be to hold the debate in the context of a General Council meeting, dedicated to "Coherence", with the participation of not only the WB and the IMF, but also OECD, regional development banks and relevant UN agencies - emphasising the WTO's shared responsibilities with other international and regional agencies.

Current State of Play

Issues for debate centre around the operationalisation of Aid for Trade, such as:

- What mechanism should be used for financing, implementing and monitoring? Make use of existing mechanisms, like the Enhanced IF, or create a new mechanism?

- The debate on management mechanism, which is in relation to implementation of aid, includes the role of WTO in these tasks.

Availability of Additional Resources

The first global review of Aid for Trade was held on 20-21 November 2007 to take stock of what is happening and to identify what should happen next and how to do better monitoring and evaluation. The outcome, however, was not encouraging in terms of clarity of roadmap and commitments by the donors. Hence, the seriousness of donors as regards Aid for Trade agenda has come under scrutiny. There have been some increase in commitment since the launch of the Doha Round, but to date, donors have limited their support to traditional trade related assistance, rather than tackling the boarder and more pressing constraints faced by developing countries, particularly strengthening productive capacities, building trade related infrastructure and financing adjustment costs.

Monitoring of Aid for Trade

The WTO, together with regional banks and governments organised regional reviews on Aid for Trade in Peru, Lima on 13-14 September 2007; in Manila, the Philippines on 19-20 September 2007; and in Dar-es-Salaam, Tanzania on 1-2 October 2007. The main objectives of these regional reviews were to underline the importance of trade in development policies, identify the main capacity constrains to export growth, emphasise the importance of comprehensive national and regional trade strategies and encourage developing countries to prepare Aid for Trade strategies. A meeting is due to be held during June/July 2008 to measure the effectiveness. How the effectiveness will be measured-is an issue for further discussion.

10.5 Implications and Strategies for Bangladesh

In order to take advantage of the Aid for Trade package, Bangladesh should be proactive in terms of identifying its priorities and place requests at the appropriate moment. Design and implementation of a trade strategy will be the first, and perhaps the most critical, building block to improve Bangladesh's global competitiveness and productivity; the nation should also generate resources on its own to develop and implement its trade strategy. Funds under Aid for Trade are grants and free of conditionality. Hence Bangladesh should take advantage of the Aid for Trade initiative. The timing for approaching funds under Aid for Trade is important since there is considerable goodwill from both the donors and the recipient countries. Bangladesh should also take ownership in determining its Aid for Trade plans, involving all stakeholders, both in the public, private and regional stakeholders. The government has to prepare its own list of projects. These projects should be large in size, as opposed to small in case of EIF. Bangladesh can be a potential candidate for two-three good infrastructural projects, for example, Deep Sea Port, Dhaka-Chittagong highway (6 lane), development of Mongla Port. Bangladesh should also

generate resources on its own to develop and implement its trade strategy from other sources such as government itself, multilateral donors, regional banks, private sector and private investors. Bangladesh can take lessons from the IF which suffered from implementation gap, and utilise the Aid for Trade resources to meet her own requirements. In order to benefit from Aid for Trade, a prioritised national plans as well as political commitment are needed.

10.6 Summary

- Major focus of the Doha Development Agenda (DDA) is on the area of implementation issues, S&DT consensus, technical assistance and capacity building, debt and finance management and technology transfer to small economies.
- Trade can be an engine for growth and poverty reduction. However, due to lack of supply side capacity, LDCs and developing countries are unable to fully take advantage of trade. Foreign aid, provided with a view to promote trade and reduce supply side bottlenecks, has come to be recognized as Aid for Trade.
- A pledge was made that Aid for Trade would be financed through new money and not by reshuffling of resources.
- Aid for Trade is part of the overall development aid - grants and concessional loans targeted at trade-related programmes and projects, but with the specific objective of assisting developing countries (in particular the least developed), to play a more enhancing economic active role in the global trading system and to use trade as an instrument for growth and poverty alleviation.
- Starting with formulating appropriate trade policies to building economic infrastructure and productive capacities, Aid for trade is needed for a wide range of purposes. Furthermore, there have been debates on what should be included in the Aid for Trade package.
- Monitoring is an important aspect with regards to building confidence that Aid For Trade will be timely delivered and effectively used.
- Aid for Trade is increasingly considered as a critical element to successfully completion the DDA.
- Operationalisation of Aid for Trade is a key issue. It is not yet clear as to what mechanisms would be used for financing, implementing and monitoring Aid for Trade funds.
- In order to take advantage of the Aid for Trade initiative, Bangladesh should be proactive in terms of identifying her priorities and placing requests at an appropriate time.

10.7 Questions for Discussion

1. What is a round?
2. Why Doha Round is termed as development round?
3. What are the development contents of the Doha round?
4. What is the official dateline for completion of Doha Round?
5. Is there any progress achieved in the Hong Kong Ministerial for terms of development dimension?
6. What are the components of Aid for Trade?
7. What are the implications of Aid for Trade in Bangladesh?
8. What is the role of WTO in Aid for Trade?

Documents/Sources Used in Preparation of this Module

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Annex 10.1

Development Dimensions

Doha Mandate	July 2004 Framework	Hong Kong Ministerial Declaration	Post Hong Kong Developments and Key Issues
<ul style="list-style-type: none"> Preference Erosion 	<ul style="list-style-type: none"> Framework recognises the problems faced by non-reciprocal preference beneficiary members in the context of MFN liberalisation. 	<ul style="list-style-type: none"> Negotiation Group requested to intensify work. 	<ul style="list-style-type: none"> Informal consultations held covering preference erosion.
<ul style="list-style-type: none"> Duty and Quota-Free Market Access for LDCs 	<ul style="list-style-type: none"> Reaffirms the commitments made at Doha. 	<ul style="list-style-type: none"> Duty and quota-free market access for all products originating from LDCs by 2008. Members experiencing difficulties in doing so shall provide duty and quota-free market access for at least 97 per cent of LDC-originating products. 	<ul style="list-style-type: none"> Precise degree of coverage of products per market. Concerns that main products of interest to LDCs can be excluded from the duty and quota-free commitment. How best to ensure that preferential rules of origin for LDCs are both transparent and simple.
<ul style="list-style-type: none"> Aid for Trade 		<ul style="list-style-type: none"> The Director General was mandated to create a task force that shall provide recommendations to the General Council by July 2006 on how to operationalise aid for trade and ensure an effective contribution to the development dimensions of the Doha Development Agenda. 	<ul style="list-style-type: none"> The Director General named a 13-Member task force, including both donor and recipient countries.
<ul style="list-style-type: none"> Integrated Framework 	<ul style="list-style-type: none"> The Council welcomed and further encouraged to improve coordination with other agencies, including the Integrated Framework for TRTA 	<ul style="list-style-type: none"> Acknowledged the endorsement by the World Bank and the IMF at its 2005 meeting of an enhanced IF. Acknowledged the establishment of a Task Force by the IF Working Group as 	<ul style="list-style-type: none"> Awaiting the recommendations of the Task Force. Broad agreement on maintaining the scope/

Doha Mandate	July 2004 Framework	Hong Kong Ministerial Declaration	Post Hong Kong Developments and Key Issues
<p>for the LDCs and the Joint Integrated Technical Assistance Program (JITAP).</p>	<p>endorsed by the IF Steering Committee (IFSC) as well as an agreement on the three elements which together constitute an enhanced IF. The Task Force, composed of donor and LDC members, will provide Recommendations to the IFSC by April 2006. The enhanced IF shall enter into force no later than 31 December 2006.</p>	<p>The Task forces shall provide recommendations on how the implementation of the IF can be improved, inter alia, by considering ways to: provide increased, predictable, and additional funding on a multi-year basis; strengthen the IF in-country, including through mainstreaming trade into national development plans and poverty reduction strategies; more effective follow-up to diagnose trade integration studies and implementation of action matrices; achieving greater and more effective coordination amongst donors and IF stakeholders, including beneficiaries; improve the IF decision making and management structure to ensure an effective and timely delivery of the increased financial resources and programmes.</p>	<p>coverage of the IF, but ongoing debate on how best to structure the management of the programme.</p>
<p>• Agreement stipulated that all S&DT provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational. Members</p>	<p>• No new commitment was made, however, the important elements of the work program are:</p> <ul style="list-style-type: none"> • Ministers' decision at Doha to review all S&DT provisions 	<p>• Developed (and developing if possible) countries will provide duty and quota-free market access to all products originating from LDCs by no later than 2008 or the start of the implementation period. For those Members facing difficulties in doing so will provide access for at least 97 per cent of all products.</p>	<ul style="list-style-type: none"> • Work continues in the CTD and in other negotiating bodies. • Lack of progress with respect to Category II proposals remains source of concern.
<p>• Special and Differential Treatment</p>	<p>• Agreement stipulated that all S&DT provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational. Members</p>	<p>• Developed (and developing if possible) countries will provide duty and quota-free market access to all products originating from LDCs by no later than 2008 or the start of the implementation period. For those Members facing difficulties in doing so will provide access for at least 97 per cent of all products.</p>	<p>Work continues in the CTD and in other negotiating bodies.</p>

(Continued Annex 10.1)

Doha Mandate	July 2004 Framework	Hong Kong Ministerial Declaration	Post Hong Kong Developments and Key Issues
<p>endorsed the work programme on S&DT as set out in the Decision on Implementation-Related Issues and Concerns.</p>	<p>'with a view to strengthening them and making them more precise, effective and operational' is recalled.</p>	<p>Continuation of the two track process.</p>	<ul style="list-style-type: none"> • Continuation of the two track process. • Renewal of the determination to fulfill the Doha mandate regarding the review of all S&D provisions. • CTD to resume work on outstanding issues.
<ul style="list-style-type: none"> • Commitment to review all S&DT provisions in the WTO agreements 'with a view to strengthening them and making them more precise, effective and operational', and to consider the legal and practical implications of converting them 	<ul style="list-style-type: none"> • Two track process established before Cancun Ministerial is recognised. 	<ul style="list-style-type: none"> • Lack of progress on Category II proposals. 	<ul style="list-style-type: none"> • Annex F contains decisions on the 5 LDC-specific proposals. In addition to the above described decision on duty-free and quota-free market access, the other proposals approved are: (23) "Understanding in Respect of Waivers of Obligations under the GATT 1994 providing easier access to GATT waivers to LDCs; (38) "Decision on Measures in Favour of Least Developed Countries," that urges donors, multilateral agencies and IFIs to coordinate their work to ensure that LDCs are not subjected to conditional ties inconsistent with their rights and obligations under the WTO Agreements; (84) "Agreement on Trade-Related Investment Measures" that allows LDCs to deviate from obligations until 2020; and (88) "Decision on Measures in Favors of LDCs that directs the WTO to coordinate efforts to increase aid for trade, underscoring the compliance with WTO obligations that such commitment takes into account each LDC's administrative and institutional capabilities.
<ul style="list-style-type: none"> • Reaffirmed that provisions for special and differential treatment are an integral part of the WTO agreements 	<p>CTD was also instructed 'to address all other outstanding work, including cross-cutting issues, the monitoring mechanism and the incorporation of S&D treatment into the architecture of WTO rules'. No deadline was set.</p>	<p>Committee on Trade and Development is tasked with Category I proposals, whereas other WTO bodies deal with Category II proposals. Deadline is set for July 2005.</p>	<ul style="list-style-type: none"> • CTD was also instructed 'to address all other outstanding work, including cross-cutting issues, the monitoring mechanism and the incorporation of S&D treatment into the architecture of WTO rules'. No deadline was set.
<ul style="list-style-type: none"> • Commitment to consider, in the context of the Doha Work Programme, 'how special and differential treatment may be incorporated into the architecture of the WTO. 			

Training Manual on **WTO and Bangladesh Trade Policy**

Module

11

Special and _____
Differential _____
Treatment in the _____
WTO _____

Special and Differential Treatment in the WTO

Learning Objectives

- The aim of this particular lecture is to provide a basic idea about the notion of special and differential treatment in multilateral trading system.
- Learners will learn about the issue of special and differential treatment, its evolution, rationale and its scope and coverage within WTO.
- Learners will also learn about the current debates on the structure and design and subsequent enforcement of S&DT in the MTS.

11.1 Why Special and Differential Treatment and What is it ?

General Agreements on Tariffs and Trade (GATT) and its successor the World Trade Organization (WTO) granted developing countries special right and privileges through a number of special and differential provisions to increase the development relevance of international trading system. From its very onset, the underlying notion of S&DT urged advanced countries (ACs) to give to the developing countries (DCs) access to their markets without reciprocity in order to reap the benefit from export growth, and consequently economic development, for the DCs. S&DT has been described by the experts in the following terms, "To call something 'special treatment' is to say that the person getting the treatment is getting an unfair advantage. However, in the same way we wouldn't tell stair-lifts for wheelchair users or Braille writings for the blind 'special treatment', we should not call the higher tariffs and other means of protection 'special treatment'- they are just differential treatments for countries with different capabilities and goal." (Chang, 2005). Special and Differential Treatment (S&DT) has been an integral part of the multilateral trade rules right from the Havana Charter and re-emphasised its importance till the Doha Development Round (DDR) of the multilateral trading negotiations.

Special and differential treatment (S&DT) provisions in the multilateral trading system emerged as recognition of the specific problems that developing countries (DCs) and least developed countries (LDCs) were facing in their effort to integrate with global markets for goods, services, capital and labour. WTO Member Countries generally tend to agree that most of the LDCs have not been able to benefit fully and equitably from a liberalising global trade environment because of their weak institutions,

inadequate infrastructure, weak bargaining capacity, scarce human resources and formidable supply side constraints. On the part of developed countries, the offer of S&DT was also informed by the fact that if DCs and LDCs fail to integrate with the global trading system from a position of strength, it will limit the overall benefits in terms of global welfare that could potentially originate from the ongoing process of liberalisation and globalisation. The S&DT provisions in the various WTO Agreements were designed to address these concerns.

At the Doha Ministerial Conference of the WTO, member states in their joint declaration on 14 November 2001 (WT/MIN/(01)DEC/1), reaffirmed that S&DT provisions are an integral part of the WTO agreement. The Ministerial declaration stressed that integration of LDCs into the multilateral trading system will require meaningful market access, support for diversification of their production and export base, and trade-related technical assistance and capacity building. S&DT provisions were to play a critically important role in achieving these objectives. The Hong Kong Ministerial meeting further reiterated this support and reaffirmed that "provisions for special and differential (S&D) treatment are an integral part of the WTO Agreements". However, S&DT provisions in the WTO have come under increasing criticisms. It is these concerns that led to the inclusion of paragraph 44 of the Doha Ministerial Declaration which stipulated that, "members agreed that all S&DT provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational". The recent report by the Consultative Board to the Director General of the WTO also states that "S&DT is part of the legal acquis and remains a valid concept, although the mechanisms of S&DT have to be compatible with WTO aims".

In identifying theoretical rationale for granting of temporary S&DT to DCs and LDCs in terms of both protection of domestic market and also ensuring preferential market access as part of WTO agreements, Conconi and Perroni, 2004 have argued that, under the WTO rules, S&DT can be interpreted as a "transitional equilibrium feature of a self-enforcing international agreement between a developed and a developing country, where both transitional and post-transitional policy choices can be sustained by each party because of the policy path followed by the other". So, in a way S&DT provisions in GATT/WTO reflected a confluence of interests of both DCs and LDCs on the one hand, and the Developed Market Economies (DMEs) on the other.

11.2 S&D Treatment and its Rationale in Current MTS

According to UNCTAD, in 2004, LDCs share in world trade (export plus import) stood at 0.68 per cent (approximately \$13 billion), compared to 3.06 per cent in 1954,¹ although it is true that the share of the LDCs in global export has increased marginally from 0.46 per cent to 0.58 per cent between 1998 and 2003, and that their share of import has also

¹It should, however, be kept in mind that LDCs, as a distinct sub-strata among the developing countries was identified by the UN only in 1971.

registered a marginal increase from 0.69 per cent in 1998 to 0.71 per cent in 2003.² In this connection, it is pertinent to remember that the top 5 exporters among the LDCs in 2003 (Angola, Bangladesh, Yemen, Equatorial Guinea and Myanmar) accounted for about 57 per cent of the total exports of the group. This process of concentration within the LDC group has been on the rise in the recent past, which would mean that the overwhelming majority among the LDCs are being marginalised at an accelerated pace. More than half of the LDC population continues to live on less than \$1 a day, while about 81 per cent live on less than \$2 a day. The number of people living in extreme poverty in LDCs is likely to increase from 334 million in 2000 to 471 million in 2015 (UNCTAD, 2004). It is in the aforesaid context that relevance and role of S&DT provisions in the WTO need to be reviewed and examined as tools that aspire to address and correct the existing vulnerabilities of the LDCs in the multilateral trading system. This Special Treatment could be achieved through providing greater access in the markets of the developed countries, allowing them greater flexibility to pursue policy options with fewer obligations and commitments.

11.3 How S&DT Become an Important Issue for Developing Countries

After the WWII, negotiations for establishing international trade organisation (ITO) took place between November 1947 and March 1948, where the interests of developed countries got priority. The developing countries were asked to introduce an additional clause in order to protect their infant industries which were not in a position to compete with the advanced countries.³ But due to the reservation from the US Congress, no special provision was incorporated in the original GATT code.

Since the establishment of GATT, there was no formal difference between the contracting parties, even though 11 members of the total 23 GATT contracting parties were so called developing countries. It was in the GATT review session in 1954-55 where developing countries were allowed to derogate from their scheduled tariff structure (i.e. article XVIII: B allowed the countries which are at early stage of development to use quantitative restrictions). During the 1950s the Prebisch-Singer thesis stipulated the declining tendency of prices of primary products in relation to manufacturing products. Around the same time, the notion of 'equity⁴ and justice' also came about, which 'reflects towards the internalisation of welfare state principles by introducing at the international level such legal concepts as the collective responsibility of the community for the social and economic development of the members'. The doctrine of S&DT is normally associated with the name of Dr Raul

²Petroleum and petroleum product exports from LDCs estimate 33 per cent of total LDC export to the world (for the US market, the share was as high as 63.3 per cent).

³"Developing countries submitted more than 800 amendments in Havana reflecting their demands on commodity price controls, qualitative restrictions for the balance of payments and longer deadlines for commitments" (Khorana, 2006).

⁴Mr Tammes rightly remarked that the differential treatment of developing states "was reminiscent of the Aristotelian definition of equality as requiring that the unequal should be treated unequally" (Yearbook of the ILC, 1968, vol 1, p. 208, cited in Yusuf, 2980: 492).

Prebisch, the first Secretary General of UNCTAD, and was intended to promote the notion of industrialisation. The inward-oriented trade measures of the late 1960s and early 1970s were paralleled by outward-oriented demands for preferential access to developed-country markets. Unilateral trade preferences became an integral part of S&DT, culminating in a resolution of the second United Nations Conference on Trade and Development (UNCTAD) in 1968. UNCTAD II recommended the establishment of a voluntary GSP that was 'generalised, non-reciprocal and non-discriminatory' amongst beneficiary countries. The creation of New International Economic Order (NIEO)⁵ during 1970s further put forward the demand for developing countries' market access.

11.4 A Brief Review of S&D Treatment in the WTO

11.4.1 From GATT to the WTO

GATT started by treating all contracting parties as equal and without any S&DT provisions. All the 23 original contracting parties of GATT, 11 of which would today fall into the category of developing countries, took on all the obligations without any exception. The adoption of Article XVIII in 1955 is the first instance of S&DT provisions being incorporated into GATT. This Article allowed countries at an 'early stage of development' and those that could only support 'low levels of living standards' to adopt measures otherwise restricted by GATT. Incidentally, even though fairly imprecise, these phrases still remain the closest definition that we have of a developing country. Later, in 1966, a Part IV on Trade and Development was added to the General Agreement, containing three new S&DT provisions. Article XXXVI called for the Contracting Parties to provide more favourable market conditions for products of export interest to the developing countries, notably primary and processed products, and introduced the principle of 'less than full reciprocity'. Article XXXVII called for the highest priority to be given to the elimination of restrictions that differentiated between primary and processed products and required the participants to take full account of the impact of trade policies permitted under the GATT on the trade interests of developing countries. And finally, Article XXXVIII called for joint action by the contracting parties through international arrangements to improve the market conditions of products of export interest to developing countries.

More than ten years later, in 1979, one of the more fundamental provisions of the multilateral trading system, the so-called Enabling Clause, was adopted. This clause established the principle of differential and more favourable treatment for developing countries and laid the legal basis for the granting of preferential market access (both with respect to tariffs and non-tariff measures) by developed countries in favour of products originating in developing countries, without having to extend the same treatment to other contracting parties. It also allowed developing countries to opt out

⁵Elements of the NIEO included: (i) additional preferential market access to developed country markets; (ii) changes in international primary commodity markets to reduce price volatility and declines; (iii) increased foreign aid; (iv) technology transfer; and (v) revision of the international monetary system to finance the recurring deficits." (Hoekman and Özden, 2005).

of certain plurilateral agreements that were being finalised, the so called Tokyo Round codes.⁶ Interestingly, the Enabling Clause also introduced (implicitly) the principle of 'graduation', by stating that the capacity of developing countries to make contributions to the GATT system of rights and obligations would increase with the improvement over time of their economic and trade situation.

The Uruguay Round Agreements (1995) introduced a number of provisions aimed at promoting the participation of developing and least developed countries in international trade and at addressing their particular concerns. The developing countries obtained a number of new and strengthened S&DT provisions in the form of less onerous commitments, exemptions from certain disciplines and extended transitional time frames for implementation of the new rules and technical assistance. At the same time developed countries committed or made best endeavour offers to improve market access for products and service sectors of interest to developing countries, and to implement the agreements in ways that were beneficial (or least damaging) to the interest of developing countries. Special provisions for LDCs were also included.

Table 11.1 Major Milestone of S&DT during the Pre and Post-Uruguay Round

Period	Incidents	Reason/remarks
1947	Havana Conference	Creation of GATT. Concept of preference rooted. Developing countries submitted 800 amendments in Havana reflecting their demands.
1954-55	GATT Review Session, 1954-55	Permitted DC's to derogate from their scheduled tariff commitments, and included Article XVIII(B), to allow countries at an 'early stage of development' to use QR's for BOP purposes and Article XVIII(C), to allow countries that could only support 'low levels of living standards' to impose trade restrictions to support infant industries.
1964-67	Kennedy Round Negotiations	3 new Articles, XXXVI to XXXVIII were introduced in Part IV of GATT dealing specifically with Trade and Development. Underlying objectives: DCs should not be expected to take on obligations inconsistent with their levels of development. Measures adopted: <ul style="list-style-type: none"> • provisions for more favourable market access conditions to products of export interest to DC's, introducing the concept of non-reciprocity; • elimination of restrictions which differentiate unreasonably between primary and processed products; and • establishment of the CTD to review the application of Part IV.
1968	Second Meeting of UNCTAD	The Generalized System of Preferences Scheme was adopted through Resolution 21 (II) to "allow the generalised, non-reciprocal, non-discriminatory system of preference in favour of the developing countries, including special measures in favour of the LDCs to increase their export earnings, promote industrialisation; and accelerate rates of economic growth." (Khorana, 2006).
1971	GSP came into force	EU, Japan, Norway started first, followed by the other countries later.
1976		USA initiated GSP from 1976.
1979	Enabling Clause	Members adopted the Decision on Differential and More Favourable Treatment, Reciprocity, and Fuller Participation of Developing Countries.
1997	Seattle Ministerial	Reaffirm the importance of S&DT, and put forward the notion of Duty-Free and Quota-Free market access for the LDCs.
2001	Doha Ministerial	Reaffirmed that S&DT provisions are an integral part of the WTO agreement.
2005	Honk Kong Ministerial	DF-QF market access becomes multilateral (earlier GSP was unilateral).

Source: Adopted from various sources.

⁶Some analysts feel that this marked the zenith of S&DT in the GATT since it allowed developing countries not to take on certain obligations; a flexibility that was later considerably diluted by the concept of the 'single undertaking' used during the Uruguay Round.

However, as the Uruguay Round Agreements were implemented, developing country members began to express certain concerns in the context of the benefits that they had hoped would come out of the S&DT provisions. In large part their concerns, first expressed in the build up to the Seattle Ministerial Conference as part of the larger 'implementation issues', were related to the perceived ineffectiveness of some of these provisions because of the best endeavour language they were couched in. In any case, these concerns continued to be expressed, including in the preparatory process to the Doha Ministerial Conference.

As the concept of preference was rooted in the Havana Conference, therefore S&DT was very much there from the onset of the GATT. Table-1.1 illustrates the milestones of the S&DT from pre-GATT to the WTO.

11.4.2 The Doha Declaration and Beyond

The recognition in the Doha Ministerial Declaration of the need to review the S&DT provisions is a reflection of these concerns. Paragraph 44 of the Doha Ministerial Declaration reaffirmed that "provisions for special and differential treatment are an integral part of the WTO Agreements" and directed that "all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational." Ministers also endorsed the Work Programme on special and differential treatment set out in the Decision on Implementation-Related Issues and Concerns and directed Members "to identify those special and differential treatment provisions that are already mandatory in nature and those that are non-binding in character, to consider the legal and practical implications for developed and developing Members of converting special and differential treatment measures into mandatory provisions". Members were also asked to "examine additional ways in which special and differential treatment provisions can be made more effective" and to "consider, in the context of the Work Programme adopted at the Fourth Session of the Ministerial Conference, how special and differential treatment may be incorporated into the architecture of WTO rules". The Ministers also directed that a report be made "to the General Council with clear recommendations for a decision by July 2002".

Paragraph 44 of the Doha Ministerial Declaration along with paragraph 12.1 of the Decision on Implementation-Related Issues and Concerns provided the basis of the work that Members have carried out since the Doha Ministerial Conference. A very large number of Agreement specific proposals were made, mainly by the LDCs and the African Group and although the Special Session considered many of the proposals, both in open-ended informal meetings and smaller plurilateral consultations, positions could not be bridged on most of them.

In its report to the General Council in February 2003, the Special Session reported that "an important area of difference has been the interpretation of some aspects of the Doha Mandate. While Members recognised the importance that Ministers

attached to the S&DT work programme, and accepted the need to review all S&DT provisions 'with a view to strengthening them and making them more precise, effective and operational', there were significant differences on how this could be achieved. Some Members considered that one way to make S&DT provisions more precise, effective and operational, was to make them mandatory by changing the existing language of some of the 'best endeavour' provisions, and that doing so was part of the mandate. Others did not wish to consider amending the text of the Agreements or otherwise altering what they considered to be the existing balance of rights and obligations. Some delegations held the view that such proposals might be best referred to negotiating bodies, while others did not consider that this was a course consistent with the Doha Mandate. The General Council took note of this report and directed its Chairman to carry out further work on this issue.

In the course of the work carried out in the General Council, Members did finally agree to make recommendations for possible adoption by Ministers at Cancun on 25 Agreement-specific proposals. During consultations carried out in Cancun by the facilitator on development issues, some developing countries had expressed concern about the value of these recommendations, contained in Annex C of the draft Ministerial text and reiterated their view that the proposed package should be strengthened by the addition of some more Agreement-specific proposals. Accordingly, in an endeavour to meet these concerns, a further three recommendations were included in Annex C at Cancun. However, these 28 recommendations are yet to be adopted by the Members and therefore remain only as text that has been agreed to in principle.

A number of systemic and institutional cross-cutting issues were also raised both in Members submissions and the subsequent discussions on those submissions. These included issues relating to the principles and objectives of special and differential treatment; a single or multi-tiered structure of rights and obligations; utilisation; and universal or differentiated treatment, including graduation. The discussions showed that there were evidently major differences of opinion on most cross-cutting issues. Some Members felt that these issues were important, in some cases as fundamental, which should be examined in greater depth. These Members were of the opinion that an improved understanding on these issues would facilitate consensus on the Agreement-specific proposals whereas others felt that the principles and objectives of S&D treatment were already reflected in Part IV of GATT 1994 and questioned whether these issues were within the mandate of the Doha Ministerial Declaration. Some Members also felt that, in certain cases, differentiation amongst developing country Members would be necessary if special and differential treatment was to be made effective and targeted. The question of the definition of developing countries was also raised in this context, with some Members saying that such a definition was necessary to make special and differential treatment more precise, effective and operational and to confer legal predictability and certainty regarding the beneficiaries. A large number of Members however disagreed, saying that any attempt to

differentiate amongst, or define a developing country went beyond what the Ministers had mandated at Doha.

11.5 S&DT Provisions by Type and Agreement

There were a total of 154 S&DT provisions incorporated within the GATT structure and of these, 12 provisions were aimed at increasing trade opportunities, 49 provisions called upon WTO Members to safeguard the interest of DC's, 30 provisions offered flexibility of commitments, 18 provisions were for providing transitional time periods, 14 provisions were related to technical assistance and finally, 22 provisions were particularly placed in favour of least developed countries. The following types of S&DT provisions can be found in the UR Agreements.

11.5.1 Provisions Aimed at Increasing Trade Opportunities of Developing Countries

This provision basically encourage developed countries to adopt positive measures which would result in increased trade for DC's. For example, Article XXXVII of the GATT 1994, provides that: "...the developed ...[Members] shall to the fullest extent possible ... accord high priority to the reduction and elimination of barriers to products currently or potentially of particular export interest to ... [developing countries]." Therefore this provision creates opportunities to increase trade of developing countries.

11.5.2 Measures Safeguarding the Interests of Developing Countries

This provision requires developed country Members to take into account the special situation of developing countries before imposing any measures which might affect their trade interests. For example, Article 10(1) of the SPS Agreement states that, "In the preparation and application of SPS measures, Members shall take account of the special needs of developing country Members, and in particular of the least developed country Members." Similarly, Article 15 of the Anti-Dumping Agreement states "It is recognized that special regard must be given by developed country Members to the situation of developing country Members when considering the application of anti-dumping duties." Through this provision developing country members can adopt special safeguard measures.

11.5.3 Provisions Permitting the Assumption of Lesser Obligations by Developing Countries

A number of provisions permit developing country members to take lesser obligations. In Agriculture, for example, developed countries had to reduce their tariffs by 36 per cent over a six-year period, while developing countries by 24 per cent over ten-years. Minimum tariff reduction on each tariff line was: Developed countries 15 per cent and developing countries 10 per cent. With the exception of Anti-

Dumping Agreement and Pre-Shipment Inspection Agreement, almost all the agreements contain longer transitional periods for developing countries.

11.5.4 Provisions Relating to Transitional Periods

With the exception of Anti-Dumping Agreement and Pre-Shipment Inspection Agreement, almost all the agreements contain longer transitional periods for developing countries. For the TRIPS & TRIMS, developing countries were given 5 years to comply with their obligations. For customs valuation, developing countries which were not parties to the Tokyo Round Code on Customs valuation were given 5 years to comply with their obligations. These provisions are legally enforceable.

11.5.5 Provisions Relating to Technical Assistance

A number of S&DT provisions also put forward the notion of technical assistance by the developed country member. For example, Art. 9 of the SPS Agreement, provides that: "Members agree to facilitate the provision of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organisations. Where substantial investments are required in order for an exporting developing country Member to fulfil the sanitary or phytosanitary requirements of an importing Member, the latter shall consider providing such technical assistance." As noted earlier, 14 provisions were related to technical assistance.

11.5.6 Provisions Relating Specifically to LDCs

The objective of this provision is to increase participation of developing countries in the functioning (including negotiating process) of the multilateral trading system. Provisions on Enabling Clause, Agreement on Agriculture, Agreement on Subsidies, Agreement on Textile and Clothing, and TRIPs Agreement are stipulated for the LDCs.

11.6 Concerns with Regard to S&DT Provision

S&DT provisions in the WTO have come under increasing criticisms in recent years. These criticisms focused on three issues: (a) design and formulation; (b) enforceability; and (c) assistance for implementation of S&DT clauses. Many of the S&DT provisions were criticised because of their interpretative ambiguities and absence of any binding commitments on the part of the developed countries in implementing these provisions that were often articulated through best endeavour clauses. Many developing countries said that most of the S&DT provisions are non-binding, in the form of 'best endeavour clauses', i.e. apparently mandatory, yet de-facto non-binding; with only a few provisions which are mandatory or could be taken as binding provisions. They highlighted these concerns at Doha, where Ministers launched a work programme on S&DT. Besides, out of the 88 agreement specific proposals, only 5 were adopted during the Honk Kong WTO Ministerial. Some examples which reflect these concerns:

- i. *A number of provisions employed purely discretionary language:* For example, "During consultations Members should give *special attention* to developing country Members' particular problems and interests." (Article 4.10 of the DSU). The modalities of special attention were not described.
- ii. *Best Endeavour Clauses:* For example, "Members *agree to facilitate* the provisions of technical assistance to other Members, especially developing country Members" (Article 9 of SPS), implies only the willingness, which solely depends on Advanced countries.
- iii. *De facto non-binding provisions:* For example, "Members shall take into account the special needs of the developing country members in preparation and application of new SPS measures" (Article 10.1 SPS agreement) and "It is recognised that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this Agreement." (Article 15 of the AD Agreement). S&DT provisions are criticised mostly due to its legally non-binding nature, therefore these provisions are not a subject of WTO dispute settlement body.

11.7 Doha work Programme and Phases in the S&DT work programme

The S&DT work programme was designed to be undertaken through the following phases:

- Procedural and submissions phase
- Responses (including cross cutting issues) phase
- General Council phase
- Development at Cancun
- Developments at Hong Kong
- Way Forward

11.7.1 Procedural and Submissions Phase

The TNC in its first meeting after Doha mandated the Committee on Trade and Development (CTD) in special Sessions to carry out the work programme on SDT. Some of the procedural issues include the structure of negotiating body, symbols of documents and reporting requirement. Afterwards a very large number of (finally 88) Agreement specific proposals were submitted by DC's, primarily by the African group and the LDCs.

11.7.2 Responses and Discussions Phase

Developed countries took time to provide (oral) responses, saying the number of proposals was too large. They also raised a number of systemic issues including those related to principles and objectives of SDT, utilisation, graduation and universal vs. differentiated treatment. In its report to the General Council, initially in July 2002, and then in December 2002, the CTD detailed the above status and sought more time to complete the work.

11.7.3 Negotiating Phase

Actual negotiations and drafting of possible language for recommendation to the GC only started in Dec 2002. Members could agree in principle to four proposals in December 2002 and a further 8 proposals by February 2003. However, most developing countries felt that the agreed language did not make the provisions more precise, effective and operational, owing to lack of progress linked to the differences in the interpretation of the mandate.

11.7.4 General Council Phase

The CTD recommended that the GC provide a clarification on how to give effect to the Doha mandate. But in reality, there was no consensus in the GC to provide this clarification. The GC only took note of the report and asked its Chairman to undertake consultations on how to take forward the mandated review of all S&DT provisions. The Chairman of the General Council put forward an approach based on two fundamental premises: 1) all proposals would be addressed without prejudice to the outcome, and 2) an informal categorisation of the proposals was necessary to make the work more efficient. Members also agreed to referrals and to consider possible changes in the existing language. Accordingly, all the 88 Agreement-specific proposals were divided into three categories. Category I comprising 38 (12 had been agreed prior to the Cancun) proposals on which it seemed that agreement may be possible. Category II comprising 38 proposals made in areas currently under negotiation, for referral and Category III comprising 12 proposals on which there appeared to be a wide divergence of views.

11.7.5 Development at Cancun

During the ministerial, members recalled Doha mandate on S&DT and reaffirmed S&DT as an integral part of WTO agreements. Out of the 88 proposal, 28 proposals were tabled where members were not in different views. Therefore, the meeting took notes of the progress made, but did not propose adopting of the proposals. Though the Cancun failed to reach in an agreement, GC instructed the special session of the CTD to pursue the work on remaining agreement and report to GC with clear recommendations by July 2005. It also instructed the Special Session to address all other outstanding work, including on cross-cutting issues. Other bodies to which proposals had been referred to also asked to report by July 2005.

11.7.6 Developments at Hong Kong

During the July 2005 Committee on Trade and Development – Special Session (CTD-SS) negotiations, which included both informal consultations and meetings of the CTD-SS, delegates worked on five Agreement specific proposals for S&DT, submitted by the LDCs. These five proposals belonged to the group of 88 Agreement specific proposals that were considered by the Members. These are: proposal 22/23

(Understanding in Respect of Waivers of Obligations), 36 (Duty and Quota-Free Access for LDCs), 38 (On Coherence of IMF, WB and WTO Measures), 84 (Exemption from Agreement on Trade-Related Investment Measures, or TRIMs), and 88 (Measure in Favour of LDCs). Subsequently, Hong Kong Ministerial adopted five agreement-specific proposals. The DF-QF market access related proposal was perhaps the single most important S&DT proposal from LDCs perspective since it was a longstanding demand of all LDCs which was also supported by a majority of developing and developed members of the WTO. For the first time LDCs will get DF-QF market access under WTO discipline, which is very important. However, meaning of 'on a lasting basis' is not clear which leaves scope for the developed countries not to provide DF-QF market access for up to 3 per cent of LDCs products. Furthermore, the possibility of greater market access in USA (which does not provide GSP for many products of export interest to Asian LDCs) remains severely constrained in terms of coverage of exported value. The introduction of additional text referring to consideration of interest of other developing countries along with the allowance of (upto) 3 per cent exclusion list will allow developed members not to provide DF-QF to all products from LDCs if they so desire.

11.7.7 Way Forward

Since the Hong Kong Ministerial, progress regarding the S&DT work programme remained stagnant. The discussion on cross-cutting issues remained focused by the developed country members and some of the developing countries. The CTD presented the progress on the 88 proposals submitted. 50 proposals from category I and III was picked to discuss in the Special Session, whereas 38 proposals from category II referred to other bodies. Out of the 50 proposals, 28 proposals were agreed to in principle at Cancun and of the remaining 23 proposals in the Special Session, 5 were adopted at the Hong Kong Ministerial. Since two of the proposals on ATC were not discussed due to the expiry of ATC, therefore CTD focused on the remaining 16 proposals, of which 8 (5 AG & 3 dc's) are from Cat I. and the remaining 8 (6 AG & 2 DC's) belonging to Category III. The CTD also initiated discussion on the issues like graduation and monitoring mechanism.

11.8 Issues for Future Consideration

Several important issues have emerged during the course of the S&DT work programme and which can have important implications for developing countries. These issues include, principles and objectives of S&DT; definition of a developing country; differentiation amongst developing countries; and Graduation from S&DT. They were often termed as the systemic or cross-cutting issues. It has been an ongoing debate within the WTO to set priority on the discussion and subsequent implementation of the agreement-specific issues and cross-cutting issues.

11.8.1 Principles and Objectives of S&DT

One of the areas of contention is the principles and objectives of S&DT. Number

of issues need to be considered, whether the objective of SDT is to give DCs time to develop their administrative capacity to implement the WTO Agreements; or, should it be to ensure that DCs are able to implement trade policies that are appropriate to their developmental goals (issue of policy space). Issues like uniform multilateral rules became prominent and thus question may rise that, should it be to ensure that the otherwise uniform multilateral rules can result in maximum gain to countries at different levels of development?

11.8.2 Differentiation Amongst DCs

Proponents of opined S&DT that in order to make SDT meaningful, it must be targeted. However, targeted SDT can only be possible if there is an objective definition of developing countries. What would be the benefits of a differentiated approach as compared to the existing universal approach to S&DT. The criteria for differentiation is also an issues of debate as there is no concrete answer whether differentiation be horizontal on the basis of economic indices or should it be Agreement wise?

11.8.3 Graduation

From the above discussion, the question arises, whether developing countries graduate out of SDT. If so, what should be the approach to graduation (experience of LDCs; disincentive to develop)? Should SDT, especially the transition periods, be linked to certain economic indicators? Should the time period and/or level of economic development up to which SDT would be available to different groups of developing countries, be specified?

11.9 Summary

- Special and differential treatment (S&DT) provisions in the multilateral trading system emerged as a recognition of the specific problems that developing countries (DCs) and least developed countries (LDCs) were facing in their effort to integrate with global markets for goods, services, capital and labour.
- The relevance and role of S&DT provisions in the WTO need to be reviewed and examined as tools that aspire to address and correct the existing vulnerabilities of the LDCs in the multilateral trading system.
- Special Treatment could be achieved through providing greater access in the markets of the developed countries, allowing them greater flexibility to pursue policy options, and expecting them to take on fewer obligations and commitments.
- Rationale of S&D treatment was perceived to be important not only from the demand side i.e. the recipient DCs and LDCs, but also the supply side, developed countries.

- Fundamental principle of GATT in perspective of S&DT was that all rights and obligations should be applied uniformly.
- In 1964, the GATT adopted a specific legal framework to address the concerns of developing countries.
- The Enabling Clause – 1979: legal basis of S&DT: created a permanent legal basis for preferential treatment on a non reciprocal and non discriminatory basis;
- Current Debate associated between Systemic Issue (cross-cutting) and Agreement-Specific issues.

11.10 Questions for Discussion

1. What is the meaning of S&DT?
2. Is there any special treatment in the GATT 1947?
3. When was the special and differential provision adopted in the GATT/WTO architecture?
4. What are the current debates regarding S&DT?
5. How many proposals were adopted for negotiation regarding the S&DT?
6. What are the three groups of category of the S&DT proposals?

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Annex 11.1

Special and Differential Treatment⁷ (S&DT): Background

<ul style="list-style-type: none"> • INTRODUCED IN 1954 OF ARTICLE XVIII OF GATT 1947: "GOVERNMENTAL ASSISTANCE TO ECONOMIC DEVELOPMENT" 	<p>This article takes account of the economic development needs of developing country Members and facilitates (1) the modification or withdrawal of tariff concessions by a developing country when it wishes to promote the establishment of an industry, (2) the conditions for the imposition of quantitative restrictions for balance-of-payments purposes subject to the agreement of the contracting party or parties.</p>
<ul style="list-style-type: none"> • INTRODUCTION OF PART IV INTO GATT 1947 IN 1964: "TRADE AND DEVELOPMENT" 	<p>The introduction of Part IV into GATT 1947 formalises the need to introduce an international trade policy that takes account of developing countries. For example, the principle of non-reciprocity in trade negotiations (Article XXXVI) is one of the main contributions to international trading relations.</p>
<ul style="list-style-type: none"> • TOKYO ROUND (1973-1979): INTRODUCTION OF THE ENABLING CLAUSE IN 1979 	<p>The Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries on 28 November 1979 introduces the so called Enabling Clause which establishes an exception to Article I of the GATT 1947 or the most-favoured-nation (MFN) clause. The Decision formalises the special system of preferences as a permanent exception to Article I of the GATT 1947. It also includes S&DT for least developed countries (LDCs) (paragraph 6) and allows developing countries to notify their regional arrangements concluded among them, based on that clause.</p>
<ul style="list-style-type: none"> • DECISION ON SAFEGUARD ACTION FOR DEVELOPMENT PURPOSES 	<p>This Decision relaxes the conditions for withdrawal and modification of tariff concessions where a developing country Member wishes to promote the establishment of an industry or in case of balance-of-payment difficulties (these provisions have been incorporated in Sections A and C of Article XVIII of the GATT 1994.)</p>
<ul style="list-style-type: none"> • THE URUGUAY ROUND: THE WTO AGREEMENTS (1986-1994) 	<p>The WTO Agreements resulting from the Uruguay Round negotiations contain six types of provision on S&DT:</p> <ol style="list-style-type: none"> 1 Provisions aimed at increasing the trading opportunities of developing countries. 2 Provisions requiring WTO Members to preserve the interests of developing countries. 3 Provisions offering developing countries a degree of flexibility in the use of instruments of economic and trade policy. 4 Provisions on technical assistance for developing countries. 5 Provisions offering a longer transition period for the implementation of the WTO Agreements (the main contribution of the Uruguay Round). 6 Special provisions on measures designed to assist LDCs or to encourage their participation.

Source: Priyadarshi, S. 2005. "Special and differential treat in the WTO." Background paper prepared for the 6th Policy Appreciation Workshop on WTO and Bangladesh, on January 2005, organised by CPD, Dhaka.

⁷The term Special and Differential Treatment (S&DT) emerged during discussions in the 1960s, concerning how to facilitate growth and development under the trade rules.

Annex 11.2

Provisions of the WTO Agreements on Special and Differential Treatment

Classification of Special and Differential Treatment

Type of Provision	Examples
<p>PROVISIONS AIMED AT INCREASING THE TRADING OPPORTUNITIES OF DEVELOPING COUNTRIES</p>	<p>Agreement on Agriculture <i>Paragraph 5 of the preamble to the Agreement</i> provides that developed countries should improve:</p> <ul style="list-style-type: none"> (a) Opportunities and terms of access to markets for agricultural products of particular interest to the developing countries; (b) Liberalisation of trade in tropical agricultural products and products of particular importance to the diversification of production from the growing of illicit narcotic crops.
<p>PROVISIONS REQUIRING WTO MEMBERS TO PRESERVE THE INTERESTS OF DEVELOPING COUNTRIES</p>	<p>Understanding on Rules and Procedures Governing the Settlement of Disputes <i>Consultations: Article 4:10</i> During consultations, Members should give special attention to the particular problems and interests of developing country Members.</p>
<p>PROVISIONS OFFERING DEVELOPING COUNTRIES A DEGREE OF FLEXIBILITY IN THE USE OF INSTRUMENTS OF ECONOMIC AND TRADE POLICY</p>	<p>Agreement on Subsidies and Countervailing Measures The general prohibition on export subsidies does not apply to least developed country Members and Members listed in Annex VII of the Agreement whose Gross National Product (GNP) per capita is less than \$1,000 per annum (Article 27.3).</p>
<p>PROVISIONS ON TECHNICAL ASSISTANCE FOR DEVELOPING COUNTRIES</p>	<p>Agreement on Implementation of Article VII of GATT 1994 (Customs Valuation) <i>Article 20:3</i> Developed country Members shall furnish, on mutually agreed terms, technical assistance to developing country Members that so request. On this basis developed country Members shall draw up programmes of technical assistance which may include, <i>inter alia</i>, training of personnel, assistance in preparing implementation measures, access to sources of information regarding customs valuation methodology, and advice on the application of the provisions of this Agreement.</p>
<p>PROVISIONS OFFERING A LONGER TRANSITION PERIOD FOR THE IMPLEMENTATION OF THE WTO AGREEMENTS (THE MAIN CONTRIBUTION OF THE URUGUAY ROUND)</p>	<p>Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) <i>Transitional Arrangements: Article 65:2</i> of the TRIPS Agreement: A developing country Member is entitled to delay for a further period of four years the date of application, as defined in paragraph 1 of the provisions of this Agreement other than Articles 3, 4 and 5.</p>
<p>SPECIAL PROVISIONS ON MEASURES TO ASSIST THE LEAST DEVELOPED COUNTRIES OR TO ENCOURAGE THEIR PARTICIPATION</p>	<p>Agreement on Agriculture Under Article 15:2 of the Agreement, least developed country Members are not required to undertake reduction commitments.</p> <p>Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Under Article 66:2 of the TRIPS Agreement, "developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least developed country Members in order to enable them to create a sound and viable technological base."</p>

Source: *ibid.*

Annex 11.3

Principal Provisions of the GATT 1994 on Special and Differential Treatment

Article XVIII of the GATT 1994

Introduction

- For the first time in the multilateral trading system, Article XVIII of the GATT 1994 establishes special and differential treatment (S&DT) for the developing countries

Principal Characteristics

S&D TREATMENT UNDER ARTICLE XVIII OF GATT 1994	The special and differential treatment established by Article XVIII of GATT 1994 allows developing country Members to establish tariff protection to promote an industry (modification or withdrawal of their concessions), and secondly, provides them with the possibility of imposing quantitative restrictions for reasons of balance-of-payments difficulties.
APPLICATION OF ARTICLE XVIII OF GATT 1994	<p>Developing countries which invoke Article XVIII of GATT 1994 as a basis for modifying or withdrawing tariff concessions in order protect an industry must hold consultations with the Member country or countries affected and offer compensation.</p> <p>The possibility of imposing restrictive measures for balance-of-payments purposes is subject to very strict conditions laid down in Article XVIII:B. In addition, developing countries which invoke this Article must hold consultations every two years (see Article XVIII:B and the Decision on Safeguard Action for Development Purposes).</p> <p>The Understanding on the Balance-of-Payments Provisions of GATT 1994, resulting from the Uruguay Round, provides for a timetable for the elimination of restrictive measures taken for balance-of-payments purposes. It also prescribes the use of 'price-based' measures because they have a less disruptive effect on trade.</p>

Source: *ibid.*

Annex 11.4**Part IV of the GATT 1994****Objective**

- The main objective of Part IV of the GATT 1994 is to favour market access for products of particular interest (i.e. primary products) to developing country Members and least developed country Members.

Principal Characteristics

S&D TREATMENT IN PART IV OF GATT 1994	Developed countries must, to the fullest extent possible, accord high priority to the reduction and elimination of barriers to products currently, or potentially of particular interest to developing and least developed countries) (Article XXXVII of GATT 1994). This obligation includes tariffs, non-tariff barriers and fiscal measures.
IMPLEMENTATION OF PART IV OF GATT 1994	<p>Article XXXVIII of GATT 1994 provides that Members should collaborate jointly to promote trade in the developing countries. This action could, for example, take the form of international arrangements to provide improved market access conditions.</p> <p>This article is mainly implemented through preferential arrangements under the General System of Preferences (GSP) or the UNCTAD administered Global System of Trade Preferences.</p> <p>Paragraph 4 Article XXXVI of GATT 1994 on 'market access for primary products' was taken into account in the Agreement on Agriculture, negotiated during the Uruguay Round. Paragraph 6 on the inter-relationships between trade and financial assistance was taken into account in the 'Declaration on the Contribution of the World Trade Organization to Achieving Greater Coherence in Global Economic Policymaking', also negotiated during the Uruguay Round.</p> <p>The obligation under paragraph 3(c) of Article XXXVII of GATT 1994 was taken into account in Article 15 of the Anti-Dumping Agreement. It concerns the obligation to explore the possibility of a "constructive remedy" when Members consider applying measures other than those laid down in the WTO Agreements to meet "particular problems". Thus, under Article 15 of the Anti-Dumping Agreement, developing country Members should explore possibilities of constructive remedies before applying anti-dumping duties where they would affect the essential interests of developing country Members.</p>

Source: *ibid.*

Annex 11.5

Enabling Clause⁸

Objective and Conditions of Application of the Enabling Clause

- The Enabling Clause consists of more favourable treatment, the main objective of which is to facilitate and promote the trade of developing country Members and least developed country Members.
- However, this 'more favourable treatment' must not be designed to raise trade barriers, and must not unduly impede the reduction or elimination of customs tariffs or other restrictions to trade on a most-favoured-nation basis. Thus, where such treatment is granted to a developing country Member by a developed country Member, it must be designed and, if necessary, modified to respond positively to the development, financial and trade needs of developing country Members.

Principal Characteristics

S&D TREATMENT OF THE ENABLING CLAUSE	<p>The essential contribution of the Enabling Clause in relation to Article XVII and Part IV of GATT 1994 is that it is an exception to Article I of GATT 1994 on most favoured nation, or MFN, treatment. Under the Enabling Clause, any WTO Member may grant any advantage, privilege or immunity to a developing country or LDC without the obligation to grant the same treatment to other WTO Members. In this way, the Generalized System of Preferences (GSP) is formalised as an exception to Article I of GATT 1994 (paragraph 2(a) of the Decision).</p> <p>The Enabling Clause also contains more flexible provisions than those of Article XXIV of GATT 1994 for regional arrangements concluded between developing countries and notified to the WTO (paragraph 4 of the Decision).</p> <p>Under the Enabling Clause, developed country Members may grant more favourable treatment to LDC Members in the context of any general or specific measures in favour of developing countries (paragraph 2(d)).</p> <p>The Enabling Clause introduces the notion of graduation (paragraph 7 of the Decision) which consists of progressively eliminating the advantages accorded to LDCs in line with their development.</p>
LIMITED SCOPE	<p>The Enabling Clause applies to:</p> <ul style="list-style-type: none"> • The preferential tariff clause under GSP schemes; • Non-tariff measures; • Regional arrangements entered into amongst developing country Members. There are at present 17 regional agreements notified under the Enabling Clause.

Source: *ibid.*

⁸The Decision of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (the Decision) instituted the Enabling Clause.

Training Manual on **WTO and Bangladesh Trade Policy**

Module

12

WTO Negotiation

Groups: An

Introduction

WTO Negotiation Groups: An Introduction

Learning Objectives

- The aim of this particular module is to provide a general understanding on the WTO negotiation groups.
- The module also highlights the process of negotiations in order to make participations equipped enough to understand the negotiation process.
- The module highlights the rationale and importance of negotiations and emergence of negotiation groups.
- Participants will understand the issue of plurilateral negotiations and the importance of group based negotiations in order to carry forward the interest of the developing countries and the LDCs.

12.1 The Idea of Trade Negotiation

The developing countries (DC) and the least developed countries (LDCs), in their attempt to benefit from the globalisation process and to improve access to the regional and global markets, are increasingly taking part in trade negotiations. As with so many occasions, a developed country does not only put forward its ideas and seek to implement those, but it attempts to initiate these new ideas without or partially considering the possible consequences for the developing countries. It is in this context that group based negotiations and often, issue based negotiations, become prominent. Moreover, the emergence of groups like G-20 in the Cancun WTO Ministerial indicate new platform for WTO negotiations. Clear understanding and appropriate handling of negotiations are now two of the major conditions to achieve success in the world trade negotiations.

The term "negotiation" originates from the Latin word *negotiar*, which means "to carry on business". Negotiation may be defined as: "A process whereby two or more parties seek an agreement to establish what each shall give or take, or perform and receive in a transaction between them" (Saner, 2000). Alternatively, it is an act of discussing an issue between two or more parties with competing interests, with an aim to identify acceptable trade-offs for reaching an agreement (Raiban, 2004). Therefore negotiations take a crucial stance in the process of multilateral trading system. The

WTO acts as a platform for multilateral trade negotiations and although negotiations process was incorporated in the GATT architecture, its importance, relevance and context changed dramatically during the post Uruguay Round trading system, signaling important differences of the latter from earlier rounds.

12.2 Importance of Trade Negotiations

Trade negotiations are an integral part of the WTO. All decisions regarding implementation are carried out through negotiations. Over the previous decades on a number of occasions, negotiations were carried out within the developed countries, developing countries and the LDCs. In the latter case, negotiations under GATT, often referred as the Uruguay Round, the international trading system witnessed a number of changes and a number of new issues found new prominence. Furthermore, besides these new issues, emergence of countries like China, India and Brazil also propelled and diverted the negotiation power, which used to be influenced by the quad countries (USA, EU, Japan and Canada). Also the LDCs and the developing countries are now much more aware of the WTO issues and therefore group based negotiations on various relevant issues have also become important. In the WTO, countries get not what they deserve, but what they negotiate. Multilateral economic negotiations are often explained by such exogenous factors as the identifiable economic interests of participants, or their domestic industries, and the general political and economic context.

12.3 Trade Negotiations Process

Success and effectiveness of any negotiation depends a lot on planning and preparation. A thorough understanding of the negotiation process always helps to prepare for this. Bhattacharya (2005) has described the WTO negotiation process in a very informative and illustrative manner. For the benefit of the trainees, we have reproduced below the relevant section from the above said document.

Thoughtful planning and preparation based on good research and analysis are as important determinants of a negotiation outcome, as are good negotiating skills at the bargaining table.

The key steps of a negotiation process are summarised in Figure 12.1 based on a review of the relevant literature.¹ The seven steps leading to a negotiated agreement are discussed below, with emphasis on the five steps involved in planning the negotiations.

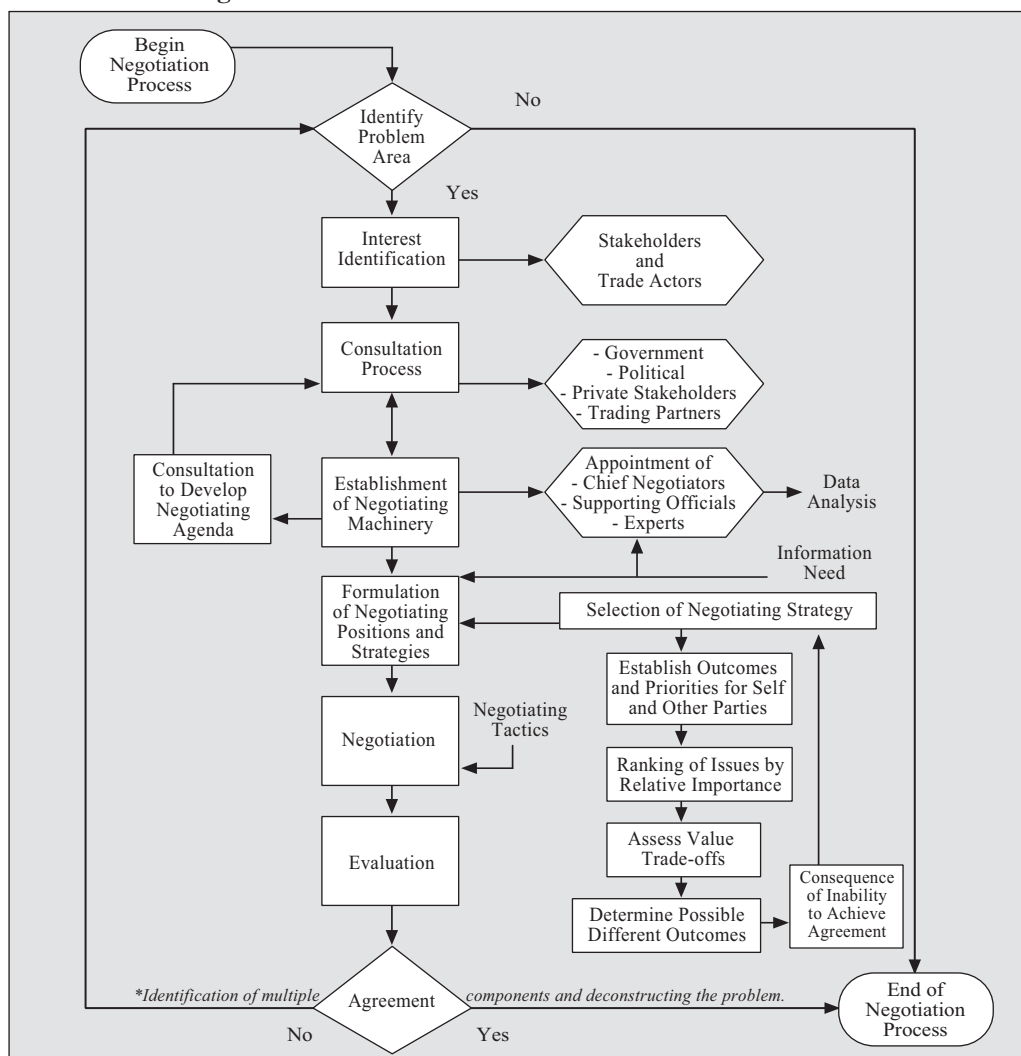
Step 1 : Problem Identification

Negotiations take place when parties identify a problem or an opportunity that, they believe, can be resolved or positively exploited through a negotiated agreement. The first question to be answered at the start of the negotiation process

¹CTPL, 2003; Monning and Feketekuty, 2004; Saner, 2000 and World Bank Institute (WBI), 2004.

is whether there is, a problem (or an opportunity) that cannot be resolved (or realised) on the basis of domestic action and that may be amenable to intergovernmental negotiations. For example, the opportunity associated with liberalised service trade is that it may increase economic growth and contribute to poverty alleviation, while the major problem is that most of the countries are protective in this area. Recognising the necessity of preference on the movement of service suppliers under Mode 4 of the GATS, Bangladesh emphasised this issue during the WTO Ministerial Conference in Cancun, and succeeded in achieving recognition of this aspect in the final draft of the Ministerial Declaration. This would not have been achieved if the problem had not been identified at an early stage of the negotiation process.

Chart 12.1 The Negotiation Process



By understanding the nature of a problem or conflict, the interests of other parties can be anticipated and proposals and options can be formulated. This usually involves: *Establishing the history of the conflict.*

This essentially involves the following two questions:

- a. What is the history of the conflict between or among parties? In a trade dispute, the history may include past practices, tariffs, quotas, dumping, or other trade-related practices that have defined a trading relationship.
- b. What has changed since the original conflict began? This may include changes in political parties or representation, in key players within administrations or in business interests.

Once the problem has been deconstructed into its discrete parts, the key issues can be identified and prioritised. Multiple solutions can then be evolved for different aspects of the problem.

Step 2 : Interest Identification

Once the problem is well understood, one has to identify who may benefit and who may lose in the negotiation. It is particularly important to recognise whether there are any powerful interest groups that may either support the efforts to negotiate a solution to the problem or strongly oppose the negotiations.

Monning and Feketekuty (2004) explain that interests are at the core of what drives parties in a negotiation. Better understanding of one's own interests as well as those of the counterparts will lead to a successful negotiation outcome. In international negotiations, interests may revolve around issues of economic interests, domestic policy objectives- such as environmental integrity and resource protection, national security, domestic political considerations, bureaucratic interests, national legal requirements, issues of legitimacy (recognition), and moral or ethical standards. The ability to identify the divergent interests or varying priorities of the different negotiating parties and their stakeholders can provide the basis for generating workable solutions.

Stakeholders, while not directly involved in the negotiations, include individuals, groups and organisations that may be affected by the trade negotiations depending on their outcome. Three major categories of domestic stakeholders are identified by the World Bank Institute (WBI, 2004).

First, various government Ministries and departments responsible for administering the regulations likely to be covered by the negotiations.

Second, the enterprises producing the goods or services likely to be covered by the prospective negotiations.

Third, other stakeholders can include labour unions, non-governmental organisations, consumer groups, etc.

By the end of step 2, domestic stakeholders and their general interests should be identified.

Step 3 : Consultation Process

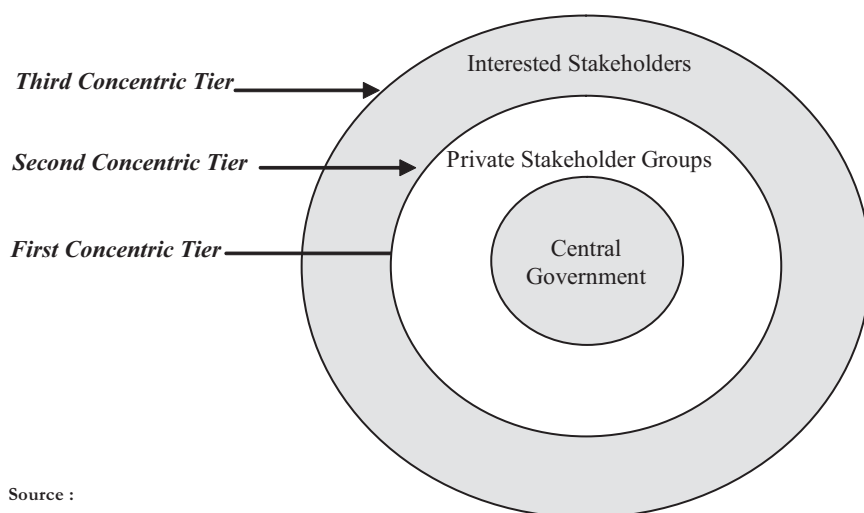
Once stakeholders and their interests have been identified, it is important to plan and organise an effective consultation process to further understand their needs and gather information needed to develop a negotiating agenda and determine a national position on each of the issues to be negotiated.

By their very nature, international negotiations involve people of different national, ethnic, racial, religious, and cultural backgrounds. These people represent governments, businesses, NGOs, and other entities that have a stake or interest in the outcome of the negotiations. However, only those people who are sufficiently interested and influential may be involved in the consultation process (WBI, 2004).

Figure 12.2 provides a graphic representation of the three groups of stakeholders that should be involved in the consultation process. The innermost circle should consist of the stakeholders within the central government, i.e. the key Ministries and departments responsible for regulations covered by the negotiations. Consultations with the members of the inner circle would be frequent and regular, and may be held throughout the consultation process.

The second concentric tier is comprised of representatives from key private stakeholder groups who may be invited to participate in various advisory bodies. These advisory bodies can give negotiators direct feedback on proposed negotiating positions and serve as a vehicle for building consensus with the most influential private stakeholders. Such advisory bodies can also serve as sources of information

Chart 12.2 Actors in the Consultation Process



Source :

on trade opportunities and problems, industry practices, and the most difficult barriers to trade expansion.

The third concentric tier includes all other interested stakeholders, who may be invited to participate in briefings or conferences covering the negotiations, during which they will be given an opportunity to express their views.

Consultations held during the negotiation process may include:

- Interdepartmental consultation, to develop and assess the analytical basis for the negotiation and to pool all relevant information available from government officials.
- Political consultation, to assess the political basis for negotiation and to secure strong political commitment to trade negotiations from top decision makers.
- Ongoing consultations with central, provincial/state governments, private sector, and other interest groups as required, to build broad-based support (and avoid surprises) for the negotiation. This may require establishment of an institutional machinery to facilitate consultations among all affected interests.
- Consultations or pre-negotiations with trading partner(s), to confirm interest and test issues.

Step 4 : Establishment of a Negotiating Machinery and Developing a Negotiating Agenda

At this stage, the chief negotiator and a team of supporting officials drawn from relevant Ministries and government agencies are appointed. The team of negotiators may also be assisted by experts hired by the government or provided by business associations, civil society and other organisations. Individuals and institutions in this group are referred to as trade negotiation actors, as they work directly on the negotiation and help the negotiating parties in reaching an agreement, often by providing much needed information, analysis, and feedback.

In Bangladesh, the government Ministries play the most vital role in the negotiation of trade agreements, especially the Ministry of Commerce, Ministry of Finance, Ministry of Foreign Affairs, and the Tariff Commission. Other Ministries and departments, such as the Ministry of Planning, the Board of Investment, and the Economic Relations Division, also provide direct or indirect support.

Bangladesh, like most LDCs, became more proactive about WTO related issues after the DDA was adopted. As a result, the Ministry of Commerce set up a special "WTO Cell" to improve its capacity to negotiate on the DDA. The government is also setting up the Bangladesh Foreign Trade Institute (BFTI), an institution under public-private partnership that will work as a think-tank for the government and private entrepreneurs in the field of international trade.

Many of the private actors, civil society groups and think-tanks in Bangladesh also play an important role in trade negotiations. The participation of these private actors contributed to the success of the Second LDC Trade Ministers' Meeting held in Dhaka just before the Cancun Ministerial in June 2003.² The growing trade negotiation related capacity of Bangladesh was further recognised when the Bangladesh government was requested to provide support in preparing the Declaration of the Third Meeting of the LDC Trade Ministers held in Dakar in May 2004.³

The compilation and assembling of various information becomes necessary at this stage of the negotiation process (CTPL, 2003). Further consultation may be held to develop the negotiating agenda based on issue identification, empirical and policy research analysis, and inputs from stakeholders and trade actors. If necessary and desirable, a separate negotiating track could also be established to address trade-related issues (e.g. environmental, labour, intellectual property rights, etc).

Step 5 : Formulation of Negotiating Positions and Strategies

Based on the available information, continuing analysis and consultations, negotiating positions and strategies may be formulated. Selection of a negotiating objective at the very beginning of this step is highly recommended, in order to provide a clear focus for both the preparatory work leading to a negotiation and to the management of the negotiation itself.

Box 12.1 Success Factors in Negotiation Planning

- Widest possible range of options
- More attention to common ground
- Greater attention to long term factors
- Setting upper and lower limits rather than fixed target points
- Planning of issues without establishing a rigid sequence
- More time devoted to studying the conflict
- Less attention paid to own objectives than to a jointly achieved solution
- Less attention to tactics: these are often overrated

Source: Adler, 1982 and Dupont, 1986 in *Saner, 2000*.

Eight success factors in negotiation planning are listed in Box 12.1 As part of the strategic planning of the negotiation, systematic analytical methods may be used to establish priorities and to assess value trade-offs. Steps involved in developing a negotiating strategy may include:

- Establishing outcomes and priorities for self
- Estimating outcomes and priorities for other parties

²The Second LDC Trade Ministers' Meeting was held from 31 May to 2 June 2003. The Declaration issued by the Ministers is available at www.wto.org as document WT/L/521.

³The Third LDC Trade Ministers' Meeting was held on 4-5 May 2004. The Declaration issued by the Ministers is available at www.wto.org as document WT/L/566.

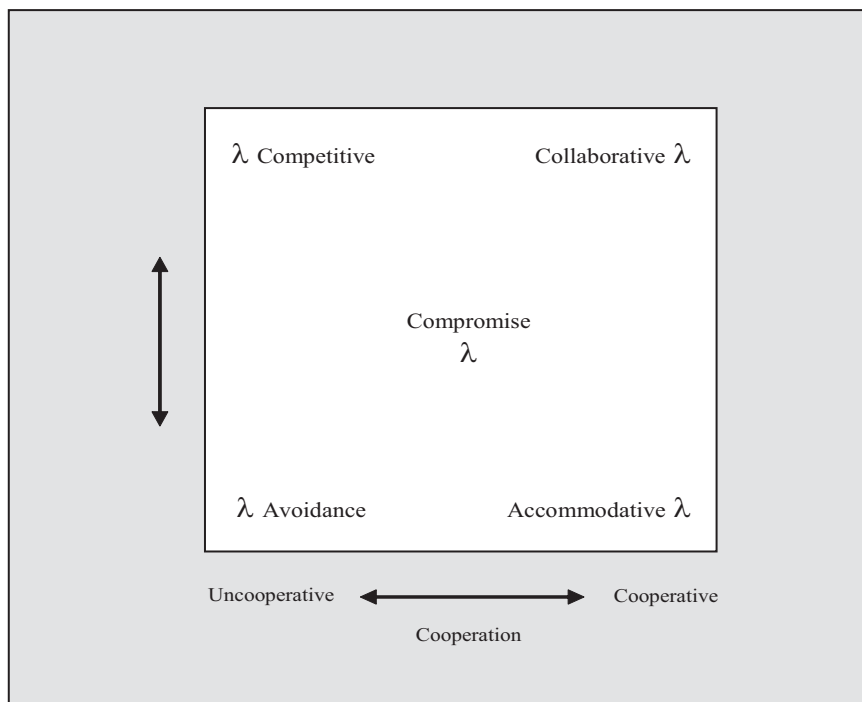
- Identifying and assessing major trade-offs
- Identifying all possible outcomes and consequences.

When establishing preferred outcomes and priorities for self as well as for other parties, ranking of issues related to the negotiation, according to their importance and relevance to the problem, may be particularly useful. Each issue may be assigned an importance weight (for example, on a scale from 0 to 1) both from the perspective of self and other parties.

Maximum and minimum expectations from the negotiation of each issue should be determined. The maximum expectation from the negotiation should be the opening position of the negotiators, while the bottom line (minimum expectation) should be their reserved position. A number of alternative outcomes should be identified in between these two extreme positions on each of the issues to be negotiated (CTPL, 2003). All the possible outcomes should be taken into account and the consequence of inability to achieve an agreement should also be determined.

Evaluating the consequence of an agreement, not being reached, is one of the major challenges in strategising and formulating the whole negotiating position. The countries should reserve their alternatives for such outcomes and do appropriate analysis of the non-agreement consequences, though it is never in anyone's expectation to fail in

Chart 12.3 Modes of Conflict Management



Source: Thomas and Killmann, 1974 in *Saner, 2000*.

negotiating and thus reach no agreement. In this connection, an example may be cited from the ongoing negotiations under BIMSTEC. During these negotiations, Bangladesh demanded compensation for revenue cost by the LDCs during trade liberalisation undertakings. The other negotiating parties, particularly the developing countries, did not agree to this demand. Bangladesh, on the other hand, could not show much flexibility by offering alternatives and was the only LDC which did not sign the agreement. Later, Bangladesh joined the BIMSTEC agreement by withdrawing its demand.

An important aspect of the strategy is the selection of an appropriate behaviour during the actual negotiation of the different issues. As shown in Figure 12.3, negotiating behaviours, also referred to as modes of conflict management, can be classified into five broad categories, depending on the combination of assertiveness and cooperation that is selected.

a. Competitive Behaviour

The essence of this power-oriented behaviour lies in its effort to achieve goals by trying to persuade the other party to make concessions. Under a competitive strategy, the other party may be convinced to concede by:

- Augmenting to encourage concessions
- Firming commitment to demands
- Refusing to reveal/share information
- Delaying
- Misrepresenting
- Rejecting the other's demands for concessions
- Withholding concessions
- Refusing to exchange offers
- Threatening walkout or retaliation

The competitive mode of behaviour may be useful to achieve desired results on some of the issues under negotiation, but it may also lead to impatience and loss of flexibility, leaving little room for movement towards cooperative approaches and a constructive solution to the conflict.

b. Accommodative Behaviour

This behaviour gives highest priority to cooperation and reaching an agreement. It is opposite to a competitive behaviour, as the negotiator is willing to adjust most self-interested objectives in order to satisfy the interests of the other party.

c. Avoidance

This behaviour combines non-cooperative behaviour with a lack of assertiveness,

generally leading to a no-win solution where the interests of none of the parties are met. This strategy could be used to defer or postpone awkward issues that might not be amenable to an agreement until a more favourable moment. It is a position that is extremely versatile and possibly useful, but it should be used in a focused and targeted manner, since frequent avoidance of conflict reduces the chances of satisfactory results in the future.

d. Collaborative Behaviour

Collaboration requires the parties to familiarise themselves thoroughly with the conflict and its causes in order to work towards finding a constructive joint approach. Without losing sight of their own principles and interests, each party works through the differences separating them and learn from each other's point of view and experiences. This strategic choice of behaviour may be implemented by:

- Signalling desire for agreement
- Exchanging information about needs/priorities
- Brainstorming and joint assessment of options

e. Compromise

Parties in the negotiation may come to a compromise in order to achieve a satisfactory alternative that might be partially acceptable to both of them. Positions for such a solution lie between avoidance and collaboration. It is where the parties make moves towards one another or look for rapid agreement that is satisfactory because it is acceptable to them.

The following aspects should be considered in selecting a strategic behaviour:

- Importance of the negotiation
- Consequences of non-agreement
- Common interests of the parties
- Relationship quality
- Power to impose demands

Step 6 : Negotiation

It is during this phase the negotiation strategy will be implemented and requests will be made, concessions offered, and compromises reached. In the context of multilateral trade negotiations, an effective and well-known method, for gaining support for negotiating proposals and to increase negotiating power, is to build coalitions among like-minded groups and countries. According to the WBI, 2004, a coalition partner may support efforts to prepare negotiations in some or all of the following ways:

- Help brainstorm possible solutions (options) to present in the negotiation

- Reach out to their constituents (members) to involve them in collateral legislative, lobbying, media, or other supportive activities
- Help to raise resources including funds to advance various aspects of a concerted campaign which will support the negotiators
- Provide market research, scientific research, and other data to support the negotiating objectives.

Findings from the research community, international governmental organisations (IGOs) and non-governmental organisations (NGOs) could also be used to press for a particular point of view. In that form, partnerships can also go beyond, strictly speaking, negotiating parties and include IGOs or NGOs representing civil society groups. A point to note is that it is necessary to first work with coalition partners in order to align on the most important issues among the coalition partners, then work with the other parties.

The LDCs could gain significantly if they are able to build up coalitions and stand firmly against groupings of powerful developed countries. The united stand that LDCs displayed at the Cancun Ministerial Conference is one of the best examples of the effectiveness of coalition building and partnership, especially in a multilateral trade negotiation. The developed countries failed to insert new issues into the agreement, mainly because such a coalition was built up by the LDCs together with other developing countries. During the WTO Ministerial Conference in Cancun, Bangladesh and some African countries also helped each other in the case of cotton and Mode 4 of the services agreement.⁴

Step 7 : Assessment

After the actual negotiation has finished and the elements for an agreement have been put together, a short evaluation of the whole outcome becomes necessary to decide whether a successful agreement is possible, or another round of negotiations might be needed. Assessment is required after the parties reach a point of consensus. Making an assessment tends to be a task assigned to officials with legal expertise, who base their effort on the substantive work done by the negotiators and work in close collaboration with the negotiators. However, it is useful to assign the legal officers to the negotiating team from the start in order to assist in development of draft texts. If consultations have been pursued throughout the draft text, political approval should be a final, formal step that would create little or no difficulty.

12.4 Trade Negotiations in the WTO

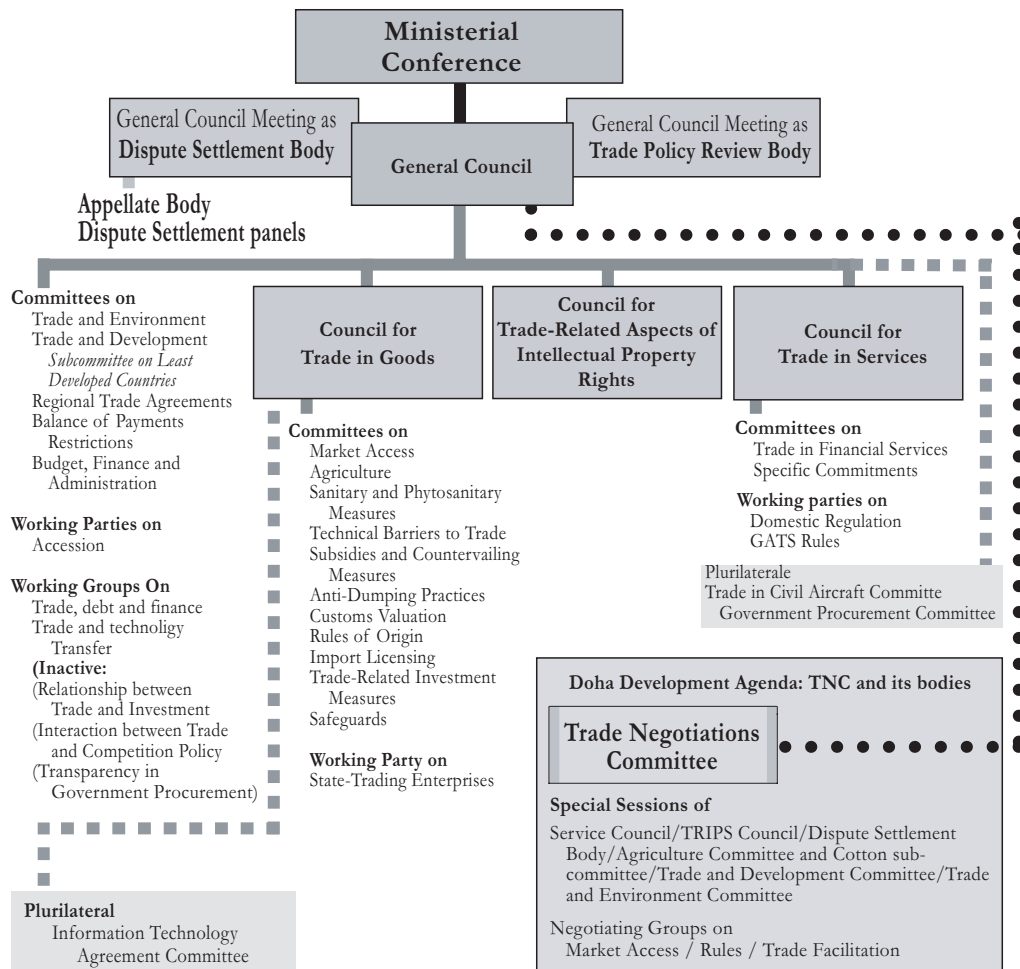
12.4.1 Actors in the WTO Trade Policy Process

Before commencing on discussion of the various interest groups in the WTO, it is

⁴See, for example, the Consolidated Position of African Union/ACP/LDC Position, WTO document WT/MIN(03)/W/17. An assessment of what happened at Cancun may also be found in ESCAP, 2004.

pertinent to look at the existing theories that describe the cause and effect of such groups. On a basic level, all groups in the WTO are formed in order to increase individual countries' weights in terms of their trade-offs that are involved in any negotiation. The Logic of Collective Action (1965), by Mancur Olson, provides an economic theory of interest group organisation and influence, and it is often considered by researchers as an economic theory of politics. Olson argues that large groups are less likely to succeed than small ones and that concentrated groups – groups with a few large numbers – are more

Chart 12.4 Structure of the WTO



Key

- Reporting to General Council (or a subsidiary)
- Reporting to Dispute Settlement Body
- ■ ■ ■ Plurilateral committees inform the General Council or Goods Council of their activities, although these agreements are not signed by all WTO members
- ● ● ● Trade Negotiations Committee reports to General Council

The General Council also meets as the Trade Policy Review Body and Dispute Settlement Body

Source: www.wto.org/english/thewto_e/whotis_e/tif_e/utw_chap_7_e.pdf

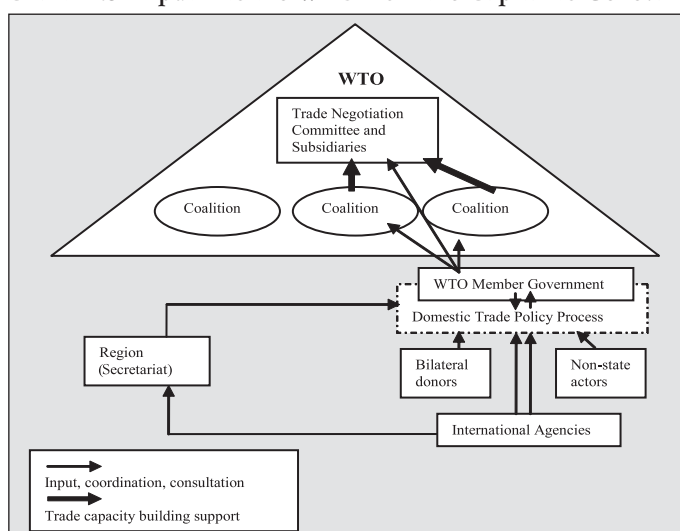
likely to succeed than dispersed groups. In a nutshell the theory suggests that labour has more organisational difficulties than capital, consumers more than producers and the numerous small countries in the United Nations Conference on Trade and Development (UNCTAD) more than the smaller organisations.

Negotiations in the WTO take place either in the Trade Negotiations Committee (TNC) and its various sub-committees or the regular WTO councils in Geneva. The actual placement of proposals in the WTO is a bottom-up process where input is generated at the national and regional levels through numerous stages of consultation before it is finally delivered in Geneva. Overall, this policy process involves a broad range of state and non-state actors that have the opportunity to provide the relevant input. A simplified scheme of this policy process from the national to the Geneva level is depicted in Figure 12.4.

However, many developing countries face considerable obstacles in the policy process. The human and financial resource constraints with respect to the dense agenda for negotiations in Geneva, their representation and the generation of substantial input at the national level constitute major barriers. Some do not maintain a permanent mission in Geneva and even for those that do, it is often impossible to participate in the multitude of meetings and to follow the complete agenda.

Cooperation, coordination and the pooling of resources with countries that have similar interests are vital for the effective participation of many developing countries in the WTO. In the most recent Ministerial Conferences in Seattle, Doha, Cancun and Hong Kong it has been evident that these coalitions are better organised and more pro-active. They preserve internal cohesion and engage in coordination with other groupings.

Chart 12.5 Input into the WTO from the Capital to Geneva



Source: Website www.wto.org, 2006.

12.4.2 Decision Making in the WTO: Formal Consultations

WTO Ministerial Conference is the highest authority for decision making at the WTO. At least one Ministerial meeting is supposed to be held every two years. The Ministerial Conference can take any decision under any agreement of the WTO. At the second level of Ministerial Conferences there is the General Council. The General Council has three different components: General Council, the Dispute Settlement Body and the Trade Policy Review Body. There are several councils including, Council for Trade in Goods, Council for Trade in Services and Council for Trade Related Aspects of Intellectual Property Rights. The architecture of the WTO decision making process is shown by Box 12.2. Decisions are taken on the basis of consensus. So it is critically important that countries engage themselves during the negotiations and try to influence an outcome that is favourable to them and addresses their concerns and interests. In case a decision cannot be reached by consensus, it is to be arrived at through a majority vote (unless otherwise provided in the particular agreement under reference). In the Ministerial Conference and the General Council, each member has one vote. Till now all decisions in the WTO had been reached through consensus.

The WTO is run by its Member governments. All major decisions are made by the membership as a whole, either by Ministers (who meet at least once every two years) or by their Ambassadors or delegates (who meet regularly in Geneva). All decisions fall under the Single Undertaking Rule.

12.4.3 Informal Meetings

Informal meetings serve a unique role-the brokering of deals on particularly thorny issues by supplementing the formal meetings, not usurping them. These meetings, that have to be transparent and inclusive, are used as mediums for breaking down the bigger council into smaller groups which engender a better environment for discussion between interest groups and the Chairperson to fulfil what they are designed to do – hammering out a compromise.

Informal Consultations

Normally important breakthroughs are rarely made in formal meetings of the bodies (either in the TNC or WTO ministerial. As decisions are made by consensus, informal consultations used to play an important role in bringing a vastly diverse membership to an agreement.

Smaller Group Meeting

"One step away from the formal meetings is informal meetings that still include the full membership, such as those of the Heads of Delegations (HOD). More difficult issues are thrashed out in such smaller groups. A common recent practice is for the Chairperson of a negotiating group to attempt to forge a compromise by holding

consultations with delegations individually, in twos or threes, or in groups of 20-30 of the most interested delegations" (WTO, 2007).

"These smaller meetings demand to be handled sensitively. The key is to ensure that everyone is kept informed about what is going on (the process must be 'transparent'), even if they are not present in a particular consultation or meeting, and that they have an opportunity to participate or provide input (it must be 'inclusive')" (ibid).

Green Room Consultation

The term 'Green Room' has become controversial specially after the Cancun Ministerial, more among outside observers than delegations (but often small delegation do not have the access into the Green Room). The phrase has been taken from the informal name of the Director General's Conference room, which is used to refer to meetings of 20-40 delegations. Meeting can be called by a committee Chairperson as well as the Director General, and can take place elsewhere such as at Ministerial Conferences. "In the past, delegations often felt that Green Room meetings could lead to compromises being struck behind their backs. No members have been able to find an alternative way of achieving consensus on difficult issues, since it is virtually impossible for members to voluntarily change their positions in meetings of the full membership. Hence, extra efforts are made to ensure that the process is handled appropriately, with regular feedback to the wider membership. In the end, decisions have to be taken by all members through consensus" (WTO, 2007).

12.5 WTO Global Coalition Groupings

A group is formed at any level of multilateral negotiations through incorporating similar interests of its stakeholders and it seeks to exert pressure on the negotiating processes in view of their respective concerns and subsequent interests. The formation of groups can be stated to have at least one principle political economy effect - it has allowed for greater information sharing within and outside members, whereby it has had a spillover effect in other negotiations fora (bilateral, regional, plurilateral or multilateral). It has strengthened developing countries' (and LDCs) stance in the negotiation processes and provided a sui generis 'safe domain' for cooperation for its stakeholders.

Often negotiating proposals are submitted on behalf of a number of countries with common concerns and interests. Developing countries particularly follow this strategy as a way to enhance their negotiating leverage and to extend their scarce resources as far as possible. These 'blocs' are fluid and they vary from issue to issue. Following are some of these coalitions, ranging from those that include mostly least developed countries to those that have a number of developed countries. It should be noted here that the LDCs often participate through coalition with other groups.

Increasingly countries are getting together to form groups and alliances in the WTO. In some cases they even speak with one voice using a single spokesman or negotiating

team. This is partly the natural result of economic integration — more customs unions, free trade areas and common markets are being set up around the world. It is seen as a means for smaller countries to increase their bargaining power in negotiations with their larger trading partners. It implies that a country with a small delegation might increase its participation, if it has an alliance with other members with similar objectives. In addition, countries with diverging interests may get together to narrow differences and help achieve consensus among the wider membership. In this case, groups are specifically created to compromise and break a deadlock rather than to stick to their initial positions.

Below are the compositions of some of the most active groupings in the WTO and also some formal regional and economic alliances (which are not always necessarily present in the WTO debates).

African Group

Of the 41 WTO-Member countries that make up the African Group, only 3 are upper-middle income developing countries; 13 are lower-middle income developing countries; and 25 are least developed countries, of the 32 least developed countries that are members of the WTO. These groups are vocal on the issues of S&DT, cotton, agriculture and others.

Developing Country Grouping (DCG)

The 13 members of the developing country grouping include 11 countries in the lower income developing country bracket, and 2 in the least developed country bracket. They are located in South America, South East Asia and Africa.

CARICOM

Of the 13 members of the CARICOM Group that are in the WTO, 7 are upper income developing countries, 5 are lower income developing countries, and 1 is a least developed country. All of the CARICOM countries are in the Caribbean/Central America region, and are also members of the Small Island Developing States (SIDS) grouping.

G21

This bloc emerged prior to the Cancun Ministerial meeting and proved to be very influential. Countries included are developing countries from Africa, the Caribbean, Latin America, and Asia. It includes 16 lower income developing countries and 6 upper income developing countries.

Small Island Developing States (SIDS)

The list of Small Island Developing States is created by the United Nations, based on the specific economic constraints these countries face. There are 25 SIDS countries in

the WTO, of which 3 are developed countries, 9 are upper income developing countries, 9 are lower income developing countries, and 4 are least developed countries. There is a lot of overlap in the countries in the SIDS and CARICOM groupings.

ASEAN

There are 7 members of the ASEAN group in the WTO, all located in South East Asia. 2 members of this group are developed countries, 1 is an upper income developing country, 3 are lower income developing countries, and 1 is a least developed country.

Cairns group (17)

This group was founded in Cairns, Australia, in 1986, consists of the world's largest agricultural exporters. At the 2003 Cancun Ministerial many of its key players preferred to partner along other lines, and the G20 took its place as the most influential grouping of countries in the Agriculture talks. Cairns group are located in North and South America, South East Asia, and South Africa. The group is basically a coalition of agricultural exporting countries and account for one-third of the world's agricultural exports. 3 members of the Cairns group are developed countries, 6 are upper income developing countries, 9 are lower income developing countries. In practice, the membership of coalition groupings evolve over time and groups can have more or fewer members than their name suggests.

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

Friends of Multifunctionality (6)

This group seeks to pursue agricultural policies that encourage environmental protection, rural development and food security. Member of this group include: EU, Switzerland, Norway, Japan, Korea and Mauritius.

G10 (10)

These group members are agricultural importers that maintain heavy protectionist rules for their own products, and are keen to protect their domestic agricultural sector. Group members include: Bulgaria, South Korea, Iceland, Israel, Norway, Liechtenstein, Mauritius, Switzerland, Taiwan and Japan.

G20 (19)

A group striving for agricultural reform and created at the initiative of Brazil shortly before the 2003 Cancun Ministerial, consist solely of developing countries. The

references to the group as G20+ or even G22 are due to the variation in numbers of the members. While a few countries have joined, others — such as Peru and Colombia — have left since September 2003.

Members of this group include: Argentina, Bolivia, Brazil, Chile, China, Cuba, Egypt, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Philippines, South Africa, Thailand, Tanzania, Venezuela and Zimbabwe.

G33 (30)

The G33 consists of developing country-importers of agricultural products and many of them are also single-crop producers and exporters. The group advocates that developing countries be granted flexibility to self-designate a number of 'special products' (SPs) on which they would not have to make any tariff reduction or tariff rate quota (TRQ) commitments. G33 also seeks a new safeguard mechanism for developing countries to enable them to counter market volatility and sudden import surges.

Members of this group include, Barbados, Botswana, Congo, Côte d'Ivoire, Cuba, Dominican Republic, Haiti, Honduras, Indonesia, Jamaica, Kenya, South Korea, Mauritius, Mongolia, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Senegal, Sri Lanka, Tanzania, Trinidad and Tobago, Turkey, Uganda, Venezuela, Zambia and Zimbabwe. This group is also referred to as the Alliance for Special Products and a Special Safeguard Mechanism.

G90

The G90 is an umbrella group of three partly overlapping groupings; namely the ACP Group, the African Group and the LDCs.

The ACP Group, consisting of developing countries from Africa, the Caribbean and the Pacific Ocean that have signed the Cotonou Partnership Agreement with the EU. The African Group, consisting of the members of the African Union, which contains all African countries except Morocco; and The Group of Least Developed Countries (LDCs), which contains all the LDCs that are WTO members.

Like the G20, this group was also born in Cancun, among others, to oppose attempts by the US and EU to include the so-called Singapore issues—investment, competition policy, transparency in government procurement and trade facilitation—in the negotiations.

Group on Cotton (4)

Group of four comprising, Benin, Burkina Faso, Chad and Mali seeking a complete phase-out of developed countries' cotton subsidies.

Table 12.1 Glossary of WTO Groups

Name (date formed)	Areas of interest	Description/ Membership
ACP (1975)	Group of 77 African, Caribbean and Pacific countries (56 WTO Members) with preferential trading relations with the EU	Angola, Antigua and Barbuda, Barbados, Belize, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Congo, Cote d'Ivoire, Cuba, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Fiji, Gabon, The Gambia, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Jamaica, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Papua New Guinea, Rwanda, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Senegal, Sierra Leone, Solomon Islands, South Africa, Suriname, Swaziland, Tanzania, Togo, Trinidad and Tobago, Uganda, Zambia and Zimbabwe.
African Group	Holds joint positions in many negotiating issues	All African Union countries who are also WTO members, currently 41 countries.
Cairns Group (1986)	Group of agricultural exporting nations lobbying for agricultural trade liberalisation	Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Pakistan, Paraguay, Philippines, South Africa, Thailand and Uruguay.
C-4 (2003)	"Cotton Four" group of countries with specific interest in cotton	Benin, Burkina Faso, Chad and Mali.
FIPs (2004)	Five Interested Parties	FIPs (2004) Five interested parties Australia, Brazil, EU, India and USA,
FIPs plus (2005)	FIPs plus Friends	FIPs plus Argentina, Canada, China, Japan, New Zealand and Switzerland.
G-4 (2005)		FIPs less Australia.
G-4 plus Japan (2005)		G-4 plus Japan.
G-6 (2005)		FIPs plus Japan.
G-10 (2003)	Importers. Multifunctionality of agriculture and need for high levels of domestic support and protection	Chinese Taipei, Rep of Korea, Iceland, Israel, Japan, Liechtenstein, Mauritius, Norway and Switzerland.
G-11 (2005)	Full liberalisation in tropical products with G-20	Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Panama, Peru, Nicaragua and Venezuela. Argentina, Bolivia, Brazil, Chile, China, Cuba, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria,

(Continued Table 12.1)

Name (date formed)	Areas of Interest	Description / Membership
G-20 (2003)	Elimination of export subsidies and domestic support and liberalisation of market access in agriculture	Pakistan, Paraguay, Philippines, South Africa, Thailand, Tanzania, Uruguay, Venezuela and Zimbabwe.
G-33 (2003)	Developing country importers. Differentiated treatment of developing countries on basis of food security, sustainable livelihoods and rural development needs - Special Products and Special Safeguard Mechanisms	Antigua and Barbuda, Barbados, Belize, Benin, Botswana, China, Congo, Côte d'Ivoire, Cuba, Dominican Republic, Grenada, Guyana, Haiti, Honduras, India, Indonesia, Jamaica, Kenya, Rep. Korea, Mauritius, Madagascar, Mongolia, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Senegal, Sri Lanka, Suriname, Tanzania, Trinidad and Tobago, Turkey, Uganda, Venezuela, Zambia and Zimbabwe.
G-90 (2003)	Coalition of African, ACP and least developed countries (currently 64 Members of the WTO)	African Group, ACP and LDCs.
Mini-Ministerial	Regular participants at mini-ministerials in 2005. (for an analysis of the principles of selection, see Wolfe, 2004)	Argentina, Australia, Bangladesh, Benin, Brazil, Chile, China, Costa Rica, Egypt, EU, Hong Kong (China), India, Indonesia, Jamaica, Japan, Kenya, Korea, Malaysia, Mexico, New Zealand, Nigeria, Norway, Pakistan, Rwanda, Singapore, South Africa, Switzerland, Thailand, USA and Zambia.
LDCs	Least developed countries according to the UN definition (currently 32 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 and Zambia.
Quint (1989)	Developed Countries Recently Acceded Members	Australia, Canada, EU, Japan, USA, (Albania, Croatia, Georgia, Jordan, Moldova and Oman.)
RAMS. SVEs (2003)	Small and vulnerable economies	Antigua and Barbuda, Barbados, Belize, Bolivia, Cuba, Dominica, Dominican Republic, El Salvador, Fiji, Grenada, Guatemala, Guyana, Honduras, Jamaica, Mauritius, Mongolia, Nicaragua, Paraguay, Papua New Guinea, Solomon Islands, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago.

Source: Wolf, 2006, CATPRM Commissioned Paper CP 2006-2.

Table 12.2 WTO Major Negotiations Groups and their Objectives

Group	Members	Objectives
CARICOM	Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Trinidad and Tobago and Suriname	Protect the interest of those in the Caribbean Community and Common Market
The Cairns Group	Australia, New Zealand, Argentina, Brazil, Canada, South Africa, Thailand and 10 others	Eliminate domestic subsidies, eliminate export subsidies and reduction of tariffs
Food Importers Group	Switzerland, Japan, South Korea, Bulgaria, Iceland, Israel, Mauritius, Norway, Taiwan and Liechtenstein	Maintain import tariffs to protect domestic industry and maintain export subsidies to prevent large increases in world price
G10	Bulgaria, Iceland, Israel, Japan, Korea, Republic of, Liechtenstein, Mauritius, Norway, Switzerland, Chinese Taipei	Protecting and advancing the agricultural interests of its members
G20	21 Relatively poor developing countries including Brazil, China and India.	EU and US tariff cuts to aid export possibilities, scope to use own tariffs to protect development
G33	Led by Indonesia and with 40 other countries	Promote the benefits of having exemptions for Special Products and of having the Special Safeguard Mechanism
G90/ACP	64 Least Developed Countries including large parts of Africa, Caribbean and the Pacific Nations	Promote the benefits of having exemptions for Special Products and of having the Special Safeguard Mechanism
MERCOSUR	Argentina, Brazil, Paraguay, Uruguay, Bolivia, Chile, Costa Rica, Colombia	Protect the interests of all those in the Latin American Free Trade Agreement
RAMS	Recent new member states including Albania, Croatia, Georgia, Jordan, Moldova and Oman	Ensure new member states are treated fairly in the negotiations

Source: *ibid.*

Group of Small Island Developing States (SIDS) (9)

These group members are the small island developing countries. Members of these groups are: Barbados, Cuba, Dominica, Jamaica, Mauritius, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, and Trinidad and Tobago.

Group of Small and Vulnerable Economies (SVE) (25)

This group includes SIDS group plus Antigua and Barbuda, Bahamas, Belize, Comoros, Fiji, Grenada, Guyana, Haiti, Maldives, Mauritius, Papua New Guinea, Samoa, Seychelles, Solomon Islands, Surinam and Vanuatu. Both these groups aim to put particular concerns and constraints faced by small island and vulnerable economies on the agenda.

Like-Minded Group (LMG) (13)

The LMG pushes for the so-called implementation issues to be on the agenda, as well as special and differential treatment, and opposes the Singapore issues. Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Kenya, Malaysia, Pakistan, Sri Lanka, Tanzania, Uganda and Zimbabwe (Jamaica and Mauritius are observers) are the members of these group.

P5, or Five Interested Parties

United States, European Union, Brazil and India (on behalf of the G20) and Australia (on behalf of the Cairns Group) are members of "Five Interested Parties".

Civil Society Group

Civil societies also supply inputs to advocate stakeholders' concerns and provide a platform for interaction in the WTO on issues of concern among various civil society organisations, networks, and special interest and advocacy groups from various regions of the globe.

In connection with the WTO Ministerial Meeting in Hong Kong in December 2005 and as part of its activism to promote and advance the interests and concerns of Least Developed Countries (LDCs) in the ongoing negotiations under the Doha Development Agenda, the Centre for Policy Dialogue (CPD), organised a Civil Society Forum in Dhaka, Bangladesh titled Pre-Hong Kong International LDC Civil Society Forum during 3-5 October 2005. The objective was to prepare a Declaration on civil society's views, as regards LDC perspectives and to prepare a list of priority issues to be considered by LDC Trade Ministers.

Negotiations Groups and their Areas of Interest

Following two tables highlights the groups involved in negotiations both inside and outside the WTO. Besides the groups, the issues on which they are working are also highlighted.

12.6 LDCs and Trade Negotiations⁵

At the conclusion of the Uruguay Round of Multilateral Trade Negotiations (MTN), the total number of founding LDC members of the WTO was 30. Since the launch of the WTO in 1995, only two more LDCs, viz. Nepal and Cambodia, were able to accede to the WTO. However, ten other LDCs are negotiating accession and are associated with the WTO as observers. LDC members are also taking a more active role in the WTO trade negotiations. The Uruguay Round promised to generate significant welfare benefits for all countries through the strengthening of the Multilateral Trade System (MTS).

The LDCs faced the major challenge of addressing possible negative effects from the obligations thrust upon them under the single undertaking of the Uruguay Round agreements. Fulfilling these obligations had to be implemented in the absence of the promised trade-related technical assistance (TRTA) for capacity building in the LDCs. At the First WTO Ministerial Conference in Singapore (1996), while the concerns of LDCs were highlighted in the Plan of Action, new issues were added by the developed countries for subsequent negotiations. The High Level Meeting (1997) and the subsequent Second WTO Ministerial Conference in Geneva (1998) approved the Integrated Framework (IF), which promoted demand-driven TRTA to effectively meet the individual needs of the LDCs. After the break down of the Third WTO Ministerial Conference in Seattle (1999), some of the major concerns of the LDCs were incorporated into the WTO work programme during the Fourth Ministerial Conference in Doha (2001). These included issues related to implementation of existing agreements, elimination of tariff and non-tariff barriers for products of interest to LDCs, phasing-out of subsidies and trade-distorting domestic farm supports in the developed countries, and implications of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) on public health. As a result, the work programme of the Doha Round was called the Doha Development Agenda (DDA).

During the preparations and at the discussions in the Cancun Ministerial Conference, held in September 2003, the LDCs effectively identified and pursued their interests. Various drafts of the Declaration of the Cancun Ministerial Conference incrementally integrated the views of the LDCs. Even though no Declaration resulted from the Cancun Conference, it was the first Ministerial Conference where the LDCs established themselves as an influential group whose views were noted in the WTO negotiations. Slowly, but steadily, LDCs have been realising their responsibilities and trying to build their capacities in order to effectively underline their concerns and interests, in a body dominated by both economically and politically powerful trading nations. In this regard, their recent experiences have shown that they have a long way

⁵This section has been adopted from Bhattacharya and Rahman, 2004. The LDCs in the WTO: Strengthening Participation Capacities, in Globalisation and the LDCs: Perspective from the Asia-Pacific Region.

to go, particularly in the area of trade negotiations. There is now greater recognition that the LDCs need to develop their own positive agenda in order to make effective use of the multilateral trading system. This implies mobilising their scarce resources for technical preparations, identifying areas of interest, and mounting a joint effort towards capturing the initiative from the very beginning of the negotiation (Bhattacharya and Rahman, 2004). While at the same time being involved in multilateral trade negotiations, either as members of the WTO or as observers in the process of accession, most LDCs in the region are engaged in an increasing number of bilateral and regional trade negotiations and agreements. Bangladesh, for example, is currently involved in all three categories of trade negotiations and aside from being one of the leaders of the LDC group in the WTO, it is discussing bilateral Free Trade Agreements (FTAs) with India, Pakistan and Sri Lanka, and has recently finalised a Trade and Investment Framework Agreement (TIFA) with the USA. At the regional level, Bangladesh is currently negotiating the details of a South Asia Free Trade Area (SAFTA) with Nepal, Bhutan and the Maldives (along with India, Pakistan and Sri Lanka). Issues being negotiated include schedule of tariff reduction, rules of origin and dispute settlement mechanism. Bangladesh also joined the Bay of Bengal Initiative for Multi Sectoral Technical and Economic Cooperation (BIMSTEC), another regional agreement in the process of forming an FTA that would not only include Nepal and Bhutan, but also Thailand, Myanmar and India. Cambodia is another LDC that has been involved in trade negotiations within the context of ASEAN, as well as at the multilateral level, as the latest acceded WTO Member. The only Latin American LDC, Haiti, is active in negotiations under the Free Trade Area of the Americas (FTAA) and the Central American Free Trade Area (CAFTA). The African and some Pacific island LDCs, along with non-LDC partners, are involved in trade negotiations with the EU under the African, Caribbean and the Pacific states (ACP) – European Union (EU) Cotonou Partnership Agreement. The growing number of bilateral and regional trade initiatives, combined with the increasing number of issues being addressed in multilateral trade negotiations under the Doha Development Agenda (DDA), requires that LDCs in Asia and the Pacific build additional negotiating capacity in order to formulate a commonly acceptable framework for discussions.

Group Dynamics in the Hong Kong Ministerial

By negotiating together, broad coalitions such as the G20 (led by Brazil and India) and the G33 (led by Indonesia), or the Africa Group, ACP, and LDC group, have acquired increased clout in the negotiations. Hong Kong was notable for the different developing country groups coming together to form an alliance known as the 'G110' (80% of humanity). It was also clear that delegations did not want the Ministerial to fail and more importantly, not to be perceived as responsible for any collapse in the talks. This was the reason that even Cuba and Venezuela, which asked for their reservations on NAMA and Services to be noted, did not block consensus.

12.7 Summary

- Negotiations at the WTO take place either in the Trade Negotiations Committee (TNC) and its various sub-committees, or regular WTO councils present in Geneva.
- Cooperation, coordination and the pooling of resources with countries that have similar interests and concerns are therefore important for the effective participation of many developing countries in the WTO. They manage to share information effectively, preserve internal cohesion and engage in coordination with other groupings.
- Important breakthroughs are rarely made in formal meetings of the bodies, least of all in the higher level councils. Since decisions are made by consensus, without voting, informal consultations within the WTO play a vital role in bringing a vastly diverse membership round to an agreement.
- There are different steps involved in planning the negotiations, which includes problem identification, interest identification, consultation process, establishment of negotiating machinery and developing a negotiating agenda, and formulation of negotiating positions and strategies.
- Smaller Group Meeting is one step away from the formal meetings, as informal meetings that still include the wider membership, such as those of the Heads of Delegations (HOD). More difficult issues have to be thrashed out in smaller groups and in this respect, the practice of 'Green Room' consultations has been developed, which is used to refer to meetings of 20-40 delegations.
- In the Hong Kong Ministerial, by negotiating together, broad coalitions such as the G20 (led by Brazil & India) and G33 (led by Indonesia), or the Africa Group, ACP and LDC group have acquired increased weight in the negotiations.
- The LDCs could gain significantly if they are able to build up coalitions and stand firmly against groupings of powerful developed countries. The united stand that LDCs displayed at the Cancun Ministerial Conference is one of the best examples of the effectiveness of coalition building and partnership, especially in a multilateral trade negotiation.

12.8 Questions for Discussion

1. What does the term negotiations stands for
2. Why negotiations are importance particularly in the light of the WTO?
3. What is the process of trade negotiations?
4. Why assessment of the whole outcome becomes necessary after the actual negotiations?

5. Who are the actors involved in formal WTO negotiations and who are in the informal negotiations?
6. Who are the active groupings in the WTO and what are their major areas of interests?
7. Why trade negotiations are important from the perspective of LDCs?
8. How LDCs can gain from this group dynamism in the WTO?

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Training Manual on **WTO and Bangladesh Trade Policy**

Module

13

A Guide to WTO

Related

Information

A Guide to WTO Related Information

Learning Objectives

- To get knowledge about the sources of trade statistics for further exploration of facts.
- To get acquaintance with the sources where one can participate in the online discussion or get online news periodicals on the burning issues related to trade and WTO.

13.1 Sources of Trade Statistics

Major sources of Trade Data are:

- TradeMap
- UN Commodity Trade Statistics Database (UN Comtrade)
- Office of Textiles and Apparel (OTEXA)
- EUROPA (online database and information on EU Trade)
- Different Annual Reports
- Food and Agricultural Organisation (FAO)

13.1.1 TradeMap: ITC-Trademap Database

International Trade Centre (ITC)

The International Trade Centre (ITC) is a joint technical cooperation agency of the United Nations Conference on Trade and Development (UNCTAD) and World Trade Organization (WTO), for the business aspects, in view of trade development. The ITC's mission is to contribute toward sustainable development through technical assistance in export promotion and international business development.

TradeMap

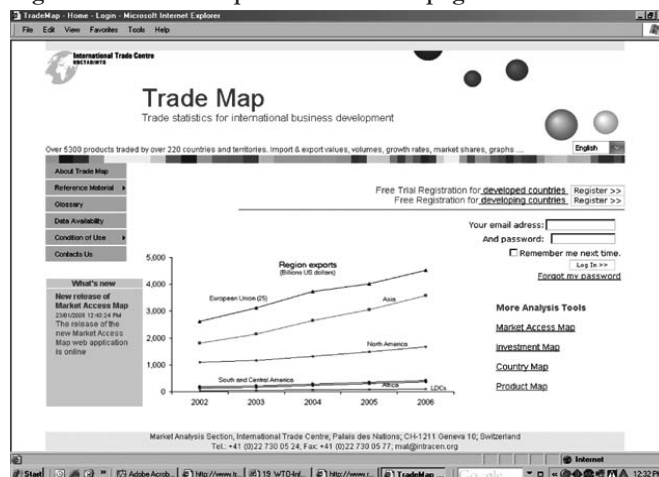
TradeMap has on-line access to the world's largest trade database. It is a market analysis tool, covering some 5,300 products and 220 countries. Developed by the ITC's Market Analysis Section (MAS), TradeMap provides indicators on national trade performance, international demand, potential for market and product diversification, market access barriers and the role of competitors from both the product and country perspective.

TradeMap operates in a web-based interactive environment and cover the trade flows (values, quantities, trends, market share and unit values, both in graphic and tabular format) of over 220 countries and 5,300 products defined at the 2, 4 or 6-digit level of the Harmonized System (HS revision 1). TradeMap features include:

- *Analysis of present export markets:* Examines the profile and dynamics of export markets for any product, assess the value, size and concentration of exports and highlight countries where market share has increased.
- *Pre-selection of priority markets:* Highlight the world's major importing countries; illustrate the extent of import concentration and increase of demand in the countries over the past five years.
- *Overview of competitors in global and specific markets:* Identify the leading exporting countries for a given product; highlight a country's position in world exports or imports from partner and neighbouring countries.
- *Review of opportunities for product diversification in a specific market:* Make a comparative assessment of import demand for related products in an export market; identify imports of similar products and possible synergies.
- *Identification of existing and potential bilateral trade with a partner country:* Identify product-specific opportunities by comparing actual bilateral trade, the total import demand of partner countries and the overall export supply capacity of the home country.
- *Information on tariffs and non-tariff barriers:* View information on a country's instruments of trade control (ad-valorem and specific tariffs, MFN tariffs, tariff quotas, anti-dumping duties, prohibitions and norms).

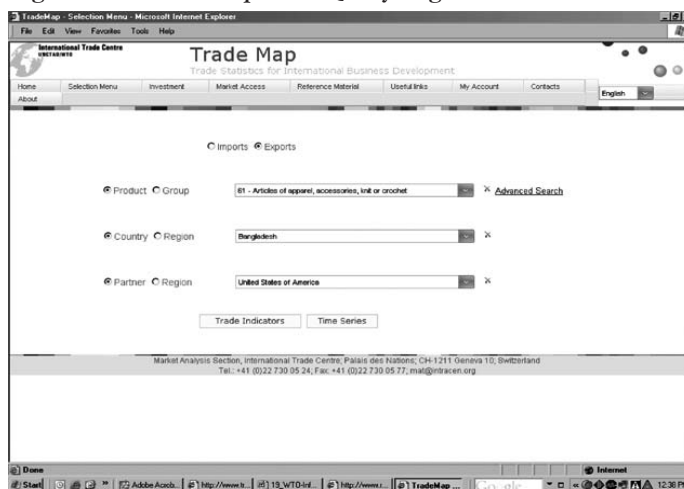
TradeMap is accessible on subscription and can be customised for trade-related institutions through a password-protected Website, which allows the dissemination of

Figure 13.1 TradeMap Database Homepage



Source: Trademap Database Website.

Figure 13.2 TradeMap Data Query Page



Source: Trademap Database Website.

access to third-party users. The TradeMap information portal (www.trademap.org) and the TradeMap database have been developed and owned by the ITC. Utilising TradeMap information portal and database are subject to certain Terms and Conditions.

TradeMap is based on COMTRADE ©, the world's largest trade database maintained by the United Nations Statistics Division, and on market access data from UNCTAD, WTO and national sources. The United Nations Statistics Division hold the Copyright to COMTRADE.

As of 15 October 2007, TradeMap has been updated with the 2006 data based on trade information, reported by 99 countries (TradeMap, 2008).

Figure 13.3 TradeMap Data

HS Code	Product Label	Bangladesh's exports to United States of America			United States of America's imports from world			Bangladesh's exports to world			
		Value in 2006, USD thousand	Annual growth in value between 2002-2006, % p.a.	Share in Bangladesh's exports, %	Value in 2006, USD thousand	Annual growth in value between 2002-2006, % p.a.	Share in world imports, %	Value in 2006, USD thousand	Annual growth in value between 2002-2006, % p.a.	Share in world exports, %	
6101	Men's overcoats, capes, etc., knitted/crocheted of hd 61 03	31,291	49	223,221.4	15.2	724,630	24	49.44	93,009	34	6.08
6102	Women's overcoat, cape, etc., knitted/crocheted of hd 61 04	15,744	23	0	16.6	879,051	19	40.39	63,200	19	3.86
6103	Men's suit jackets, blouses etc./shirts, knitted/croch.	72,253	35	10,321.96	16.6	856,537	2	26.2	126,286	30	1.89
6104	Women's suits, dresses, skirt etc./short, knitted/croch.	16,413	28	6,396.38	14.3	2,601,963	7	27.45	139,929	30	1.03
6105	Men's shirts, knitted or crocheted	63,710	19	36,792.14	19.8	2,332,110	6	38.89	352,316	24	5.40
6106	Women's blouses & shirts, knitted or crocheted	26,727	14	107,198.8	20.2	1,368,833	4	22.69	119,426	32	1.69
6107	Men's undershirts, pyjamas, pajamas etc./knitted/croch.	35,972	10	719,440	8.6	1,081,476	3	27.54	77,072	17	1.36
6108	Women's slip, partner, pyjamas, pajamas etc., knitted/crocheted	120,676	5	67,416.2	10.2	2,795,899	6	29.76	202,162	13	2.13
6109	T-shirts, singlets and other vests, knitted or crocheted	104,356	33	17,107.38	18	4,803,230	7	17.56	1,879,661	28	6.07
6110	Jerseys, pullovers, cardigans, etc., knitted or crocheted	340,628	-1	26,793.78	12.4	14,030,960	4	32.37	2,123,923	18	5.16
6111	Boiler garments, knitted or crocheted	23,694	9	7,687.96	15.7	1,726,590	5	32.46	62,776	22	1.83
6112	Track suits, ski suits and swimwear, knitted or crocheted	17,422	60	87,310	24.2	724,723	10	21.34	27,343	21	0.79

Source: Trademap Database Website.

TradeMap free trial is available for the potential/interested users to acquire on initial impression regarding what TradeMap has to offer.

Free trade data is also available in: <http://beta.trademap.net>.

More Analytical tools

Market Access Map

This web portal contains information on market access measures, trade agreements and rules of origin.

Web: <http://www.macmap.org>

Investment Map

This is an online portal combining statistics on FDI, international trade, market access and information on foreign affiliates.

Web: <http://www.investmentmap.org>

Country Map

It offers an overview of the ITC's technical cooperation activities both at the country and regional levels. It also provides links to national trade related institutions and country-specific business information. In addition, it presents trade and market profiles, Country Map, based on trade statistics which benchmark national trade performance and provide indicators on supply of exports and demand for imports.

Web: <http://www.intracen.org/countries/>

Product Map

The Product Map Web site consists of 72 Market Analysis Portals, accessible from the ITCs Web site (www.intracen.org/pmaps) or directly via www.p-maps.org, covering over 5,000 products classified within 72 product clusters, ranging from automotive components to wood products, fruit juice. Each portal offers:

- Extensive international trade statistics for over 180 countries and territories.
- Powerful market analysis tools for both quantitative and qualitative insights into the global market trends.
- Unique facilities to identify international trade opportunities in any product category.
- Networking tools for subscribers with a choice of facilities in order to create a presence on the Web.
- Links to potential business contacts, to published market research and to numerous sources of market intelligence.

- All Product Map data are updated regularly while international trade statistics are updated annually.

Web: <http://www.p-maps.org>

13.1.2 UN Commodity Trade Statistics Database (UN Comtrade)

The Statistics Division is committed to words the advancement of the global statistical system. It compiles and disseminates global statistical information, develop standards and norms for statistical activities, and support countries' efforts in order to strengthen their national statistical systems.

Web: <http://unstats.un.org/unsd/comtrade/>

Coverage of the Database

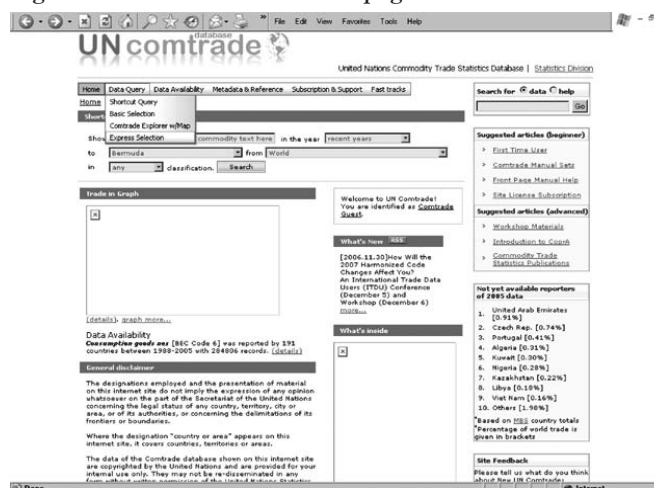
The UN Comtrade, contains detailed import and export statistics reported by statistical authorities of proximally 200 countries or areas. It also possesses annual trade data from 1962 to the most recent year. UN Comtrade is considered the most comprehensive trade database available with more than 1 billion trade records.

Limitations of the Database

UN Comtrade is accessible to the general public. However, it should be used with sound knowledge of its limitations:

- The values of the detailed commodity data do not necessarily sum up to the total trade value for a given country dataset. Due to confidentiality, countries may not report some of their detailed trade data. This data will - however - be included at the higher commodity level and in the total trade value. For instance, trade data not reported for a specific 6-digit HS code will be included in the total trade and may be included in the 2-digit HS chapter. Similar situations could occur for other commodity classifications.
- Countries (or areas) do not necessarily report their trade statistics aerially. This means that aggregations of data into groups of countries may

Figure 13.4 UN Comtrade Homepage

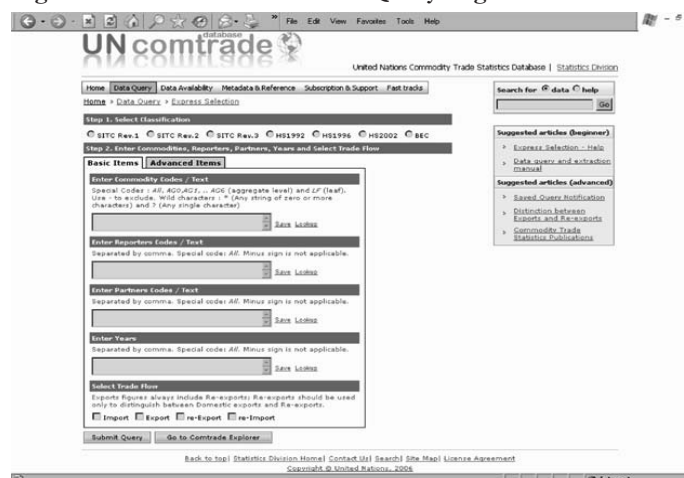


Source: UN Comtrade Database Website.

involve the latter with no reported data for a specific year. The UN Comtrade does not contain estimates for missing data, whereby, trade of a country group could be understated due to unavailability of some country data.

- Data are made available in several commodity classifications, but not all countries necessarily report in the most recent format. Furthermore the UN Comtrade does not contain estimates for data of countries which do not report in the most recent classification.
- When data are converted from a more recent to an older classification, it may occur that some of the converted commodity codes contain more (or less) products than what is implied by the official commodity heading. No adjustments are made for these cases.
- Imports reported by one country do not coincide with exports reported by its trading partner. These differences are due to various factors including valuation (imports CIF, exports FOB), differences in inclusions/exclusions of particular commodities, timing etc. It is noteworthy to put here that recommendations for international merchandise trade statistics can be found in the 'International Merchandise Trade Statistics: Compilers Manual'. Additional methodological information can also be found on the same web page (UN comtrade 2008).

Figure 13.5 UN Comtrade Data Query Page



Source: UN Comtrade Database Website.

13.1.3 Office of Textiles and Apparel (OTEXA)

OTEXA provides trade data regarding US import and export of textiles and apparels.

The Major Shippers' Report

This report provides General Import statistics from the Census Bureau, by date of import for a variety of recent time periods on countries that exceed certain thresholds. The statistics are also summarised in national categories. The status of any

control on these imports is also provided. However, this data does not include plastic apparel and it looks up the category for an HTS or downloads the entire correlation as a spreadsheet. The following information is provided in the report:

- Headnotes to the Major Shippers' Report
- U.S. Imports by Category
- U.S. Imports by Country
- U.S. Imports by Part Category
- U.S. Imports by Merged Category
- Interactive Correlation

Additional Import Data Reports (TQ Data)

These interactive reports show the U.S. Textile and Apparel Imports from ALL suppliers by MFA Category and Harmonized Tariff Schedule (HTS) line item.

- Textile and Apparel Import Data in units
- Textile and Apparel Import Data in dollars

Current and Historical Data (back to 1989)

The U.S. textile and apparel imports data are available by MFA Category and Harmonized Tariff Schedule (HTS) line item. Data is also available as per group products or countries (annual only) and they can be viewed either in a table or downloaded as an Excel spreadsheet for generating both annual and monthly reports.

The Textile Correlation

There is a correlation between the Textile Import Category System and the Harmonized Tariff Schedule (HTS).

The Export Market Report

U.S. Exports data of Textile and Apparel Products are available in dollar:

- By Group
- By Country
- U.S. Exports to the Middle East
- Fastest Growing Markets
- Historical data: 1989-2006

Expanded Export Data

U.S. Exports of Textile and Apparel Products by Schedule B line item in first unit of

quantity and also in dollars. The data can be viewed either in a table or downloaded as an Excel spreadsheet.

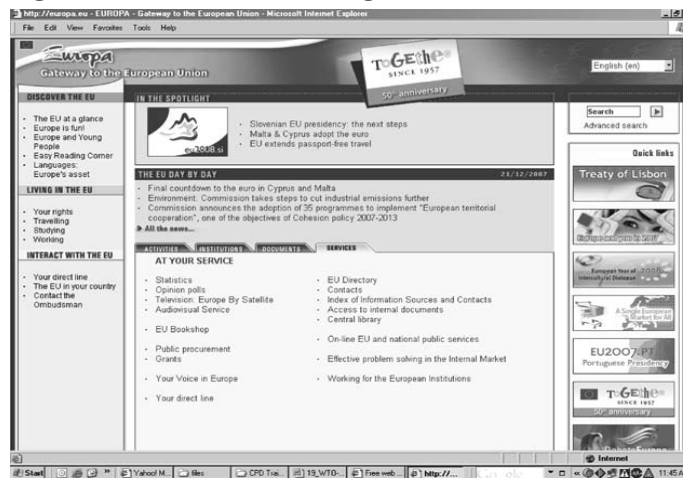
The Textile and Apparel Trade Balance Report

In March 2007, OTEXA expanded its product coverage for the Trade Balance Report to correspond with the product coverage of textile provisions under Free Trade Agreements. This coverage is different from the Major Shippers' Report which covers imports of textile and apparel in products that were subject to possible quota restrictions by the United States, under the MFA (Multi-fibre Arrangement). OTEXA plans to use this expanded product coverage in additional future reports. Web address: <http://otexa.ita.doc.gov/msrpoint.htm>

13.1.4 EUROPA (online database and information on EU Trade)

EUROPA is the portal site of the European Union (<http://europa.eu>) and it provides up-to-date coverage of the European Union affairs and essential information on countries' integration in the European Community. Users can also consult the legislations currently in force or under discussion, access the websites of each of the EU institutions and inquire about the policies administered by the European Union under the powers delegated to it.

Figure 13.6 EUROPA Home Page



Source: EUROPA Website.

Web: http://europa.eu/index_en.htm

External Trade Database on EU is available in:
<http://epp.eurostat.ec.europa.eu/newxtweb/>

13.1.5 Annual Reports

United Nations Conference on Trade and Development (UNCTAD) Reports
 UNCTAD Reports are available in web: <http://www.unctad.org>

Trade and Development Report

The Trade and Development Report (TDR), launched in 1981, is issued every year for the annual session of the Trade and Development Board. The Report analyses current economic trends and major policy issues of international concern and makes suggestions for addressing these issues within various levels.

Current Issue:

TDR 2007 - Regional Cooperation for Development

Trade and Environment Review

The objective of the Trade and Environment Review is to enhance understanding of and promote dialogue on the development dimension of key trade and environment issues. Each edition of the Review comprises one or more lead articles on selected topics, commentaries on those articles by a range of experts, and an overview of UNCTAD technical cooperation activities in the area of trade, environment and development.

Current Issue:

Trade and Environment Review, 2006

World Investment Report (WIR)

The World Investment Report (WIR) focuses on trends in foreign direct investment (FDI) at global, regional and country levels. The report contains:

- Analysis of the trends in FDI during the preceding year, with special emphasis on implications for economic development.
- Ranking of the largest transnational corporations in the world.
- In-depth analysis of a selected topic related to FDI.
- Policy analysis and recommendations.
- Statistical annex with data on FDI flows and stocks for 196 economies.

Current Issue:

World Investment Report 2007: Transnational Corporations, Extractive Industries and Development

Least Developed Countries Report

UNCTAD's Least Developed Countries Report provides a comprehensive source of information on socio-economic analysis and data on the world's most impoverished countries. The report is intended for a broad readership of governments, policy makers, researchers and all those involved with LDCs' development policies. Each Report contains a statistical annex, which provides the basic data with respect to the LDCs.

Current Issue:

2007 - Knowledge, Technological Learning and Innovation for Development

UNDP Report

Human Development Reports (available online)

The Human Development Report is the product of a collective effort. Members of the National Human Development Report unit (NHDR) provide detailed comments and advice throughout the research process. They also link the Report to a global research network in developing countries.

Current Issue:

Human Development Report 2007/2008: Fighting Climate Change: Human Solidarity in a Divided World

Web: <http://hdr.undp.org/>

Locally Available Data

Bangladesh Bank

In Bangladesh Bank Website, different types of annual, quarterly and monthly reports are available. These are:

- Weekly: Statement of Affairs
- Fortnightly: Statement of Trends of Major Economic Indicators
- Monthly: Economic Trends, Major Economic Indicators, Monthly Update, Bank Parikrama
- Quarterly: Bangladesh Bank Quarterly
- Half Yearly: Financial Sector Review
- Annually: Annual Report, Balance of Payments, NGO-MFIs in Bangladesh, Import Payments, Export Receipts

Web: <http://www.bangladesh-bank.org/>

Foreign Trade Statistics of Bangladesh

Foreign Trade Statistics of Bangladesh is published by the Bangladesh Bureau of Statistics (BBS), Statistics Division, Ministry of Planning, Government of People's Republic of Bangladesh, Dhaka, Bangladesh.

Independent Review of Bangladesh's Development (IRBD)

IRBD is an annual homegrown publication by the Centre for Policy Dialogue (CPD) and University Press Limited (UPL). It contains research on Bangladesh's development issues both from the current and strategic perspectives. It is divided into

two parts. Part A essentially focuses on the review of macroeconomic management in Bangladesh for the last fiscal year, while part B presents a discourse on the specific issues of importance regarding Bangladesh's development.

13.1.6 Food and Agricultural Organisation (FAO)

FAOSTAT is an on-line and multilingual database currently containing over 3 million time-series records, covering international statistics in agriculture, fisheries and other areas:

- Trade
- Producer Prices
- Forestry Trade Flow
- Forest Products
- Codex Alimentarius Food Quality Control
- Fertiliser and Pesticides
- Agricultural Machinery
- Food Aid Shipments
- Exports by Destination

Web: <http://faostat.fao.org/>

Other important online Sources of Information

- World Bank Group
- International Monetary Fund (IMF)
- United Nations Economic Commission for Africa (UNECA)
- Organisation for Economic Co-operation and Development (OECD)
- International Trade Centre (ITC)
- International Food Policy and Research Institute (IFPRI)
- Commonwealth Secretariat
- Common Fund for Commodities (CFC)

13.2 WTO Negotiations

In WTO web site information is available regarding the WTO, WTO news, trade topics, resources, documents and community/forums.

13.2.1 The WTO in Brief

The World Trade Organization (WTO) is the only international organisation dealing

with the global discipline of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible. The WTO website provides information on the following topics:

- History
- Organisation
- Agreements
- Developing countries

Figure 13.7 WTO Home Page



Source: WTO Website.

And the website further provides information on:

- *10 benefits*: The WTO and the trading system offers a range of benefits; some are well-known, others not so obvious.
- *10 misunderstandings*: Is it a dictatorial tool of the rich and powerful? Does it destroy employment opportunities? Does it ignore health, environment and development concerns? Criticisms of the WTO are often based on fundamental misunderstandings of the way the WTO works.
- *Understanding the WTO*: An in-depth introduction to the WTO and its agreements.

Table 19.1 Available Informations in WTO Website

THE WTO	TRADE TOPICS	WTO News	Resource	Documents
Ministerial Conferences	The current negotiations	Current News Event calendar Archive	Trade Statistics	Legal Text
2005: Hong Kong	Background and update	All news: 1998-2008 Press release:1995-2008	Publication	Official Documents
2003: Cancun			WTO Distance Learning	
2001: Doha	News of the negotiations	Speeches: • Pascal Lamy • Supachai, Panitchpakdi, • Mike Moore, • Renato Ruggiero	Terminology Database	
1999: Seattle	The meetings		WTO Library	
1998: Geneva			Glossary	
1996: Singapore			Webcasting	

Source: WTO Website

World Trade Organization website: www.wto.org

13.2.2 Available Data in WTO Website

International Trade and Tariff Data

New, improved and updated trade statistics are available from 12 November 2007.

Statistics Database

All tables from the World Tariff Profiles 2006 publication are now included in the Statistics Database.

International Trade Statistics 2007

The 2007 report marks a significant change in the design and contents and provides a more user-friendly presentation of the statistical tables. It provides comprehensive, comparable and up-to-date statistics on trade in merchandise and commercial services for an assessment of world trade flows by country, region and main product groups or services by category. The coverage of statistics on international trade in services is expanded to respond to increasing demands. Major trade developments are summarised in the highlights of each chapter in the report. Detailed trade statistics and times-series are provided in the Appendix.

Previous editions of ITS are: 2006, 2005, 2004, 2003, 2002, 2001, 2000, 1999 and 1998.

Comprehensive Tariff Data

The bound and applied tariffs for all members at the standardised Harmonized System 6-digit subheading level are available for download.

13.2.3 Online Documents: Search in WTO Website

Much of the detail of the organisation's work is recorded only in the official documents of the councils, committees, working groups etc. These are made available separately through the 'Documents Online' database, which has its own search facility.

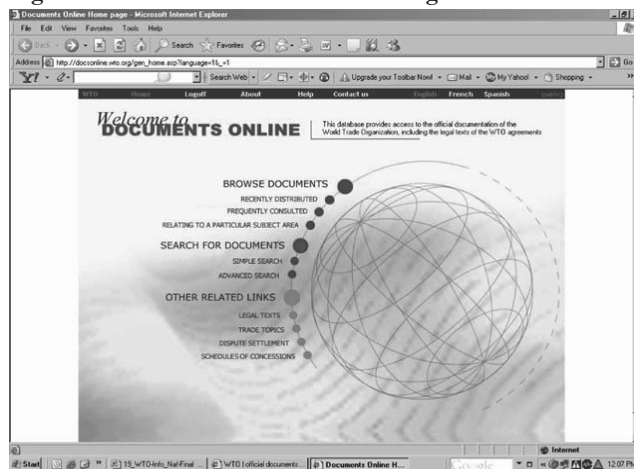
Available Options

This Database provides access to the official documents of the WTO including the legal text of the WTO agreements.

Documents can be browsed as:

- Recently Distributed
- Frequently Consulted
- Relating to a Particular Subject Area

Figure 13.8 WTO Document Search Page



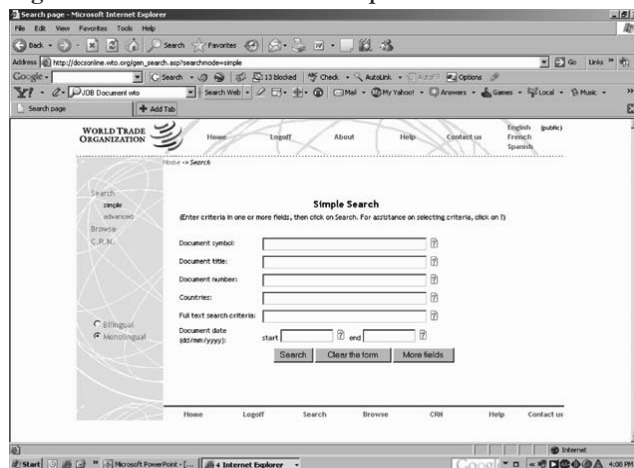
Source: WTO Website.

Search for Documents

There are two types of search:

- Simple Search
- Advanced Search

Figure 13.9 WTO Document: Simple Search



Source: WTO Website.

Other Related Links are:

- Legal Text
- Trade Topics
- Dispute Settlement
- Schedules of Concessions

Web: <http://docsonline.wto.org/>

Figure 13.10 WTO Document Advanced Search

Source: WTO Website.

13.2.4 International Centre for Trade and Sustainable Development (ICTSD)

The International Centre for Trade and Sustainable Development (ICTSD) was established in Geneva in September 1996 to contribute to a better understanding of development and environmental concerns, in the context of international trade.

ICTSD's Mission

By empowering stakeholders in trade policy through information, networking, dialogue, well-targeted research and capacity building, it seeks to advance the goal of sustainable development.

ICTSD's WTO Ministerial Section

ICTSD has been providing its audience with tools to gain a better understanding of the issues that emerge at the crossroads between trade and sustainable development during the lead-up, duration and aftermath of the Conferences. Here one can find information related to past, current and/or upcoming WTO Ministerial Conference proceedings (ICTSD, 2008).

Website: www.ictsd.org

13.2.5 Third World Network (TWN)

The Third World Network is an independent non-profit international network of organisations and individuals involved in issues related to development in the Third World and the North-South regions.

Its objectives are to conduct research on economic, social and environmental issues pertaining to the South; to publish books and magazines on relevant themes and issues; to organise and participate the seminars; and, to provide a platform

representing the South's interests and perspectives at international fora such as the UN conferences.

The TWN's recent and current activities include: publication of the daily SUNS (South-North Development Monitor) bulletin from Geneva, Switzerland; the fortnightly Third World Economics and the monthly Third World Resurgence; the publication of Third World Network Features; the publication of books on environment and economic issues; organising various seminars and workshops and participation in international processes such as UNCED and the World Bank - NGO Committee.

The TWN's international secretariat is based in Penang, Malaysia. It has offices in Delhi, India; Montevideo, Uruguay (for South America); Geneva; and Accra, Ghana. The TWN has affiliated organisations in several Third World countries, including India, the Philippines, Thailand, Brazil, Bangladesh, Malaysia, Peru, Ethiopia, Uruguay, Mexico, Ghana, South Africa and Senegal. It also cooperates with several organisations in the North (TWN, 2008).

Web: <http://www.twinside.org.sg/>

Information available on the TWN website are:

- Recent News and Updates
- TWN Info Service on WTO and Trade Issues
- TWN Info Service on Finance and Development
- TWN Info Service on Health Issues
- TWN Info Service on Climate Change
- TWN Info Service on Intellectual Property Issues
- TWN Info Service on Sustainable Agriculture
- TWN Info Service on Free Trade Agreement
- UN and UN Reform Process

13.2.6 Centre for Trade and Development (CENTAD)

Centre for Trade and Development CENTAD is an independent, non-profit organisation, registered under the Indian Societies Act that carries out policy research and advocacy on issues reflecting trade and development, with a special focus on South Asia.

CENTAD aims to strengthen the ability of governments and communities to make trade and globalisation work for economic development.

Key Activities

- Undertake policy-oriented research on trade and development.

- Publish policy papers and briefing documents.
 - Publish a trade and development report for South Asia.
 - Organise seminars and fora for sharing knowledge and advocating key policy issues.
 - Engage with policymakers to advocate and lobby for changes in both national as well as global levels.
 - Develop a comprehensive website on South Asia trade and development issues
- Web: <http://www.centad.org/>

Figure 13.11 CENTAD Home Page (?)



Source: CENTAD Website.

The site below also provides links to WTO resources on Disputes in WTO involving India, Pakistan, Bangladesh, Nepal and Sri Lanka as both complainant and respondent.

Figure 13.12 CENTAD: WTO Disputes



Source: CENTAD Website.

13.3 Online Discussion and Courses

13.3.1 EU-LDC Network

The EU-LDC website covers the following themes:

- WTO, Regional Integration, Development Co-operation, Social, Environmental and Welfare aspects of Trade, Enterprise Development, EU Enlargement, International Capital Markets

- Information, analysis and views from developing countries are provided by the following regions: South East Asia, South Asia, Middle East/North Africa, Africa, Latin America
 - Other information on this website: News, Online discussion forum, Glossary of trade and aid terms, Guide to relevant EU institutions, Agenda of Events, Links.
- Web: <http://www.eu-ldc.org/src/fora.php>

EU-LDC Network Discussion Fora

Discussion 1: Global governance and poverty reduction

Discussion 2: ACP-EU Trade Negotiations: Ensuring that EPAs are an Effective Tool for Development

EU-LDC Network : Registration and Subscriptions

One can subscribe to the Network's electronic registration and the publication EU-LDC Brief, free of charge, simply by completing the electronic registration and subscription form. Information supplied by the members upon registering in the Network, helps to make the site relevant and interesting to the users, and to assess the socio-economic and age profile of its different users' groups.

13.3.2 WTO's On-Line Forum and Chat Area it Provides:

- Regular discussions among the members/ participants where everyone is encouraged to present one's views and opinions
- Focused discussions/debates on WTO related issues
- Each WTO-initiated discussion involves expert panelists both from the WTO and outside.

Figure 13.13 EU-LDC Network Registration Form

The screenshot shows a web browser window displaying the 'SUBSCRIPTION REGISTRATION FORM'. The form is divided into several sections. On the left, there are links for 'About the EU-LDC Network', 'Subscribers Info', and 'Contact Us'. Below these is a 'Site Search' box. The main form area contains the following fields: 'Full Name (*)', 'Title (Mr/Mrs/Dr)' with a dropdown menu, 'Position/Job title', 'Professional function?' with a dropdown menu, 'Organisation (*)', 'Type of organisation' with a dropdown menu, 'Address', 'Town/City', 'County/State/Province', 'Post Code /Zip Code', 'Country' with a dropdown menu, 'International Telephone', 'International Fax', 'Email (*)', and 'Web (if applicable)' with a dropdown menu. Below the form, there is a note: 'Items marked with (*) are required.' and a section titled 'Please use the check boxes below - Check for Yes!' with two checkboxes: 'Do you wish to receive the biweekly EU-LDC Newsletter?' and 'Do you want to receive the quarterly bulletin, EU-LDC Brief?'. The browser's address bar shows 'http://www.eu-ldc.org/src/fora.php'.

Source: EU-LDC Network Website.

13.3.3 News E-mail

WTO News by E-mail for Public

This is more for general public than for journalists. The information provided during registration will be used solely by the WTO in order to send the relevant information through e-mail.

How to Register

- Fill in the e-mail address
- Assign a password (this will enable the user to change/modify the information about his/her personal profile or to unsubscribe later)
- Fill in the details
- Specify the subject areas of interest

For Students

There is also scope for students in finding basic or detailed information about the WTO in the WTO website itself. The Search and Contact links also help to find information on other areas of the WTO work.

13.3.4 Online Courses

WTO Distance Learning

The WTO offers a number of interactive training modules on WTO related subjects. Each module is prepared on course material developed by WTO experts and includes a number of interactive tests to assess the user's progress.

Each of the training modules offer user the possibility of taking the course over a number of sessions and a simple registration procedure has to be followed in order to begin a course. Information on progress will be stored in the user's browser using a cookie.

Training Modules

- General Agreement on Trade in Services (GATS)
- Agreement on Sanitary and Phytosanitary Measures (SPS)
- SPS Handbook: How to Apply the Transparency Provisions of the SPS Agreement
- WTO Dispute Settlement System

Multimedia Presentations

- Technical Barriers to Trade: Fifth Special Meeting on Procedures for Information Exchange: Audio clips, 7-8 November 2007

- Overview of the WTO: Includes a self-evaluation section
- The WTO: Economic Underpinnings: Provides background on trade theory

Briefings

- WTO Trade Facilitation
- The WTO Coherence Mandate

Other Work in the WTO Related to Training

- Training
- WTO training courses for government officials
- Training videos

13.3.5 Centre for Trade Policy and Law (CTPL)

CTPL is a leader in the field of executive training on trade policy for government officials, private sector executives, and other professionals working on and interested in trade policy issues. CTPL provides regularly scheduled course, as well as customised courses tailored to meet specific client needs.

The CTPL Certificate Program in "Trade Policy and Commercial Diplomacy" explores the fundamentals of trade policy formulation, trade negotiation strategy, and public advocacy, covering the full scope of commercial diplomacy. "The Advanced Certificate Program" builds on the foundation course through an in-depth observation of selected policy issues.

CTPL also offers training on trade policy for clients via the Internet. The course modules are prepared based on the Centre's unmatched experience providing technical assistance and training on WTO-related issues (CTPL, 2008).

Market

Although appropriate for use by anyone, these programmes have been specially designed to meet the particular needs of the clients in developing and transition economies. They are written in clear English and require very little technical infrastructure beyond a computer copied with internet connection. Where Internet connections are unreliable, CTPL can provide the entire contents of the programme on CD-ROM.

Content

Each module provides a comprehensive overview of a key trade issue. The programme begins with basic topics and moves forward to newer or more complex issues. Each module takes about 30 minutes to work through with another 30 minutes allocated for optional testing and applied exercises. All relevant readings, WTO texts

and an extensive glossary are contained within the programme with no requirement for additional textbooks.

Course of Study

CTPL can package the Internet programme to suit any training requirement. The modules may be used as a teaching aid to augment a classroom-based seminar. Alternatively, CTPL can create a learning environment that is entirely Internet-based, including on-line collaboration with Professors and other students.

Feedback

Developed in partnership with the Canadian International Development Agency (CIDA), these course modules are being used successfully by senior undergraduate students at two Russian universities. Based on the positive response to these modules, CTPL is fine-tuning them for domestic and international use.

Web: <http://www.carleton.ca/ctpl/training/on-line.html>

13.4 Reference Materials

Reference materials which could be helpful for understanding WTO and trade-related issues:

- Training Manual
- WTO Manual
- Legal Text of WTO
- Annual Publication of WTO
- Research Reports of WTO
- World Trade Review
- Future of WTO

13.4.1 ICTSD Series

Publications produced through partnerships of ICTSD with other organisations are also listed below:

- Doha Round Briefing Series
- International Trade in Agriculture and Sustainable Development Series
- Trade in Services and Sustainable Development Series
- Intellectual Property Rights & Sustainable Development Series
- Sustainable Development and Trade Issues: ICTSD Resource Papers
- Natural Resources, International Trade and Sustainable Development Series

- Trade and Environment Series
- Biodiversity and Trade Briefings
- Policy Views on Trade and Natural Resource Management
- Trade Knowledge Network Papers
- Public Participation in the International Trading System
- Bridges Executive Summaries
- ICTSD Recommended Reading

Issue areas available in ICTSD are:

Africa

ICTSD is endeavouring to strengthen its network in the Africa region, with the aim of fostering capacity building among a wide range of actors, including government officials, civil society organisations and the private sector. It is hoped that the publications and resource materials will contribute to strengthen trade policymaking institutions and processes in the context of sustainable development.

Agriculture

The website www.agtradepolicy.org is an Internet portal about agriculture and sustainable development in the international trade system. Conceived by the International Centre for Trade and Sustainable Development (ICTSD), it features news on agriculture, resources (including reports, articles and WTO documents), information on recent dialogues, a calendar and links to other useful websites.

Web: www.agtradepolicy.org

Dispute Settlement

Since the introduction of the WTO Dispute Settlement Understanding (DSU) during the Uruguay Round negotiations in 1995, there has been an increase in the use of the DSU system by WTO Members to defend their trade and development interests. This has been credited, among others, to a more transparent and predictable rules-based system. The ongoing DSU review negotiations aim to further improvement of the existing rules. The web page presents news and analysis on WTO disputes as regards trade and sustainable development, resources and events, regional dispute settlement news and updates on the ICTSD's DSU project.

Environment

Conceived by the ICTSD, www.trade-environment.org contains a wide range of key resources related to trade, environment and sustainable development. It includes the latest news on Trade and Environment (T&E), a calendar consisting of T&E events,

links to institutions working on T&E, relevant legal texts at the international, regional and bilateral levels, and a collection of submissions by WTO Member on trade and environment. Furthermore, one can also explore trade and environment issues of primary interest to developing countries through the Southern Agenda project.

Web: <http://www.trade-environment.org/index.htm>

Intellectual Property

iprsonline.org is an Internet portal on Intellectual Property Rights (IPRs) and Sustainable Development. It contains a selection of relevant online documents and resources related to IPRs and sustainable development including a guide to IPRs, proposals submitted to the WTO, discussion papers classified by topics, a calendar of IPRs related events, latest news on IPRs, and links to relevant institutions working on IPRs.

Web: <http://www.iprsonline.org/index.htm>

Services

This section contains a selection of products prepared or commissioned by ICTSD which are related to trade in services, along with an overview on ICTSD services dialogues, latest news on services, a compilation of useful resources on services and links to relevant institutions working on services.

S&DT

ICTSD has been working on Special and Differential Treatment (S&DT) issues since 1997, when the programme began by assisting identification of hard links between sustainable development objectives and trade policy and rules. From this exploratory work, which included policy dialogues in Latin America, Asia and Africa and the production and publication of the article "Sustainable Development and Environmental Policy Objectives: A Case for Updating Special and Differential Treatment in the WTO" (Meléndez-Ortiz, R. and Dehlavi, A. 1998), the topic was identified as a key to furthering the goals of sustainable development in the WTO. During the early stages of the Doha Development Round, work also included identifying priorities of developing countries in negotiations at the WTO Committee on Trade and Development Special Session and analysing the 88 agreement-specific proposals that were on the table, including through an Ambassador's Analytical Retreat in 2001. In 2006-2007, following consultations and informal dialogues, ICTSD focused on a situational approach recognising the need for policy space, flexibility and modulation of rules and financial assistance for adjustment as a means towards a resolution of the deadlock on issues of eligibility, differentiation and development in S&DT negotiations at the WTO.

13.4.2 Choike: A Portal on Southern Civil Societies

The Choike portal is dedicated to improve the visibility of the work done by NGOs and social movements from the South. It serves as a platform where citizen groups can disseminate their work and at the same time, enrich it with information from diverse sources, which is presented from the perspective of the Southern civil society.

Choike offers:

- A directory of NGOs organised in categories and sub-categories. This is not an exhaustive list, but a selection of useful and relevant sites. The directory only contains Southern NGO web sites; relevant information from other sources can be found in separate sections.
- A search engine that enables to find information in the directory's web sites. It is a tool designed for searching the sites selected by Choike on the basis of their quality and relevance. NGOs that wish to include the Choike search engine on their web sites can do so at the Choike portal.
- A selection of materials produced by NGOs, containing information relevant to civil society and to people interested on the role and activities of NGOs which can be used for/as reports, news items and information resources.
- In-depth reports on key issues which provide comprehensive information, in particular on the position adopted by civil society.
- Dissemination of NGO actions and campaigns.

Choike is the Mapuche name for the Southern Cross, the constellation that guide travellers in finding their ways. In the same way, Choike.org helps its users to find the best of the South on the web.

Choike is a project of the Instituto del Tercer Mundo, an NGO based in Montevideo, Uruguay with Special Consultative Status to the Economic and Social Council (ECOSOC) of the United Nations.

Reports

In-depth reports on WTO Ministerial Conferences found in Choike are:

- Fourth WTO Conference - Doha 2001
- Fifth WTO Conference - Cancun 2003
- Sixth WTO Conference - Hong Kong 2005

Detailed reports on key issues are also available on the web site:

- GATS: Trade in Services

- FTAA: A New Colonialism?
- Free Trade Agreements: FTAs
- Agriculture and Food Sovereignty
- Education on the Market
- Software: Patents and Copyrights
- Health and Health Services, Goods for Sale
- Patents and Medicines

Website: www.choike.org

13.4.3 European Centre for Development Policy Management (ECDPM)

The main newsletters of the ECDPM are the *InfoCotonou* newsletter and *Capacity.org*. Both of these publications are available electronically and on request, in hard copy version.

The *Cotonou Infokit* is a quick reference to the complexities of the *Cotonou* Partnership Agreement, which is divided into twenty-three sections and is available in English, French and Portuguese.

Online Publications Available in ECDPM

- Summary of Discussions Meeting on "Negotiations on Rules in the Doha Round: Introducing a Development Dimension in GATT Article XXIV?"
- Talking Trade: Practical Insights on the Capacity to Conduct Trade Negotiations; Contribution of Technical Assistance to Capacity Development by Heather Baser, Joe Bolger
- Discussion Paper 57: Strategic Positioning and Trade-related Capacity Development: The Case of CTPL and Russia by Phil Rourke
- Discussion Paper 70: WTO and EPA Negotiations: For an Enhanced Coordination of ACP Positions on Agriculture
- Discussion Paper 68: ACP-EU Economic Partnership Agreements, Sanitary and Phytosanitary Measures.

13.4.4 Government Sources of Information in Bangladesh

Ministry of Commerce

Different types of documents are available on the WTO; such as, The Criteria for the Identification of LDCs, Dakar Declaration by LDC Trade Ministers, Second LDC Trade Ministers' Meeting, Declaration on the TRIPS Agreement and public health etc.

Web: www.mincom.gov.bd

Bangladesh Tariff Commission (BTC)

International Cooperation Wing (ICW) of Bangladesh Tariff Commission is responsible for providing policy advice to the Government of Bangladesh on matters related to the regular work of the WTO, as well as Doha Work Programme. ICW is directly involved in preparation of negotiating position of the Government of Bangladesh on various elements of the Doha Work Programme. It played an important role in strengthening Bangladesh's position at the Cancun and Hong Kong Ministerial Conferences.

Downloadable available reports of BTC are:

Annual Report

- Annual Report 2003-04
- Annual Report 2004-05
- Import Policy Order-2006-09

13.4.5 Non-Government Sources

Centre for Policy Dialogue (CPD)

Publications on WTO especially the dialogue reports, occasional papers are available in web site www.cpd.bd.org.

Downloadable papers are available in: <http://www.cpd.org.bd/html/download.asp>

Recent available papers on trade are:

- Impact of Trade Liberalisation on Employment in Bangladesh
- Executive Summary of Bangladesh's Apparel Sector in Post-MFA Period: A Benchmarking Study on the Ongoing Restructuring Process

CPD's Publication lists are also available in:

<http://www.cpd.org.bd/html/publications.asp>

Dialogue Reports and Occasional Papers are available at free of cost.

Unnayan Shamunnay

Unnayan Shamunnay is a homegrown Bangladeshi non-profit and non-governmental research organisation. Name of the organisation denotes 'coordinated developmental activities' in the wider context of a living society. The human context and with all its concomitant linkages that shape and define human capital development is the central concern of Unnayan Shamannay. The operational space of Unnayan Shamannay, therefore is more than research; it internalises development, public policy and heritage. It conducts quantitative and qualitative research work, training, communication, advocacy and facilitates cultural learning and developmental

initiatives. Although, reports are not downloadable but lists are available in the website.

Web: <http://www.shamunnaybd.org/>

13.5 News and Views

13.5.1 WTO Website

WTO Website contains current news, events calendar and archives with all news items, press releases and speeches.

13.5.2 ICTSD News Periodicals: Electronic News

BRIDGES Weekly Trade News Digest Features: Weekly review of trade-related news and information relevant to the sustainable development and trade communities.

BRIDGES Between Trade and Sustainable Development (BRIDGES Monthly) Features: Trade and sustainable development news and analysis from the WTO and other intergovernmental organisations as well as opinion pieces by invited authors.

BRIDGES Trade BioRes Features: Current news, events and resources related to trade with a special focus on biological resources and sustainable development.

BRIDGES Asia Features: Trade and sustainable development news and analysis with a regional focus on Asia.

Trade Negotiations Insights (TNI) Features: Major issues faced by all African and ACP countries in their international trade negotiations at the WTO and with the EU in the context of the Cotonou Agreement.

13.5.3 Third World Network (TWN)

Briefings

TWN Briefings for Hong Kong:

Briefing Paper No. 4: Even Patched-up, Procedural Deal in Hong Kong will be Worse than Failure.

Briefing Paper No. 3: Agriculture: Why the EU, US Offers are not Good Enough

Briefing Paper No. 2: Comment on Services Issue in the HK Ministerial Draft

Briefing Paper No. 1: Some Critical Issues in the Hong Kong Ministerial

13.5.4 South Asia Watch on Trade, Economics and Environment (SAWTEE)

SAWTEE is a regional network that operates through its Secretariat in Kathmandu, Nepal. The overall objective of SAWTEE is to build the capacity of the concerned stakeholders in South Asia in the context of trade liberalisation and globalisation. In

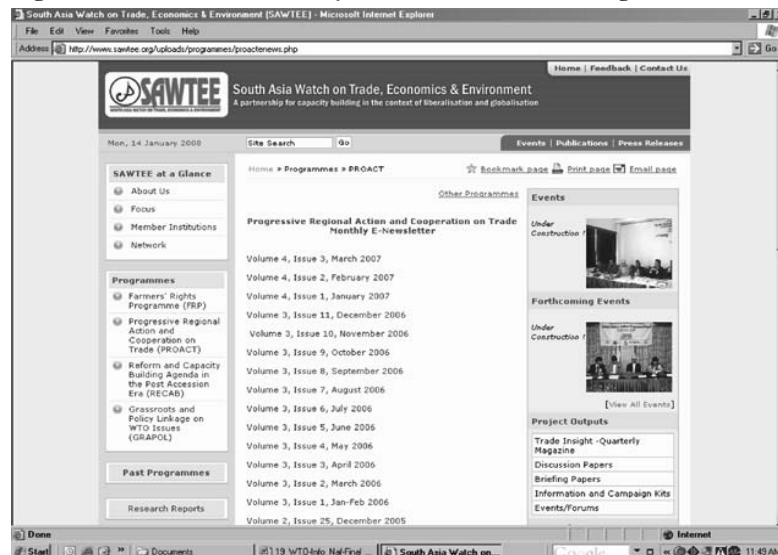
the website, different magazines, periodicals, newsletters, briefing papers, policy briefs and research reports are made available (SAWTEE, 2008).

Some of these are:

- Magazine: Trade Insight (Quarterly)
- Newsletters (in English): Farmers' Right In the Context of Globalisation and WTO, Vol. 1, No. 1, 2005, Trade and Development Monitor (TDM), SAWTEE Newsletter
- Discussion Papers: Discussion Papers on different aspects
- Monograph: Integrating LDCs into the Multilateral Trading System: Rhetoric Galore, Globalisation: South Asian Perspective
- Books on WTO and other issues
- Briefing Papers: Briefing Papers on WTO and different trade related issues
- Research Reports: Research reports on specific issues of South Asian countries and Gender and Trade
- *Monthly E-Newsletter*: Progressive Regional Action and Cooperation on Trade (PROACT)

Website: <http://www.sawtee.org/uploads/programmes/proactenews.php>

Figure 13.14 PROACT Monthly Newsletter Download Page



Source: SAWTEE Website.

Figure 13.15 PROACT - Monthly Newsletter



Source: SAWTEE Website.

13.5.5 Trade Observatory

Trade Observatory is a project of the Institute for Agriculture and Trade Policy, a Minneapolis-based non-governmental organisation.

Since 1999, Trade Observatory (formerly WTO Watch) has been documenting the World Trade Organization, the North American Free Trade Agreement (NAFTA), the Free Trade Area of the Americas and other international trade agreements. Additionally, Trade Observatory posts the work of IATP and other organisations working toward a fairer trade system and alternative approaches to globalisation. Trade Observatory is dedicated to gathering information about international trade and making it accessible for the general public, a true repository of information about global trade can be found. Information stored on tradeobservatory.org is not necessarily endorsed by the Institute for Agriculture and Trade Policy (IATP).

Geneva Update

Geneva Update covers activities related to the World Trade Organization. It is produced by the IATP's Trade Information Project in Geneva.

Figure 13.16 Trade Observatory



Source: IATP Website.

Figure 13.17 Trade Observatory: Geneva Update



Source: IATP Website.

WTO Watch (Listservs)

The e-mail newsletter can be subscribed through registration using an e-mail address. An archive of this list can be viewed at: <http://www.iatp.org/listarchive>.

Web: <http://www.tradeobservatory.org/>

To view the archive of a private list, one must enter the e-mail address that he/she subscribed under. One can also search list of archives by keywords, date viewing and individual's e-mail address.

Figure 13.18 IATP: Message Archive



Source: IATP Website.

13.6 Conclusion

There are numbers of many other sources from where one can obtain the information regarding the WTO and Trade issues. These are the in general sources which. These are regularly update of with current the information and data.

13.7 Summary

- The sources of online Trade Statistics are: TradeMap, UN Commodity Trade Statistics database (UN Comtrade), Office of Textiles and Apparel (OTEXA), EUROPA (online database and information on EU Trade), Different Annual Reports, Food and Agricultural Organisation (FAO).
- Different types of annual reports are also available in the UNCTAD and UNDP website.
- Among the local sources Bangladesh Bank, Foreign Trade Statistics, Tariff Commission, Ministry of Commerce are mentionable.
- The WTO website provides information on –History of WTO and GATT, Organization, Agreements in WTO and information on Developing as well as developed countries. International Trade Statistics 2007 provides comprehensive, comparable and up-to-date statistics on trade in merchandise and commercial services for an assessment of world trade flows by country, region and main product groups or services by category.
- International Centre for Trade and Sustainable Development (ICTSD), Third World Network (TWN) and Centre for Trade and Development (CENTAD) provides updated news and information on WTO and trade related issues.
- One can participate in online discussions in EU LDC Network and WTO website
- One can also participate in the online training course in WTO and Centre for Trade Policy and Law (CTPL).
- Electronic news and periodicals are available in ICTSD, TWN, South Asia Watch on Trade, Economics and Environment (SAWTEE), Trade Observatory website.

13.8 Questions for Discussion

1. What are the sources of Trade Data?
2. What are the sources of WTO negotiation?
3. Describe about some sources of WTO periodical news.
4. What other source s can be used as reference materials?

Documents/Sources Used in Preparation of this Module

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Training Manual on **WTO and Bangladesh Trade Policy**

Module

14

Evolution of _____
Bangladesh's _____
Trade Policy _____

Evolution of Bangladesh's Trade Policy

Learning Objectives

The present training module envisages to acquaint the participants with the following issues:

- Historical account of Bangladesh's trade and investment regimes
 - Import and export policy of Bangladesh
 - Recent trends in the external sector of Bangladesh
- Trade Policy Review under the WTO Framework

14.1 Introduction

During 1980s, a number of the developing countries were engulfed in a debt and macroeconomic crisis. As a result, the inward-oriented, import-substituting policies followed by many countries came under critical scrutiny from policy makers. Under this backdrop, structural reform, especially reform of trade and industry related policies and structures had been initiated in many developing countries under the pressure of the World Bank and IMF. The impact of these reform measures has been analysed in different studies. In general, these studies found that economic liberalisation is conducive to higher growth (see Balassa, 1978; Feder, 1983; Michaely 1977; Syrquin and Chenery, 1989; Barro, 1991; and Dollar, 1992).

14.2 Bangladesh's Trade and Investment Regimes: A Historical Account

Since the Independence in 1971, Bangladesh has followed a public sector led, import-substituting industrialisation strategy till the end of the decade. It started to take various reform measures since early 1980s with the aim of improvement of competitiveness, enhancement of economic efficiency, and dismantling state interventions to create conditions for promoting export-led growth. As a part of the process, significant reforms have been implemented in terms of liberalisation of external trade and foreign exchange regulations and introduction of deregulatory measures to facilitate increased participation of the private sector. Both tariff and non-tariff barriers have been reduced along with dismantling of quantitative restrictions on imports and deregulation of import procedures. Through out the '90s and afterwards, the process of liberalisation continued with the objective of achieving adequate export growth with employment generation, which is expected to have a direct impact on alleviation of poverty.

Bangladesh's trade and investment regimes can be broadly categorised into three phases since its independence in 1971: First phase (1972-78); Second phase (1979-1990); and Third phase (1991-onward).

First Phase (1972-78)

After the independence Bangladesh followed a public sector dominated, import substituting industrial policy. In 1972, Government nationalised most of the industries consisting of jute, textile and sugar sectors as a result of which 86% of country's industrial assets went to government's control. Domestic industries were protected through maintenance of high tariff scheme on imported products. However, public sector enterprises in most cases were found to be inefficient with high debt and consequently, because of inefficiency of public sector led enterprises, the government decided to limit public sector operation and de-nationalise a number of enterprises. In the process, public sector operation was reduced to 18 sectors. In 1976, government further liberalised the industrial sector by abolishing moratorium of nationalisation allowing public-private partnership in the public sector enterprises and also encouraged foreign investment in most of the reserved sectors.

Second Phase (1979-1990)

Since early 1980s, various initiatives were undertaken in view of economic liberalisation. The decade started with the shift towards export-oriented industrial policies from the earlier import substituting regime. A New Industrial Policy (NIP) was announced in 1983, which was followed by a Revised Industrial Policy (RIP) in 1986. Consequently private sector's ownership on industrial assets increased, from 25 per cent in 1981 to 59 per cent in 1982. During the second five year plan (1980-85), government delimited the operation of public sector only in air transport, telecommunication, nuclear energy, power and defense. Private investment was encouraged in all sectors without any limit. Jute, cotton textile, sugar, paper, steel, shipbuilding, heavy electrical and electronics, minerals, and oil and gas were also opened either for public or private investment or for partnership of both. In 1980s, government denationalised a total of 390 enterprises including a number of banks. At the same time, a large number of new enterprises were established in different sectors, especially in apparels and textiles sector.

Third Phase (1991-onward)

Trade liberalisation deepened in 1990s which was further accelerated after 2000. Under the initiatives of trade liberalisation, different types of customs duty and number of tariff lines were reduced (Table 14.1). The maximum tariff (customs duty) rate was as high as 350 per cent in FY1991. Government drastically reduced the import duty in the following years. The maximum tariff rate was lowered down to 50 per cent in FY1996, which was further reduced to 37.5 per cent in FY2000. In FY2007, it was fixed at 25 per cent. At the same time, government took initiatives

to reduce average import duty in order to ensure availability of different kinds of raw materials, machinery and equipments etc. Currently higher tariff rates are applicable only for finished products, at 25 per cent; while tariff rates for intermediate and raw materials and machineries remain relatively low, and even zero for importing export-oriented materials. As a result, simple MFN applied average tariff and import weighted average tariff rates came down to 13.5 per cent and 9.8 per cent respectively in 2006 from 88.6 per cent and 42.1 per cent in 1991.

All the indices of MFN effective tariff rate, weighted import tariff rate, and quantitative restrictions were lowered in the 1990s compared to that in 1970s and 1980s. For example, MFN effective tariff rate and weighted import tariff rate were reduced to 13.5 per cent and 13.8 per cent respectively in 2000, from 88.6 per cent and 42.2 per cent in 1991. At the same period, contribution of trade in GDP rose to 40 per cent in 2006 from 17 per cent in 1991. The number of tariff slabs was also reduced gradually. In FY1993, there were 15 slabs; after 14 years, in FY2007, the number was reduced to four (0 per cent, 10 per cent, 15 per cent, and 25 per cent). Upon scrutinising the tariff structure, it is found that unweighted average tariff rate and weighted tariff rate decreased gradually-to 12.2 per cent and 6.9 per cent respectively in the month of February of FY2007.

Table 14.1 Tariff Structure: 1990-2006

Year	Number of Tariff Bands	Maximum Rate (%)	Unweighted Average Rate (%)	Weighted Average Rate (%)	Dispersion ^a
1990-91	18	350.0	88.6	42.1	72.0
1991-92	18	350.0	57.5	24.1	73.1
1992-93	15	300.0	47.4	23.6	65.1
1993-94	12	300.0	36.0	24.1	67.7
1994-95	6	60.0	25.9	20.9	74.5
1995-96	7	50.0	22.3	17.0	74.1
1996-97	7	45.0	21.5	17.9	75.9
1997-98	7	42.5	20.8	16.1	73.9
1998-99	7	40.0	20.3	14.7	72.2
1999-00	5	37.5	19.5	13.8	80.8
2000-01	..		18.6	15.1	..
2001-02	..		17.1	9.7	..
2002-03	..		16.5	12.4	..
2003-04	..		15.6	11.5	..
2004-05	..		13.5	9.6	..
2005-06	3	25.0
2006-07	3	25.0
2007-08	4	25.0

.. Not available; a coefficient of variation.

Note: The numbers may differ from those calculated by the WTO Secretariat.

Source: Estimated from CPD Trade Database.

Aid Dependent to Trade Dependent Country

As a result of the various reform measures undertaken in the last three decades, Bangladesh is now a 'trade dependent country', from being an 'aid dependent country'. The country's trade openness has substantially increased from 13.5 per cent in 1981 to 16.8 per cent in 1991; which further increased after 2000–33 per cent in 2001 and 43.3 per cent in 2007 (Table 14.2). Along with, the country's extent of globalisation reached at 55.6 per cent in 2007. Export of goods in 2007 passed the level of US\$ 12 billion, while import too, passed the level of US\$ 17 billion. During July-February, FY2008 total export was US\$ 8.9 billion, an increase of 11.6 per cent compared to the previous year. Country's major exportable product, readymade garments stood at US\$ 6.75 billion during this period with export of woven products at US\$ 3.3 billion and knit products US\$ 3.5 billion. Foreign aid, once considered to be the major source of foreign exchange, constituted only 2.4 per cent of GDP in 2007, which declined from 5.6 per cent in 1991.

Table 14.2 Bangladesh's Degree of Openness and Extent of Globalisation

Items	FY1981	FY1991	FY2001	FY2004	FY2005	FY2006	FY2007
Export (X)	724.9	1718.0	6467.3	7603.0	8654.52	10526.16	12153.7
Import (M)	1954.1	3472.0	9335.0	10903.2	13530.81	14746.40	17156.7
Remittance (R)	379.0	764.0	1882.1	3372.0	3848.29	4801.88	5978.2
ODA Disbursed	1146.0	1733.0	1369.0	954.0	1221.15	1509.68	1624.6
FDI (net)	n/a	23.5	550	385.0	750.14	668.32	760
Total	4204.0	7710.5	19603.4	23217.2	28004.9	32252.4	37673.2
GDP (Current Price)	19811.6	30974.8	47825.8	56732.7	58150.12	59671.01	67726.2
Degree of Openness (Export+Import as % of GDP)	13.5	16.8	33.0	32.6	36.30	41.84	43.32
Extent of Globalisation	21.2	24.9	41.0	40.9	48.16	54.05	55.63
X as % of M	37.1	49.5	69.3	69.7	65.80	71.29	70.98
(X+R) as % of M	56.5	71.5	89.4	100.7	95.10	103.89	105.83
ODA as % of GDP	5.8	5.6	2.9	1.7	2.10	2.53	2.40
ODA As % of Export	158.1	100.9	21.2	12.5	14.50	11.80	13.34

Source: Economic Survey, EPB, Enterprise Level Survey, BBS, CPD-IRBD Database.

14.3 Import and Export Policy of Bangladesh

Since early 1980s, the government introduced separate import and export policy on a yearly basis. This was introduced in the first half of the 1980s and on a bi-annual

basis in the later half of the 1980s, continued during the initial half of 1990s. Later on, a five yearly import and export policy was announced for the period of 1997-2002. After that, the policy was prepared for a three year period (i.e. for 2003-2006). Subsequently, the Government announced a new import policy (2006-2009) on 14 May 2007, and a new export policy (2006-2009) on 31 May 2007.

14.3.1 Import Policy of Bangladesh

The import policy announced in the 1980s was targeted to rationalise and simplify the trade regime through lowering the tariff rates, phasing out the quantitative restrictions, streamlining import procedures and introducing tax reforms. Various measures were introduced with a view to simplifying import procedures. In 1985-86, two lists were introduced to replace the 'positive list' (which contained all goods that could be imported into Bangladesh along with their constituent raw and packing materials): all banned items were listed under a 'negative list' and those importable under certain conditions were registered on a 'restricted list' (Table 14.3). All other products could be imported freely. Over the years, Import Policy Orders showed substantial reduction in the number of banned and restricted items. Since 1990, the negative and restricted lists of importables have been named as 'consolidated list'. As a result, the extent of protection of the domestic economy declined due to changes in the tariff structure. Total quantitative restriction was 315 in 1990, which was reduced to 120 in 1995-97 and further lowered down to 63 during 2003-06. The effective rate of protection (ERP) declined from 76 per cent in 1992-93 to 25 per cent in 1999-2000 (Table 14.4).

Table 14.3 Removal of Quantitative Restrictions (QRs) at 4-Digit HS Code-Level

Year	Total QRs	Trade Reasons			Non-trade Reasons
		Banned	Restricted	Mixed	
1987	550	252	151	86	61
1989	433	165	89	101	78
1990	315	135	66	52	62
1992	193	78	34	25	56
1995-1997	120	5	6	17	92
1997-2002	124	5	6	17	96
2003-2006	63	5	8	10	40

Source: NBR.

Table 14.4 Effective Rates of Protection, 1992-2000

Sectors	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-2000
Average	75.71	56.65	40.57	33.02	32.42	28.55	26.77	24.47
Old ERP (growth)		(-25.18)	(-28.38)	(-18.61)	(-1.82)	(-11.94)	(-6.23)	(-8.59)

Source: CPD, 2007.

Import Policy Order (IPO) 2006-2009

Government has announced a new import policy named *Import Policy Order 2006-09* in May 2007 for the period of 2006-2009. Major objectives of the *Import Policy Order 2006-2009* are to: a) keep pace with globalisation and the gradual development of a free market economy under the WTO rules; b) facilitate imports of technology to expand use of modern technology; c) ease imports for export industries, in order to place them on a sound basis; coordinate the import policy with the industrial policy, export policy and other development programmes; d) make available industrial raw materials by withdrawing restrictions and thereby increase competition and efficiency; e) ensure supply of quality and hygienic products; and f) take necessary measures to import food and other necessary products on an emergency basis in order to ensure their availability in the market. The New IPO has relaxed restriction on import of all but 25 items as against 131 in the previous IPO. The restricted items included firearms, health and environmentally hazardous items and those that may hurt the religious sentiment of the people.

14.3.2 Export Policy of Bangladesh

Over the years, the government attempted to promote exports through various measures. The policies in this regard emphasised the need to diversify the export base, stimulate higher value-added exports, improve the quality of exports, develop backward linkage industries and undertake vigorous marketing efforts. Incentives are provided to the exporters in the form of special bonded warehouses, export processing zones (EPZs), duty drawback, and a number of other methods. Under the Export Policy 2006-09, government has announced different incentives and facilities to enhance export, such as sectors to be considered as special development sectors, general and product specific export facilities etc.

Export Policy 2006-09

According to the Export Policy 2006-09, nine sectors have been announced as special development sectors in order to boost their production and export in the country; these are: finished leather products, frozen and processed fish products, handicraft products, electronic products, fresh flower and foliage, jute products, hand-woven textiles from hill areas (pahari taat bostro), uncut diamond, and herbal medicine and medicinal plants. These sectors are to be considered for special facilities, such as project loans with general interest rates on a priority basis, consideration for export loans with soft terms and lesser interest rates, subsidies etc. which are compatible with WTO Agreement on Agriculture, and WTO Agreement on Subsidies and Countervailing Measures; reduced air fare for shipment of products, duty draw back/bond facilities; privileges for the establishment of backward linkage industries including infrastructural development so as to reduce production cost; expansion of technical facilities to improve product quality; assistance in product marketing; assistance in foreign market

search; possible financial benefits for utility services such as electricity, water and gas; and taking necessary initiatives to attract foreign direct investments (FDI).

14.3.3 Impact of Trade Liberalisation on Bangladesh Economy

According to a study of World Bank (1999), trade liberalisation in general has positively contributed to the economy, as manufacturing industries under the liberalised trade regime have performed strongly. Although more foreign goods are in fact available, it appears that increased supplies of cheaper raw materials/intermediate inputs and fixed capital goods have generally stimulated faster expansion in exports and stronger GDP growth to the benefit of the economy overall. According to this study, firms that perform poorly in fields where activity is shrinking, the fault generally does not lie with trade reform, but with failures to graduate from the comforting cradle of high and long-standing levels of protection. Such enterprises are, however, in the minority. Most firms surveyed under the study experienced sizable productivity growth over a period of five years, suggesting that trade liberalisation has had a positive, not a negative, impact in the manufacturing sector.

On the other hand, Farida Chowdhury Khan pointed out that trade reforms in 1980s and 1990s have not encouraged the development of an autonomous domestic industrial capability. Among export industries, the jute sector had difficulties owing to world market conditions and has not been able to stand up to sectoral adjustment. Although export growth is largest in the readymade garments sector, it continues to be dependent on foreign buyers. Leather exporters have also generally suffered from an inability to move to high end products and adopt necessary quality controls. Quality standards pose a marketing problem for seafood producers as well. Furthermore, environmental and labour safety issues persist in all these sectors. These problems are particularly pervasive in import competing sectors such as textiles, chemicals, and metals which have not been able to successfully compete with consumer goods imports. Also, small firms have not benefited from the reforms to the extent that cost savings from lower tariffs on imported inputs have rarely been passed on to them. While the reforms have led to some resource shifts in the economy, growth and diversification in the industrial sector has been limited. Marketing, technical, and entrepreneurial skills are yet to be developed to allow such success (for details see, http://www.goodgovernancebd.org/new_article/).

In 2007, CPD in association with the ILO, carried out a study on 'Impact of Trade Liberalisation on Employment in Bangladesh' (see, Rahman, Shadat and Raihan, 2007). The study revealed that because of tariff liberalisation over the last two decades a number of import substituting industries, for example, sugar, yarn, edible oil, paper, pharmaceuticals, tobacco cigarette, cloth mill, chemical fertiliser, iron and steel, metal products, machinery and transport equipment industries have faced a decline in respective effective rates of protections (ERPs). However, not all import substituting industries have performed badly during this period. Sectors with

negative growth were sugar, edible oil, paper, cloth mill and transport equipment industries, whilst industries such as yarn, pharmaceuticals, cement, tobacco/cigarette, chemical fertiliser, iron and steel and metal products experienced positive growth during that period. The CMI data shows that export-oriented sectors were more protected than non-export oriented sectors and labour-intensive sectors were more protected than non-labour intensive sector. It was also found that growth of production workers in labour intensive sectors was higher than that of non-labour intensive sectors.

According to Rahman, Shadat and Raihan (2007), growth in employment of productive workers is observed for both export and non-export sectors, though the growth rate has been relatively higher in case of the export-oriented sectors. In general, during the liberalisation period, labour-intensive sectors have expanded more rapidly than the non-labour intensive sectors. The CGE modelling exercise shows that in terms of employment generation there will be many sectors that will lose out as a result of trade liberalisation; but some sectors will win as well. Trade liberalisation would lead to expansion of the export-oriented manufacturing industries, and as a result, these sectors would experience increase in employment under a more liberalised trade regime. However, the other side of this is that the performance of the non-export oriented sectors, especially those in the agriculture and service sectors, turn out to be unsatisfactory.

14.4 Recent Trends in the External Sector

14.4.1 Import Performance in FY2008

Total imports during the July-January period of FY2008 posted a growth rate of 18.6 per cent (Table 14.5). A large part of this is accounted by rise in international market prices, and less to rise in volume. Significant growth was registered by food grains imports, both in terms of import payments and import volume. In monetary

Table 14.5 Import of Different Products

Year	July-January, 2007 (mil. US\$)	July-January, 2008 (mil. US\$)	% Change
Food Grain	286.83	809.44	182.2
Milk and Dairy Products	47.07	85.98	82.7
Oil Seeds	49.12	77.24	57.2
Edible Oil	308.81	540.07	74.9
Textile and Articles Thereof	1132.51	1097.32	-3.1
Iron and Steel	559.23	650.55	16.3
Capital Goods	1056.77	984.36	-6.9
Others Incl EPZ	6276.69	7278.18	16.0
Total Imports	9717.02	11523.14	18.6

Source: Bangladesh Bank.

terms, it amounts for food grain (182.2 per cent) and, milk and dairy products (82.7 per cent). The rise in import of grains is mainly because of huge growth of import of rice due to increase in import volume, whereas the rest is attributable to higher price in international markets and increased transport cost. Petroleum products posted growth of 1.1 per cent during July-December period of this year, compared to the previous year. Import of capital machinery registered a decline during this period (-6.9 per cent), which indicate the prevailing investment situation of the country. A declining import of textiles and apparels, which are imported as back-to-back for manufacturing apparels, indicates possible slower growth of manufacturing and export of apparels in the coming months.

On the other hand, overall settlement and opening of LCs respectively registered 19.9 per cent and 30.56 per cent growths (Table 14.6). High growth in opening and settlement of LCs are observed in case of import of consumer goods, industrial raw materials and machinery for miscellaneous industry. But in case of capital machinery, settlement of LCs is negative (-3 per cent), while opening of LCs is very low (2 per cent), which indicates that growth of new enterprises is relatively slow. Import of petroleum and related products both in terms of settlement and opening showed a very pessimistic scenario. In view of rise of price of petroleum products in the global market, a low level of growth of settlement of LCs and a reduction of opening of LCs indicate fall in the volume of import of petroleum products in the country. This indicates that the current depression in investment situation may be carried over to the next months.

Table 14.6 Changes in Opening and Settlement of LCs During July-January 2007 and 2008

Sector /Commodity	% Change in between July-January 2007 and July-January 2008		
	Fresh LCs Opening	Settlement of LCs	Outstanding LCs at the End of the Period
a. Consumer goods	114.49	96.79	94.84
b. Intermediate goods	1.81	-0.68	25.93
c. Industrial raw materials	36.59	20.67	41.65
d. Capital machinery	2.00	-3.06	-2.10
e. Machinery for misc. industry	22.94	14.31	17.56
f. Petroleum and petro.products	-12.26	0.57	19.13
g. Others	43.02	18.31	29.01
Total	30.56	19.79	30.96

Source: Bangladesh Bank.

14.4.2 Terms of Trade

One of the major challenges in FY2008 is to identify appropriate strategies in view of the falling terms of trade for Bangladesh (Table 14.7). If the export price levels of FY2000 are taken to be 100, average export prices had come down to about 86 by FY2007. It is worrying to see that whilst prices in general has tended to rise quite sharply in recent years and months, for most of the items of export interest to

Bangladesh, these have indeed fallen, including for apparels. This falling terms of trade means that Bangladesh is required to export more goods in exchange for the same amount of import. If the existing trend sustains, the pressure on balance of trade will deepen in the coming years. A renewed effort towards movement to upmarket segment of the global apparels market, intra-RMG diversification, product and market diversification, more export to regional countries and taking advantage of the various supply-side capacities will need to be put high on the agenda.

Table 14.7 Falling Terms of Trade (Base: FY2000 = 100)

	Export Price Index	Import Price Index	Terms of Trade
FY2000	100.00	100.00	100.00
FY2001	102.40	107.53	95.24
FY2002	104.82	115.61	90.67
FY2003	107.44	124.57	86.25
FY2004	115.07	129.62	88.78
FY2005	118.82	134.21	88.54
FY2006	121.18	139.50	86.88
FY2007	124.21	145.14	85.59

Source: Bangladesh Bank.

14.4.3 Export Performance During FY2008

Export sector achieved considerable progress during the last several years. However, political unrest during the end of 2006 raised concerns regarding sustainability of this quite commendable export performance of the country in recent years. Labour unrest towards the end of May 2007 further added to this worry, particularly with respect to the RMG sector. The cumulative impact of these developments had adverse implications for placement of orders in the export-oriented apparels sector. In July-August 2007, owing mostly to the fall of both woven (-16.6 per cent) and knit (-12.0 per cent) exports, export posted a (-)12.1 per cent growth. However, gradual improvements are discernible in recent months of September and October, when exports picked up and registered positive growth rate. During July-October of FY2008, export earnings stood at US\$ 4127.3 million, registering a negative (-)2.63 per cent growth. The negative export growth of woven garments came down to a single digit percentage decline (-9.34 per cent), while knit RMG almost managed to match the earnings during the corresponding period of FY2007 (with marginal - 0.56 per cent decline). However, export picked up in the following months. During July-February FY2008, total export was US\$ 8.9 billion, which was 11.6 per cent higher compared to the previous year. Export of RMG reached at US\$ 6.75 billion during this period.

Overall export growth target for FY2008 has been set at 19.1 per cent, with 15.9 per cent and 20.0 per cent respective growth targets for woven and knit exports.

14.5 Bangladesh in Different Bilateral, Regional and Multilateral Trade Agreements

14.5.1 World Trade Organization

Bangladesh participated actively in the Uruguay Round negotiations and is a founder Member of the WTO. On behalf of the LDCs, Bangladesh continues to advocate the implementation of special and differential treatment in favour of LDCs, and has emphasised the problems faced by LDCs in the multilateral trading system. Despite longer implementation periods available to LDCs, Bangladesh is taking action to bring its trade-related legislation into conformity with the WTO Agreements and has made efforts to meet its obligations concerning WTO notifications in certain areas, e.g. agriculture.

Bangladesh is actively participating on the ongoing negotiations of the Doha Development Round as an LDC. There are a number of negotiating areas; such as agriculture, NAMA, dispute settlement etc., where interest of LDCs is directly related. LDCs expressed their concern as regards withdrawal of farm subsidy in developed countries, since it would increase price of food in the global market which would negatively affect LDCs for being net food importing country. In case NAMA negotiations, LDCs have seriously expressed their concern on reduction of import duty in the developed countries from the existing level, which will have serious preference erosion on LDC's export. In this regard, in view of increasing participation of LDCs in the dispute settlement process, LDCs demanded more facility in the DSB. They also demanded exemption of imposition of anti-dumping duty on their products to be exported to the markets of developed and developing countries in order to increase their exports. LDC Trade Ministers expressed these concerns and raised their demands in the WTO through the LDC Trade Ministers Meeting held in Maseru, Lesotho during 28-29 February 2008.

14.5.2 Regional Trade Agreements

Bangladesh is a Member of several regional trading arrangements: the South Asian Preferential Trading Arrangement (SAPTA), which is being strengthened with the establishment of South Asian Free Trade Area (SAFTA) in 2006; and the Asia Pacific Trade Agreement (APTA), known as the Bangkok Agreement. Bangladesh also participates in the Bay of Bengal Initiative for Multi Sectoral Technical and Economic Cooperation (BIMSTEC).

According to different estimates with the inaction of SAFTA, intra-regional trade will increase substantially (by about 35 per cent) from the existing level, if trade in most of the tradable products is to be considered (Mehta and Bhattacharya, 1999; RIS, 2004). However, impact of SAFTA is not positive for all, as most of the benefit will be potentially accrued by developing country Members, with least or

even negative returns for least developed country Members. Two years have passed since the ratification of SAFTA with no major shifts in the size and volume of intra-regional trade. One of the major limitations is the inclusion of major tradable items in Member country's negative list. Moreover, recent analyses reveal that agreement on trade in goods would not enhance intra-regional trade unless the agreement is further extended to cover services.

BIMSTEC is another regional trading initiative where Bangladesh is a Member along with other South Asian and South East Asian countries. A number of areas have been identified for preferential trade arrangements under the BIMSTEC, such as textiles and clothing, drugs and pharmaceuticals, gems and jewelry, horticulture and floriculture, processed food, automotives and parts, rubber, tea and coffee, coconut and spices. A sub-regional initiative called BCIM (Bangladesh, China, India and Myanmar) is now in the process of negotiation between Member countries. Analysis show that India could import a number of products from Bangladesh instead of outside the region as there is definite comparative advantage of some of the Bangladeshi products, such as men's/boy's shirt (cotton or knitted), pharmaceuticals etc. Asia Pacific Trade Agreement (APTA), formerly known as Bangkok Agreement, of which Bangladesh is a Member along with India and China, is currently being negotiated as regards national concession list of Member countries. Being an LDC Bangladesh will enjoy tariff concessions in Member countries market, e.g. India offers tariff concessions on 48 products (6 digit level) with the margin of preference ranging from 14 per cent to 100 per cent. If this happens, according to UNESCAP (2006), intra-regional trade in APTA will substantially increase.

However, a slow progress in effectively forging Regional Trade Agreements (RTAs) has led Member countries to be interested on signing more Bilateral Trade Agreements (BTAs) with intra and extra regional member countries. India has signed a number of bilateral trade agreements with its neighbouring countries, such as Bhutan, Nepal, and Sri Lanka. In view of these agreements, bilateral trade between these two countries has increased.¹ India-Sri Lanka Bilateral FTA started operation since 2000, and both countries have enjoyed the benefit of the agreement through enhancing trade. Bilateral free trade agreements are being currently discussed between Bangladesh and India, and Bangladesh and Pakistan, which could also increase scope of trade and investment in the region.² It is important to note that the establishment of an FTA is not likely to automatically lead to economic gains, and success of it much depends on how the Agreement is crafted, how it is

¹India and Bhutan have extended cooperation in investment also. India and Nepal have a joint economic cooperation agreement, mainly in the nature of a FTA, which provided non-reciprocal, duty-free access to Nepalese manufactured goods to Indian markets.

²Outside the region, India has signed draft framework bilateral free trade agreement with ASEAN countries. All parties will reduce their tariffs following a mutually agreed timeframe, over a period from 2006 to 2016 for new Members of ASEAN; 2006 to 2011 for Brunei, Indonesia, Malaysia, Singapore, Thailand; 2006 to 2016 for Philippines and India, etc.

able to cater to and reconcile the often conflicting interests and concerns of member countries.

14.5.3 Generalised System of Preferences (GSP) and Everything but Arms (EBA)

Under the GSP, Bangladeshi products currently receive preferential market access from more than 13 Members and non-members of the WTO, including Australia, Belarus, Bulgaria, Canada, the European Communities, Japan, New Zealand, Norway, Switzerland, the Russian Federation, and the United States. Bangladeshi exports accounted for 24 per cent and 82 per cent of the total amount of trade receiving GSP treatment in Japan and the European Communities. The authorities are also pursuing efforts to obtain duty-free access for textiles and clothing items to the US market.

From 2001, Bangladesh's exports, in particular RMGs, have benefited from the EC's Everything but Arms (EBA) Initiative. During 2004-05, 42 per cent of Bangladesh's exports to the EC benefited from such treatment; but Bangladesh is not in a position to fully utilise these benefits due to stringent EC rules of origin. It could not yet take advantage of the EC's offer (in 2000) of regional cumulation and relaxation of value-addition criteria, which could expand further its exports under the scheme.

Under Canada's Least Developed Countries Market Access Initiative, from 31 December 2002, Bangladeshi exports have been granted duty-free and quota-free privileges with certain criteria; manufactured or formed from inputs from any of the 48 eligible least developed countries, or produced using inputs imported from general preferential tariff beneficiary countries and the value added in the least developed exporting country is at least 25 per cent. Following the implementation of this Initiative, between 2002/03 and 2004-05 Bangladesh's total exports to Canada rose by 40 per cent (130 per cent increase of knit garments, 10 per cent in woven garments).

From 1 January 2006, China has agreed to grant duty-free access for 84 Bangladeshi export items, including, RMGs, textiles, frozen food, leather, jute and jute goods, soap and plastic ware. Bangladesh considers this treatment as a move towards reducing its substantial and rapidly rising trade deficit with China.

Bangladesh is a participant in the Global System of Trade Preferences among Developing Countries (GSTP), and grants/benefits (from) tariff concessions to/from the 47 other signatories on a range of products. Bangladesh's concessions consist of tariff cuts on its applied MFN rates ranging from 2.5 per cent to 10 per cent on imports of pistachios, saffron, sesame seed, pharmaceuticals, hand tools, and certain scientific instruments.

Bangladesh is a signatory to the 1991 Framework Agreement on Trade Preferential System among members of the Trade Preferential System - Organisation of Islamic

Countries (TPS-OIC) (23 out of 57 OICs signed the agreement). Bangladesh signed the Agreement in 1997 and ratified it in 2004. Tariff concessions depending on the level of development were to be implemented progressively from 1 January 2006 to 1 January 2011 (developing countries) or 2013 (least developed countries). Bangladesh also participates in the Developing Countries–8 (D8) arrangement between eight Islamic countries. The agenda of this arrangement provides for the reduction of tariffs, and elimination of para- and non-tariff barriers to boost trade among Members of the group.

14.6 Trade Policy Reviews under WTO

Surveillance of national trade policies is a fundamentally important activity running throughout the work of the WTO. At the centre of this work is the Trade Policy Review Mechanism (TPRM). All WTO Members are reviewed; the frequency of each country's review varies according to its share of world trade. The reviews take place in the Trade Policy Review Body which operates under special rules and procedures of the WTO. The reviews are therefore essentially peer-group assessments, although much of the factual leg-work is done by the WTO Secretariat. As per the schedule, Bangladesh's trade policy was last reviewed in 2006 where major features of trade related policies, shortcomings of those policies have been identified.

14.7 Summary Observations of Bangladesh's Trade Policy Review 2006

The customs tariff is Bangladesh's main trade policy instrument as well as a major source of government revenue (26.4 per cent of total tax revenue). Almost all tariff rates are ad valorem, thus ensuring a high degree of transparency of the customs tariff. The tariff comprises four tiers. The average applied MFN tariff (exclusive of specific duties and other charges) fell from 22.2 per cent in 1999-00 to 15.5 per cent in 2005-06. The average customs duty on agricultural products (19.6 per cent) remains higher than for industrial goods (14.7 per cent). There is a concentration of tariff lines at the three higher customs duty rates, and pronounced escalation in several activities (including textiles and leather), seemingly in line with national policy priorities.

Bangladesh has bound 15 per cent of all tariff lines. Whereas, 100 per cent of agricultural tariff lines are bound, this is only 3 per cent in case of industrial tariff lines. As a consequence, market access conditions for manufactured items is subject to some uncertainty; the absence of bindings for most tariff lines and the current gap of 149 percentage points between the average bound and applied MFN tariff rates provides a great deal of scope for the authorities to raise applied rates.

Additional protection has been maintained through other border charges (infrastructural development surcharge, advance income tax) and discriminatory

internal taxes (VAT, supplementary duty, regulatory duty (as from 2000-01)); other border charges are at a minimum rate of 4 per cent, which is higher than the bound rate of 2.5 per cent for this type of levy.

In February 2000, Bangladesh passed legislation to implement the WTO Agreement on Customs Valuation. Since then, pre-shipment inspection has been mandatory with importers bearing the associated costs (1 per cent of the c.i.f. value) while certain customs requirements have undergone significant streamlining (e.g. migration to the Automated System for Customs Data ASYCUDA++, red and yellow channels, and a reduction in the number of signatures required on the manual customs entry form).

Export prohibitions are maintained mainly for reasons of health, ecological balance, security, archaeological value, or maintenance of adequate domestic supply. Export permits/authorisations are required for a few items. Re-exports remain banned unless minimum value-added and other transformation conditions are met. Exports of urea fertiliser produced at the state-owned Khanaphuli Fertilizer Company (KAFCO) plant remain restricted.

Assistance for domestic production and exports varies by type of activity to, inter alia, encourages use of domestic technology, import substitution, adjustment and/or boost export performance as well as to offset the adverse effects of tariffs and other border taxes. Such assistance is available in the form of tax and non-tax incentives. Other forms of support consist of cash grants for exports, accelerated depreciation, and various types of loans at concessional interest rates.

Work is under way to bring intellectual property right laws in line with the WTO TRIPS Agreement in areas such as trade marks, patents, plant variety protection, and copyrights. Bangladesh benefits from an extended time-limit (until July 2013) for the full implementation of the Agreement. No legal framework relating to competition policy is in place. However, a consumer rights protection law is being finalised.

14.8 Summary

- Since the Independence in 1971, three major phases can be identified in country's trade and investment regimes: First phase (1972-78); Second phase (1979-1990); and Third phase (1991-onward). 1990s was a decade of transition for Bangladesh from aid dependence to trade orientation, and enhanced integration of local economy with the global economy.
- The maximum tariff (customs duty) rate was as high as 350 per cent in FY1991. Government had drastically reduced the import duty in the following years. The maximum tariff rate was lowered down to 50 per cent in FY1996, which further reduced to 37.5 per cent in FY2000. In FY2007, it was fixed at 25 per cent. The number of tariff slabs has also been

reduced gradually. In FY1993, there were 15 slabs; after 14 years, in FY2007 tariff slabs reduced to four (0 per cent, 10 per cent, 15 per cent, and 25 per cent).

- Government announced a new import policy (2006-2009) on 14 May 2007 and a new export policy (2006-2009) on 31 May 2007 for the period of 2006 to 2009.
- Impact of various trade liberalisation measures is mixed. Because of various trade liberalisation measures, sectors that experienced negative growth were sugar, edible oil, paper, cloth mill and transport equipment industries whilst industries such as yarn, pharmaceuticals, cement, tobacco cigarette, chemical fertiliser, iron and steel and metal products experienced positive growth during that period.
- It appears that trade liberalisation would lead to expansion of the export-oriented manufacturing industries, and as a result, these sectors would experience increase in employment under a more liberalised trade regime. However, the performance of the non-export oriented sectors, especially those in the agriculture and service sectors, turn out to be unsatisfactory.
- Bangladesh is a member of several bilateral, regional and multilateral trading arrangements. It is a founder Member of the WTO. At regional level, Bangladesh is a member of South Asian Free Trade Area (SAFTA) and the Asia Pacific Trade Agreement (APTA). Bangladesh also participates in the Bay of Bengal Initiative for Multi Sectoral Technical and Economic Cooperation (BIMSTEC).
- Bangladesh is active in supporting and strengthening the multilateral trading system, and its leading role among least developed countries in the WTO, addressing their specific needs and concerns, is well appreciated.
- All WTO Members are subject to review under the Trade Policy Review Mechanism (TPRM). The Annex mandates that the four Members with the largest shares of world trade (currently the European Communities, the United States, Japan and Canada) be reviewed every two years, the next 16 every four years, and others at every six years. A longer period may be fixed for least developed country Members.

14.9 Questions for Discussion

1. What are the major phases of trade and investment regimes of Bangladesh? Discuss the major features of these phases.
2. What are the salient features of import and export policy of 2006-2009?
3. How do you evaluate the impact of trade liberalisation in Bangladesh on production and employment?

4. What are the major findings of the *Trade Policy Review 2006*?
5. What are the major regional, bilateral and multilateral trade arrangements where Bangladesh is a member at present?

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Training Manual on **WTO and Bangladesh Trade Policy**

Module

15

Generalized _____

System of _____

Preferences (GSPs) _____

Applicable for _____

Bangladesh _____

Generalized System of Preferences (GSPs) Applicable for Bangladesh

Learning Objectives

- Objective of this module is to expose the participants to the issue of Generalized System of Preferences (GSPs) facilities provided by developed and some transitional countries outside the WTO mechanism.
- The module will explain the background and nature of current GSP facilities applicable for

Bangladesh and their implication on the countries' exports.

- It is hoped that this module will enable the participants to understand the fundamentals of GSPs and also the necessary measures to be followed for greater utilisation of these market access preferences.

15.1 Introduction to Generalized System of Preference (GSP)

The Generalized System of Preference (GSP) is a system whereby preferential treatment by way of a reduced or duty-free tariff rate is granted by developed countries known as preference giving countries, to eligible products imported from the developing countries. This preferential treatment is granted without any reciprocal obligation on the part of the developing countries. The main purpose of the above tariff concession scheme is that:

- a) To increase the export earnings of the preference receiving countries;
- b) To promote their industrialisation; and
- c) To accelerate their role of economic growth.

Currently GSP is provided by EU, US, Australia, Canada, Japan, New Zealand, Norway, Switzerland, Republic of Belarus, Republic of Bulgaria, Czech Republic, Republic of Hungary, Republic of Poland, Russian Federation, and Slovakia.

15.1.1 Historical Background of GSPs

Tariff preferences for developing and least developed countries have been the classical instrument to promote export competitiveness, industrialisation and diversification of their economies. The GATT recognised at the very outset that the developing countries were in need of special and targeted market access facilities in

order to enhance their competitive strength in the global market, and that there was a need to bridge the developmental gaps with developed market economies. Special and differential treatment (S&DT) provisions in the GATT were recognition of this felt need.

In 1968, United Nations Conference for Trade and Development (UNCTAD) recommended the creation of a "Generalized System of Tariff Preferences" under which industrialised countries would grant autonomous trade preferences to all developing countries. In 1971, the GATT Contracting Parties created the legal framework for the Generalized System of Tariff Preferences by adopting the "Enabling Clause"¹, which authorised developed countries to establish individual "Generalized Schemes of Tariff Preferences". According to this clause, preferential treatment under the GSP has to be non-discriminatory, non-reciprocal and autonomous. In other words, while discrimination in favour of developing countries is allowed, there should be no discrimination between them, except for the benefit of least developed countries (LDCs). The GSP schemes offered on bilateral basis by various developing countries and the European Union (EU)—as a community of countries—evolved outside the ambit of GATT's institutional structure, but was very much informed by the philosophy of GATT's S&D treatment of the developing countries.

Following the Ministerial Conference of the World Trade Organization (WTO) in Singapore in 1996, and particularly in the context of the Third United Nations Conference on the Least Developed Countries (LDCs), many developed and developing countries have expanded or introduced market access preferences for marginalised developing countries, especially LDCs. In 2001, there were a total of 28 market access initiatives in favour of LDCs, 19 of which were granted by developing countries or transition economies, and 9 were granted by developed countries, including the Quad countries — Canada, the European Union, Japan and the United States. Market access preferences enable exporters from the LDCs to pay lower tariffs or even to enter markets quota and duty-free.

15.2 WTO Rules on Generalized System of Preferences

The Enabling Clause, officially called the "Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries", was adopted under GATT in 1979 and enables developed members to give differential and more favourable treatment to developing countries. The Enabling Clause is the WTO legal basis for the *Generalized System of Preferences* (GSP). Under the GSPs developed countries offer non-reciprocal preferential treatment (such as zero or low duties on imports) to products originating in developing countries, with the

¹The "Enabling Clause" involves a waiver from Article 1 of the GATT, which prohibits discrimination. The enabling clause was adopted originally for a period of ten years, and renewed in 1979, for an indefinite period of time.

preference-giving countries unilaterally determining which countries and which products to be included in their schemes.

15.3 GSP Facilities Applicable for Bangladesh

Over the years Bangladesh has transformed from an aid dependent country into a trading one. Bangladesh's annual export of goods and services is about six times higher than the aid that it receives annually (in 2000), which, in comparison, stood only one and half times in the early 1990s. Bangladesh's total export in the previous fiscal year (2006-07) stood at US\$ 10.9 billion where primary products (frozen food, fish products, agricultural products, tea, raw jute and others) accounted for 6.8 per cent whereas manufacturing products was 93.2 per cent.² Woven garments and knitwear together contributes around 75 per cent of Bangladesh's total exports with raw jute and jute goods together accounting for only 3.8 per cent. As of 2004-05, the country currently exports 162 products to 173 markets (Export Promotion Bureau, 2006). The European Union (EU) (52.5 per cent) and United States (US) (28.3 per cent) are the two largest markets of Bangladesh's exports, with Canada 3.8 per cent and India accounting for 2.4 per cent (as of 2006-07) (Figure 15.1). Thus preferential market access facilities provided by EU, US, Canada, Japan, and Australia are of crucial importance for Bangladesh. The current module tries to capture the current facilities with the Rules of Origin (RoO) and standards requirement by GSPs.

Bangladesh at present enjoys preferential market access facility under 17 GSP schemes run by various developed market economies. Although subject to RoO of varying degrees of stringency, these GSP schemes offered two major benefits: (a) Preferential market access in the form of reduced (or zero) tariff for particular products; and (b) Greater market access in the form of enhanced quota or quota/ceiling free entry of particular products into domestic markets of developed countries.

15.3.1 The EU-EBA Initiative

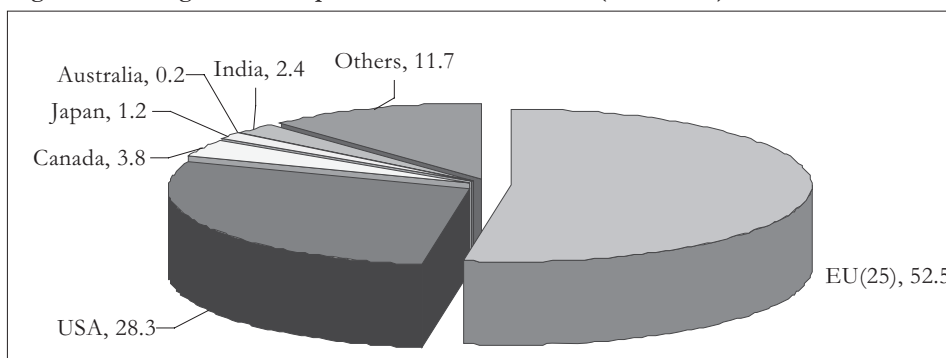
The EU originally granted two sets of market access preferences to LDCs. It provided relatively far-reaching market access preferences to the group of African, Caribbean and Pacific (ACP) countries, which includes many LDCs, and provided less far-reaching market access to other developing countries, including non-ACP LDCs. In 2001, however, the EU introduced the Everything But Arms (EBA) initiative, which has consolidated and improved the market access preferences for the group of LDCs as a whole. EU grants duty-free and quota-free market access to

²During July-October of FY2008 export earnings stood at US\$ 4127.3 mil., registering a negative (-) 2.63 per cent growth. The export growth of woven garments was negative (-9.34 per cent), while knit RMG almost managed to match the earnings during the corresponding period of FY2007 (with marginal - 0.56 per cent decline).

all types of exports from the LDCs, with the permanent exception of arms and ammunition, and a temporary exception for bananas (to be phased out 2006), rice and sugar (will be phased out 2009). With the new EBA initiative, it is expected that the non-ACP LDCs will be benefited more in terms of greater market access facilities for their exports.

The EU-GSP Scheme is relatively more important for Bangladesh as EU has become a major destination of Bangladesh's exports over the past several years, as the wide range of coverage under the EU-GSP Scheme³ has played an important role in the growing prominence of EU market for Bangladesh's exports. According to Export Promotion Bureau data for fiscal year 2006-07, Bangladesh exports to EU stood at US\$ 6.4 billion, which is 52.5 per cent of total exports (48 per cent in 2001) (Figure 15.1). Bangladesh is one of the highly benefited LDCs from GSP schemes of EU.

Figure 15.1 Bangladesh's Export in Different Countries (FY2006-07)



Source: Export Promotion Bureau (EPB).

Evolution of the EU-GSP Scheme

The EU-GSP Scheme was introduced in 1971 and has gone through considerable evolution over the past years. The first EU-GSP Scheme covered an initial period of 10 years (1971-81), and was subsequently renewed for a second decade (1981-91). This was extended for another four years, till 1995. A new GSP Scheme was put in place in 1995 for another 4 years at the end of which the scheme was further revised in 1999. This was revised once again with expanded coverage for the LDCs in 2000, to be effective from January 2001. It is this initiative which subsequently came to be known as the 'Everything But Arms' (EBA) initiative of the EU. EU-EBA is not subject to any time limit.

³The European Union maintains both non-reciprocal and reciprocal trade arrangements that extend preferential market access to the members of such arrangements. Two important non-reciprocal preferential trade arrangements are: Generalized System of Preferences (GSP) and ACP Scheme.

Coverage of the Scheme

EU-EBA provides the most favourable regime available. The beneficiary countries of this special arrangement for LDCs require formal recognition by the United Nations. At present, 49 developing countries belong to the category of LDCs and roughly 2100 products already enter the EU market duty-free from these countries. Practically all products are covered by EBA and are granted duty-free access (zero duty rates) to the EU market if they fulfill the RoO requirements. The regime provides duty-free and quota-free market access for all goods exported by the LDCs to the EU market, except those falling in the category of *Trade in Arms*. Out of the 10,500 tariff lines, the previous EC-GSP Scheme covered 9556 tariff lines, granting these items duty-free and quota-free market access to the EU. The EBA expands the list of the earlier GSP Scheme by another 919 HS 8 digit items (leaving only 25 items that concern *Trade in Arms*) and allows these items duty-free and quota-free entry to the EU market. The newly included 919 items mostly belong to HS 1-25 categories covering mainly agriculture products. However, imports of fresh bananas, rice and sugar are not fully liberalised immediately. Duties on these products will be gradually reduced until duty-free access is granted for bananas in January 2006, for sugar in July 2009 and for rice in September 2009. For products that do not fulfill the GSP's rules of origin requirements, the normal third country duty rates (MFN duty rates) apply or any preferential duty rate agreed by separate agreement by the country in question and the EU.

Since the Uruguay Round there is no "quota" on agri-products anywhere. Imports to EU are regulated by Tariff Rates Quotas or TRQs. As per this system, tariff rates are imposed on import of farm products, up to a certain quantitative limit; beyond which imports are allowed up to unlimited levels but with higher tariff rates.

Rules of Origin Under EU-EBA

Preferences under the EBA apply to imports of products originated in the LDCs. The RoO applying to imports under the GSP are meant to ensure that the tariff preferences foster the development of beneficiary countries, and not of non-targeted countries. Preferential treatment is subject to compliance with EC RoO which has remained unchanged (two-stage conversion for apparels, and value addition requirements for agricultural products). While products wholly obtained in the exporting country are considered as originating there, products manufactured with inputs from other countries are considered so only if they have undergone sufficient working or processing. The EU RoO refer to any of the following (a) stages of conversion (apparels); (b) change in tariff headings; (c) value addition; (d) combination of the above three. Accessing of zero-tariff preferential treatment will hinge on supply side capacity building in the manufactured sector. The RoO also lay down that products have to be accompanied by a certificate of origin or an invoice declaration in order to prove the origin of the imported products in the beneficiary country, and that they have to be shipped directly to the Community.

The RoO applying to imports under the GSP allow, under certain conditions, for cumulation of origin. Provisions on cumulation thus extend the possibilities for producers in beneficiary countries to use inputs from other countries. In order to foster regional integration, the RoO provide for the possibility of regional cumulation of origin between the members of regional groups. Where a product has been manufactured in or with inputs from two or more countries belonging to a group enjoying regional cumulation, inputs from other countries of the same group are treated as if they originate in the exporting beneficiary country. At present, ASEAN (Association of South East Asian Nations, comprised of Brunei Darussalam, Indonesia, Cambodia, Laos, Malaysia, the Philippines, Singapore, Thailand and Vietnam), SAARC (South Asian Association for Regional Cooperation comprising of Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka), and CACM (Central American Common Market comprising of Costa Rica, Honduras, Guatemala, Nicaragua, El Salvador, Panama, Bolivia, Colombia, Ecuador, Peru and Venezuela) are considered regional trade groups by EU.

In order to foster economic cooperation between the EU and GSP beneficiary countries, the rules of origin provide that all imports under the GSP are entitled to bilateral cumulation of origin, which is also known as "donor country content". This means that goods originating in the EU which are used as input for products manufactured in a beneficiary country and then are imported in the Community under the GSP are treated as if they originated in the exporting beneficiary country, provided the processing is more than minimal.

SPS-TBT Requirements Under EU-EBA

Imports to the EU market are subject to compliance with stringent Sanitary and Phyto-Sanitary Standards and Technical Barriers to Trade (SPS-TBT) requirements and Quality Standards. Since most of the products which have been included in the EBA are agricultural products, compliance with SPS-TBT requirements is crucial to ensure market access in the EU. EU food law works on the principles of Risk Analysis, Precautionary Principle and Consumers' Interest Protection. In this relation, EU introduced the Hazard Analysis and Critical Control Point or HACCP system to:

- (i) Assess risks and hazards associated with all stages and practices of product handling and processing including presence of biological, physical and chemical nature, antibiotics, additive substances which can adversely affect food safety;
- (ii) Determine the points, procedures and operational steps that can be controlled to eliminate the hazards or minimise its likelihood of occurrence; that is, the Critical Control Point (CCP); and
- (iii) Establish a monitoring system to control the CCP.

Table 15.1 Bangladesh GSP Utilisation Performance in EU(27) for Selected Items

	Non GSP				Non GSP			GSP Utilisation Rate (%) (a/b)
	Non GSP (a)	MFN Zero	MFN Non-Zero	Unknown	Others	Total Exports (b)		
03037998 – frozen salt water fish (excl./ /3.79-87)	0.23	0	0.02	0.02	0	0.27	85.53	
03042019 – frozen fillets of freshwater/ /salmon	0.06	0	0	0	0	0.06	100	
03042094 – frozen fillers of saltwater/ /renadier	0	0	0.01	0	0	0.01	0	
03061350 – frozen shrimps of the genus/ /water	59.31	0	0	59.57	0	118.87	49.89	
03061380 – frozen shrimps and prawns/ /"penaeus"	68.98	0	0	33.23	0	102.22	67.49	
57011090 – carpets and other textile/ /by weight	0	0	0.01	0	0	0.01	0	
61051000 – men's or boys' shirts o/ /thervests	183.51	0	17.12	15.23	0	215.86	85.01	
61091000 – t-shirts, singlets and other/ /rocheted	1218.14	0	67.17	128.65	0	1413.96	86.15	
61101290 – jerseys, pullovers, cardigan/ /rticles	18.85	0	0.04	0.2	0	19.08	98.79	
61102099 – women's or girls' jerseys,/ /stcoats	386.38	0	21.66	16.27	0	424.31	91.06	
61103099 – women's or girls' jerseys,/ /stcoats	559.5	0	39.99	39.9	0	639.39	87.51	
62034235 – men's or boys' trouser/ /underpants	190.39	0	156.15	13.52	0	360.06	52.88	
62052000 – men's or boys' shirts o/ /thervests	62.05	0	158.31	11.52	0.97	232.85	26.65	
62142000 – shawls, scarves, mufflers/ /crocheted	0.01	0	0	0	0	0.01	100	
Total (14 HSC)	2747.42	0	460.48	318.1	0.97	3526.97	77.9	

Source: Estimated from EuroStat Database.

Utilisation of EU-GSP by Bangladesh

The EU-EBA initiative is one of the most liberal market access opportunities provided to the LDCs. EBA also recognises the need for technical assistance as an essential complement to the GSP Scheme and is expected to put pressure on other developed countries as regards demands of the LDCs for global zero-tariff, zero-quota market access. The EU-EBA is very important for Bangladesh's agricultural exports. Currently 19 per cent of Bangladesh's farm exports are destined to EU; 85 per cent of African farm products and 45 per cent of Latin American farm products are destined for the EU. In case of manufacturing sector, various types of apparel products mostly knit products utilised the GSP facility at a high rate (more than 80 per cent) (Table 15.1).

If Bangladesh is to exploit the market opportunities through export of agro and food products, a HACCP monitoring cell will need to be put in place to ensure compliance at the point of production. This will require keeping records at the firm level about ingredients, product safety, processing, packaging, storage, distribution and marketing. Technical assistance may be sought to ensure capacity building in these areas. Translation of the EBA market access will require commensurate capacity building at production, compliance assurance and marketing levels. Trade Related Technical Assistance Projects will need to be designed to put in place the required supply-side capacities. The recently floated EC Green Paper (Green papers are discussion papers published by the Commission on a specific policy area) may provide an opportunity to Bangladesh to voice its demands as regards RoO and technical assistance, issues which are of crucial importance for Bangladesh.

15.3.2 Japan's GSP Programme

Japan's GSP started on 1 August, 1971, and the current scheme is effective until 31 March 2011. The GSP scheme of Japan was introduced for 164 developing and least developed countries for the period 1971-2011 and was revised in 1981, 1991, 2001 and 2003. The scheme was reviewed, and extended for a new decade (until March 2014). During the 2001-2002 fiscal year, the special treatment granted to LDCs was improved by the addition of a number of tariff lines. All exports from LDCs, under the Japanese scheme, are eligible for duty-free entry and exemption from ceiling restrictions for a list of relevant products.

The 99 per cent Initiative (only for LDCs) was into effect from April 2001 where approximately 350 items (including all textiles and clothing products manufactured by LDCs) received duty and quota-free treatment, except a few HS categories. In early 2003, Japan further improved its GSP scheme for the benefit of LDCs. While many industrial goods have already benefited from far-reaching market access preferences under the previous scheme, the new scheme has improved market access preferences primarily for agricultural goods and food items, such as prawns and frozen fish fillets.

The scheme was revised and made effective in April 2003. In the revised scheme, another 198 agricultural products at HS 9-digit level were given quota and duty-free market access and tariff rates of approximately 60 items under the prevalent GSP Scheme was brought down further. Thus an additional list of 350 items of industrial product and 316 agricultural products were made eligible for quota and duty-free access to the Japanese market if exported by the LDCs. In the context of the export opportunities for items belonging to HS 61 (knit RMG), HS 62 (woven RMG), HS 64 (footwear, gaiters and like), the recent GSP initiatives promises to create important market opportunities for Bangladesh from short as well as medium to long term perspectives. Virtually all textile and clothing products are in the enhanced preferential list.

Number of items in the negative list for industrial products has been downsized further by the exclusion of 3 additional categories (HS 43, HS 4 and HS 50). However, 7 out of 75 HS 2 digit level industrial product categories remain in the negative list, which essentially renders 68 HS chapters of industrial products eligible for quota and duty-free access to the Japanese market. Such expansion is expected to boost the percentage of total imports from LDCs under purview of quota and duty-free regime from 80 per cent to 90 per cent, a target initially set for 2005.

Coverage of the new GSP Scheme

Japan grants GPT (General Preferential Tariff) treatment for selected agricultural and fishery products (HS chapters 1-24) in 338 items (9-digit base). In case of industrial products (HS chapters 25-97) preferences are granted for all industrial products, with the exception of 100 items. These products include 1007 items granted preferences only to LDCs. In the GPT treatment there are no ceilings for all agricultural and fishery products and a number of industrial products. For the rest (81 product groups), GPT imports can be allowed until they exceed the ceilings. For these product groups, the ceilings are calculated for each fiscal year.

Ceilings are calculated by the following manner:

$$\text{FY2002-2010: Ceilings} = \text{Ceiling of the previous FY, multiplied by 1.03}$$

The New GSP scheme of Japan, however, includes an Escape Clause, which provides the legal ground to Japan government to temporarily suspend preferential treatment on a product, if increased preferential imports of the product cause or threaten to cause damage to a domestic industry. Moreover, advanced beneficiaries are to be excluded from the list of GSP beneficiaries under the annual review. This process of "graduation" begins with "partial graduation", which means a product of a beneficiary country or territory is to be excluded from the GPT-treatment product coverage if the country or territory is classified as a high income economy in the previous year's World Bank statistics (in case of fiscal year 2006, for example, it means World Bank statistics 2005, which carries the data of 2003) or, when it is not

on the World Bank statistics, recognised to have the same level of GNP (gross national product) per capita; and its exports of the product to Japan exceed 25 per cent of the world's exports of the product to Japan and at the same time are more than 1 billion yen.

Rules of Origin Under Japan GSP for LDCs

In order for goods exported from a preference-receiving country to be eligible for the preferential tariff treatment, they must be recognised as originating in that country under the origin criteria of the Japanese GSP scheme, and transported to Japan in accordance with its rules for transportation (Direct Consignment). This rule is to ensure that the goods retain their identity and are not manipulated or further processed in the course of shipment. Goods are considered as originating in a preference-receiving country if they are wholly obtained in that country. In the case of goods produced totally or partly from materials or parts, which are imported from other countries, or of unknown origin, such resulting goods are considered as originating in a preference-receiving country if those materials or parts used have undergone sufficient working or processing in that country. As a general rule, working or processing operations will be considered sufficient when the resulting goods is classified under an HS tariff heading (4 digits) other than that covering each of the non-originating materials or parts used in the production.

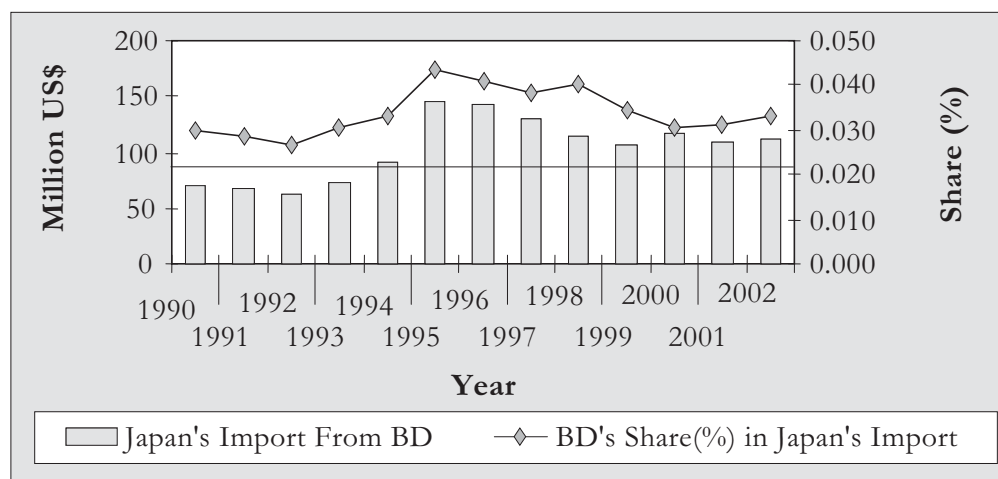
In case of donor country content rule, i.e. materials being imported from Japan into a preference-receiving country and used there in the production of goods to be exported to Japan later, those exports get some preferential treatment in the form of receiving the status of wholly obtained in the preference-receiving country. The cumulative origin rule also applies to Japan's GSP where the 5 countries (Indonesia, Malaysia, the Philippines, Thailand and Vietnam) are regarded as a single preference-receiving country for the purpose of applying the above mentioned origin criteria and preference-giving country content rule.

Implication for Bangladesh's Export

In spite of Japan's GSP Scheme facilitating greater quota and duty-free access for products of LDCs and a number of trade measures favouring the LDCs, over the years Bangladesh's export to Japan has not increased much. Bangladesh's total export to Japan was valued at US\$ 147.5 million in FY2007, which was 1.2 per cent of the total export (Figure 15.2). Bangladesh could avail duty-free access under the GSP scheme for export on more than 70 per cent products.

Out of the exports, knitwear accounted for 3.6 per cent, woven garments 10.5 per cent, leather 12.5 per cent, frozen food 9.2 per cent and jute goods 7.2 per cent. Bangladesh's exports account for only 0.03 per cent to 0.04 per cent of total import by Japan.

Figure 15.2 Japan's Import from Bangladesh and Bangladesh Share in Japan's Total Import



Source: CPD 2004, Study on GSP Schemes.

Bangladesh's exports to Japan constitutes several non-conventional industrial products with or without preferential treatment like instruments and apparatus (HS 90), electrical and electronic products (HS 85), toys, games and sport requisites (HS 95), ceramic products (HS 69), etc. In 2001, for a total of 49 HS 6-digit level agricultural items the quota and duty-free regime was applicable (in 2001) only to LDCs; HS 20 (preparations of vegetable, fruit, nut, etc.), HS 21 (miscellaneous edible preparations), HS 16 (preparation of meat, or fish or of crustaceans), HS 03 (fish, crustaceans, mollasses, aquatic invertebrates), HS 08 (edible fruits and nuts), HS 19 (preparations of cereal, flour, starch, milk, pastry cooks products). In 2003, HS 09 (coffee, tea mate and spices), HS 20 (preparation of vegetable, fruits, nuts or other), HS 16 (preparations of meat, or fish or crustaceans, molasses or other aquatic invertebrates), HS 08 (fruit and nuts; peel of citrus, fruits or melons) received comparatively more preferential treatment. For 135 HS 6 digit level items, both developing countries and LDCs received preferential treatment under the scheme albeit in different degrees. The LDCs were granted quota and duty-free access to the market, while developing countries benefited from reduced tariff in general and zero duty access for only a nominal number of items.

Potential Bangladeshi Exports to Japan

Out of 781 items at HS 6 digit level exported by Bangladesh to Japan and elsewhere, 176 products have been identified as promising in terms of export to the Japanese market. In respect to agricultural items, 28 HS 6 digit products were identified having export opportunities in the Japanese market. 13 of these 28 categories of products have been recently included for preferential treatment under the revised 2003 GSP scheme. Bangladesh has price advantage in most of these items like fresh bean,

cucumbers, asparagus, processed food such as dog or cat food, processed cucumbers, onions and lentils. Thus the country should eye the Japanese market for exports of fish and frozen food, beans, nuts, fresh fruits and black tea. Market analysis shows that Bangladesh's major competitors for these products would be China, Korea, Thailand, Vietnam, the Philippines, Taiwan, Hong Kong, Indonesia, India, Sri Lanka, Oman, UAE, Mexico and USA.

For *non-agricultural* items, 59 HS 6 digit level industrial products can be identified which have export potentials in the Japanese market. These products mainly belong to *RMG* categories HS 61 and HS 62. In 2003, substantial numbers of products under HS 61 and all products under HS 62 was included in the new scheme. Of the newly included HS 61 items in 2003, Bangladesh exported only two items (HS 610110 and HS 611130) to Japan. Since Bangladesh exports a large number of HS 61 items in the global market, there is potential for export of these items to the Japanese market by taking advantage of the new GSP Scheme. Bangladesh has export opportunities too for undergarments and dresses for women and girls, garments of babies, men's suit and ties. Export data indicate that Bangladesh currently exports only limited quantities of these products to the global market. Thus a scope for quota and duty-free export of such high-end products to the Japanese market will help Bangladesh realise the potentials of diversifying her apparel product basket.

31 HS 6 digit level *non-RMG* categories hold export potential in the Japanese market, of which 22 categories have been included for preferential treatment under the revised GSP Scheme in 2003. The principal *non-RMG* categories included in the list are footwear (HS 64) and textiles (HS 52). Bangladesh's export performance in the Canadian market indicates that Bangladesh has good potentials in expanding export of home textiles, and the market opportunities provided by Japan could allow Bangladesh to also tap the market for this item in the Japanese market.

15.3.3 Canadian GSP

In September 2000, the Canadian Government widened the product coverage of market access preferences granted under the Generalized System of Preferences (GSP) for the benefit of LDCs, and since January 2003 the market access preferences for these countries has been further expanded. Unlike the previous market access scheme, the new scheme improved market access for textiles and clothing, but continues to exclude sensitive agricultural produce, such as dairy products, eggs and poultry. With these exceptions, Canada now provides duty-free access under all tariff items for imports from LDCs. The new initiative also changed the rules of origin, introducing an innovative cumulative system that allows inputs from all beneficiary countries.

Canada has reduced its trade barriers for LDCs with a variety of initiatives since 2002. In 2002, Canada completed its Phase 3 obligations of the World Trade Organization's

(WTO) Agreement on Textiles and Clothing (ATC) by removing some quotas from textiles and clothing sourced from LDCs, including Bangladesh. On 1 January 2003, Canada's Least Developed Countries Market Access Initiative (MAI) removed all tariffs and quotas on imports on all goods, with exceptions in dairy, poultry and eggs, from LDC's. Bangladesh is a beneficiary of both these initiatives and as an internationally competitive exporter of textiles and apparel, the removal of barriers against these products allowed Bangladesh to capture export gains. In 2004, Canadian tariffs for a range of imported goods were further reduced as part of its WTO commitments.

The global trading environment for textiles and apparel changed again on 1 January 2005 with the end of the Multi-fibre Arrangement (MFA) as all remaining quotas from other suppliers of textiles and clothing were removed. The liberalising measures of 2004 and 2005 would effectively erode the margin of preferential access that Bangladesh had gained since 2002 in its existing areas of export strength in textiles and clothing. Bangladesh should therefore be further proactive to find other markets, such as Canada, where the MAI could foster this expected export growth.

Canada's Least Developed Country Tariff

Canada has been providing preferential access for LDC exports to its market for decades. The General Preferential Tariff (GPT) was implemented in 1974, with additional measures targeting LDCs specifically, called the Least Developed Country Tariff (LDCT), which was introduced subsequently and which included zero tariffs on GPT-applicable goods, more generous rules of origin (RoO) and additional product eligibility. The LDCT was introduced in 1983, providing benefits to 48 of the world's poorest nations by providing duty-free access into Canada for all of their products, except certain agricultural goods, apparel and textiles. In 1999, the LDCT included most industrial and agricultural items; however, textiles, clothing and footwear were only partially covered, and agricultural products under tariff quotas are excluded. An additional 570 products were added to the GPT/LDCT duty-free list for LDCs in 2000 (Weston, 2003), although the bulk of eligible product lines were not significant for Bangladesh, and most other LDCs, as textiles, clothing, leather, rubber footwear and travel goods along with other sensitive products were largely excluded.

Prior to 2003, the Canadian tariff schedules allowed duty-free access for the exports of 47 LDCs to Canada in 90 per cent of its tariff lines. In 2000, even under the auspices of the GPT where 90 per cent of Canadian tariff lines allowed LDC exports' duty-free entry into Canada, approximately half of LDC exports to Canada faced tariffs averaging 19 per cent. In February 2004, Canada extended both the GPT and LDCT for an additional ten years beyond their original expiration date of 2004, to 2014. The LDCT can be summarised as:

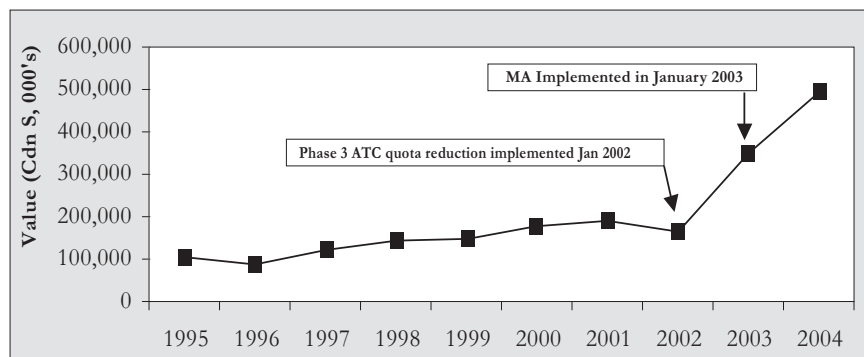
- LDCT covers all products except textiles, apparel and footwear and the out-of-quota tariff rates for tariffied agricultural goods.
- 46 per cent of all goods entered duty-free, and 54 per cent faced tariffs averaging 19 per cent.
- 99 per cent of all agriculture goods entered duty-free.
- Canada maintained tariff rate quotas (TRQs) on beef and veal, wheat and barley and products based on these foodgrains; and margarine. Exports above quota faced MFN tariff rates applied to most countries, with the exception of free trade agreement (FTA) partners (Chile, Costa Rica, Israel, United States and Mexico (NAFTA), along with others under negotiations. LDC exports of these agricultural products were limited, and well within their duty-free access limits.
- 60 per cent of textile items faced duties of 14-16 per cent.
- Most apparel products had 19 per cent duties, with quotas applicable to apparel sourced from Bangladesh.
- Tariff on footwear was 19.5 per cent.
- In 2000, 570 new 8-digit tariff lines were added to the LDCT.

In 2000, apparel imports from five of 48 LDCs eligible for LDCT (Bangladesh, Lesotho, Cambodia, Laos, and Nepal) also faced quotas; in fact, approximately one half of the imports of apparel from LDCs were under quota. On 1 January 2002, some quotas on textiles and clothing were eliminated as Canada completed Phase 3 of its quota elimination commitments under the ATC, benefiting among others, export-ready Bangladesh. The staggered convergence of the Phase 3 of the ATC in 2002, the MAI in 2003, and WTO scheduled commitments in 2004 and the end of the MFA in 2005 resulted in the granting and then erosion of Bangladesh's preferential access to the Canadian market for clothing and textiles. The impetus is upon Bangladesh to investigate alternatives allowing it to continue to maximise benefits from the MAI despite this erosion of preferential access in clothing and textiles. The first step in achieving this goal is to understand the provisions of the MAI.

The Canadian Market Access Initiative (MAI) Provision

The 1983 LDCT allowed duty-free access on 90 per cent of Canadian tariff lines for products from LDCs; these products continue to be covered by the existing rules of origin. Textiles, clothing and footwear were only partially covered, and agricultural products under tariff quotas are excluded from the LDCT. In 2002, the MAI was announced and became effective as an individual tariff programme for LDCs on 1 January 2003. The MAI provides that all goods imported into Canada and considered originating from an LDC, will be granted duty and quota-free status with the exclusion of dairy, poultry and egg products. Bangladesh reaped considerable benefits

Figure 15.3 Canada's Total Imports from Bangladesh



Source: May Yeung, 2005.

from this initiative, capturing export gains, particularly in textiles and apparel where it was export ready and competitive.

Canada continued to liberalise its market in 2004 by reducing MFN tariff rates. As part of its WTO commitments, Canada also removed all quotas on textile and apparel imports on 1 January 2005. This round of liberalization however eroded Bangladesh's margin of preferential access (mostly in case of textiles and apparel) as other exporters gained quota-free access to the Canadian market. Bangladesh's MFN competitors still must face tariffs in textiles and apparel, but Canada's various partners in free-trade agreements (Chile, Costa Rica, Israel, United States and Mexico (NAFTA) with others under negotiations) are on an equal footing as Bangladesh, with duty-free and quota-free access.

Impact of Canada's MAI on Bangladesh

Bangladesh's exports to Canada enjoyed a gradual growth for the period 1995 to 2004, during the coverage of the GPT/LDCT, up to the first year of the MAI.

Weston (2003) pointed that LDC-specific measures added to the GPT in 2000 were ineffective at improving Bangladesh's export performance in the Canadian market, which is observed by marginal and negative growth between 2000 and 2002. In 2002, Canada enacted Phase 3 of ATC quota reduction and Bangladesh's export value doubled from Cdn\$ 1.65 million to Cdn\$ 3.5 million from 2002-03, the highest levels achieved (Figure 15.3). In 2003, the MAI was implemented, which encouraged a significant rise in Bangladesh's exports to Canada between 2003 and 2004, to a record export value of just over Cdn\$ 490 million. There is drastic and immediate growth, from 2002 onwards, in the values of Bangladesh's textiles and apparel exports to Canada as these are product categories where Bangladesh has traditionally excelled.

Bangladesh can continue to benefit from the MAI by seeking to diversify its export mix to Canada beyond textiles and apparel. In FY2006-07, Canada was Bangladesh's

third most important export market (US\$ 457 million) after the US and EU (25), with exports growing by 12.6 per cent in FY2007 compared to the same period in FY2006. High export growth was particularly observed in 39 new product categories and 25 existing categories. These products are prime candidates to achieve greater diversification of Bangladesh's export mix to Canada.

The US and Canada have similar import profiles from Bangladesh, differing only in volume and pattern. These differences could prove to be opportunities for Bangladesh to diversify its exports to Canada, based upon what it is already exporting to the US.

For Bangladesh, the Canadian market presents opportunities beyond textiles and apparel. In order to capture any potential export gains afforded by the MAI, Bangladesh's exporters must first determine whether there is demand for their product in Canada, and whether or not they can in fact meet that demand on a reliable basis. From there, these exporters must assess whether or not they can accomplish these tasks competitively, across a broad range of factors, against other suppliers to the Canadian market. The specific tariff and quota preferences that Bangladesh enjoys under the MAI should be compared to the tariff/quota regimes faced by competitors as a starting point. However, these are not the only issues affecting competitiveness in the Canadian market. Price, quality, style, distribution, industry linkages, market dynamics, transparency, inter-personal and inter-business relationships, delivery, familiarity with the regulatory regime, language, reliability, cultural and historical ties, and similar business and technological developments all affect a product's competitiveness and ability to capture market share.

There are significant opportunities for Bangladesh to increase its agri-food exports to Canada, as many of these categories have exhibited high growth rates in the first year of the MAI. While initial volume and values are relatively low, these categories are promising avenues to furthering export volumes in the future. Bangladesh must become more adept at meeting the requirements of Canada's regulatory regime pertaining to agri-food, particularly SPS requirements, as well as the Canadian consumers' tastes and expectations. Familiarity with specific segments of the Canadian agri-food industry that may utilise Bangladesh's products as inputs would also be useful. A similar process should be followed for non-food-related manufactured products. In the fish and seafood markets, the importance of meeting standards and regulations is highlighted. In order to take advantage of potential opportunities, Bangladesh should undertake the necessary steps in either obtaining status on CFIA's 'A-list' of foreign suppliers, or completing an MOU with CFIA regarding fish and seafood. Without these steps, Bangladesh's export expansion in these products will be seriously hindered, as its ability to compete with suppliers on the 'A-list' or from countries with an MOU is limited.

In addition, there are also non-governmental initiatives driven by Canadian consumers which can affect Bangladesh's exports to Canada. These include ethical and social labeling (i.e. not using child labour, working conditions of labour utilised

to produce the product) and environmental labeling (i.e. sustainably harvested, organic) which can affect a consumer's purchasing decision for or against a particular product. These issues are most pertaining to the fish and seafood exports of Bangladesh, and typify the largest types of barriers facing Bangladesh's overall exports. Compliance with Canada's standards and regulations will require a significant effort on the part of Bangladesh's producers. The government of Bangladesh can assist its exporters by addressing these issues at a policy level, by negotiating MOUs, obtaining technical assistance, and disseminating information. Beyond agri-food products, when examining Bangladesh's exports to the US and EU particularly, the greater role of manufactures in their respective export mixes is apparent. Bangladesh's export capability in these products is illustrated by the volume and variety of manufactures exports to the EU especially, yet Bangladesh currently exports very few manufactures to Canada. The reasons for this disparity are beyond the scope of this paper, but further study would contribute to Bangladesh's efforts to diversify its exports to Canada to take full advantage of the MAI. The MAI provides duty and quota-free access for virtually all manufactured products, yet Bangladesh's exports of these products to Canada have not, for the most part, noticeably increased.

15.3.4 The US-GSP Program

The United States of America under the Generalized System of Preferences (GSP) provides preferential duty-free entry to approximately 4,600 products from some 140 designated beneficiary developing countries (BDC) and territories and to another 1,783 product categories from LDCs. The Programme was enacted on 1 January 1976 under the Title V of the Trade Act of 1974 for a ten year period. It was reauthorised and amended on 4 July 1993 by the Trade and Tariff Act of 1984. Seven subsequent laws have authorised GSP, most recently through 31 December 2006 by the 107th Congress in section 4101 of the Trade Act of 2002. The purpose of the programme is to encourage the economic growth of beneficiary developing independent countries and dependent countries and territories. Products which are grown, produced or manufactured in a beneficiary country and which meet Rules of Origin criteria are eligible for duty-free entry to the United States under the GSP. In 2005, the United States imported US\$ 24.5 billion under the programme with petroleum products, automobile parts, jewellery, and furniture being the leading imports.

The GSP eligibility list contains a wide range of products classifiable under more than 4,000 different subheadings in the Harmonized Tariff Schedule of the United States. Eligible merchandises are entitled to duty-free treatment provided some conditions are met; such as, the merchandises must be destined to the United States without contingency for diversion at the time of exportation from the beneficiary developing country; the cost or value of materials produced in the beneficiary developing country and/or the direct cost of processing performed there must

represent at least 35 per cent of the appraised value of the goods; and the cost or value of materials imported into the beneficiary developing country may be included in calculating the 35 percent value-added requirement for an eligible article if the materials are first substantially transformed into new and different articles, and are then used as constituent materials in the production of the eligible article, etc.

The United States provides three distinct sets of market access preferences to the LDCs. One set of market access preferences is granted through the African Growth and Opportunity Act (AGOA) to LDCs in Africa; another set is granted through the LDC GSP Scheme to LDCs in Asia; and a third set is granted through the Caribbean Basin Initiative (CBI) to Haiti, the only LDC in the region. The LDC GSP Scheme expired in September 2001 but was reauthorised until December 2006. Unlike the LDC GSP Scheme, the other two market access schemes have been significantly revised and expanded in recent years, especially where clothing and apparel are concerned. The LDC GSP Scheme, for example, excludes sensitive products such as textiles, work gloves, footwear, handbags, luggage, and watches, while AGOA provides preferential market access for many of these sensitive goods. The enhancements of AGOA concerned mostly textiles and apparel. Moreover, the list of products that are eligible for the LDC GSP system is reviewed on an annual basis, while for AGOA the list of products are reviewed less frequently, which implies a certain degree of stability and predictability as regards market access preferences. In short, the differences between the two schemes imply that Asian LDCs have less favourable market access preferences to the US than African LDCs, and that the Asian LDCs are also subjected to a greater degree of instability with regard to market access preferences in comparison to their African peers. AGOA is therefore also referred to as "super GSP". The difference between the market access schemes has important implication for the export and production in textile and clothing, which also need to be viewed in the context of the phasing-out of the Agreement on Textile and Clothing (MFA phased out in 2005).

In FY2006-07 Bangladesh's exports to USA stood at US\$ 3441 million, which is 28.3 per cent of the total exports in that period. This total volume is composed of; woven garments 66 per cent, knitwear 22 per cent and frozen food only above 5 per cent. Further to note in this regard, 48 per cent of Bangladesh's total woven garments exports and 16 per cent of knitwear exports are destined to USA.

Eligibility for US-GSP Programme

Regarding eligibility of a beneficiary developing country and LDC, the programme takes into account the level of economic development of the country, its commitment to a liberal trade policy, the extent to which it provides adequate protection of intellectual property rights, and its observance of internationally recognised workers rights. The program is reviewed annually by a subcommittee of the Trade Policy Staff Committee (TPSC). In the past, the subcommittee has occasionally denied benefits to

certain countries due to alleged malpractices. For example, in August 2001, Ukraine was suspended from the list of beneficiaries as it was not making sufficient progress in protecting intellectual property rights.

The Trade Act lists categories of import-sensitive products — certain textile and apparel products, watches, electronic articles, steel products, footwear, glass products, and other items — that are not eligible for GSP treatment. In addition, the act also establishes "competitive need limits," which require that the GSP treatment be suspended when US imports of a product from a single country reach a specified threshold value or when 50 per cent of total US imports of the product come from a

Box 15.1 Economic Effects of GSP

Supporters of GSP argue that it is an effective, low-cost means of providing economic help to developing countries. Empirical studies, based mostly on trade data from the late 1970s and mid-1980s, suggest that GSP has modestly increased the exports of beneficiary countries. This increase results mostly from creation of new trade opportunities, as relatively low-cost producers in the beneficiary countries take advantage of lower tariffs to displace higher cost producers in the markets of the industrialised countries.

However, the benefits of GSP to developing countries are limited by several features of the program. In 2005, for example, only about 9.6 per cent of US imports from beneficiary countries entered on preferential terms under GSP. Many products that were technically eligible for GSP treatment were excluded, most often because they exceeded the competitive need limit of a given product, or because they did not meet the rules of origin requirements of the law. In 2002, of USD 33.6 billion in imports that was eligible for GSP, USD 17.7 billion actually entered duty-free. Because the list of eligible products can change and because different countries make different products eligible for GSP, it is difficult for export industries in the developing countries to specialise to take advantage of the tariff preferences.

GSP tariff cuts can also result in efficiency and welfare losses for the world economy. Because GSP reduces tariffs in a discriminatory manner (that is, it favours some producers in developing countries over other producers), it can divert trade from more efficient producers in third countries to less efficient producers in beneficiary countries. Such costs are borne by relatively more efficient producers, who compete with those exporters that benefit from tariff preferences and by consumers in importing countries. Trade diversion can also harm the domestic economy of the beneficiary country. Tariff preferences could encourage exports of goods for which a country does not have a comparative advantage, thus distorting the domestic allocation of resources. By diverting resources away from potentially efficient producers, preferences could, over time, result in reduced exports and growth.

The lack of reciprocity in the GSP programme may also result in long-term costs for the beneficiary countries. In multilateral trade negotiations, the requirement for reciprocal tariff reductions means that all signatories reduce their tariffs. By avoiding reciprocal tariff reductions under GSP, however, some developing countries have tended to keep in place protectionist, import-substitution trade policies that have impeded their long-term growth.

With multilateral, non-discriminatory tariff cuts, on the other hand, countries tend to produce and export on the basis of their comparative advantage. Multilateral tariff reductions such as those agreed to in the Uruguay Round of GATT, redistribute the benefits of trade liberalisation in developing countries. Some exporters benefit because they face reduced tariffs in the industrial countries, while others are hurt because the margin of preference under GSP is reduced.

Source: Cooper H. William, 2006. Generalized System of Preferences, Congressional Research Service (CRS) Report for Congress, The Library of Congress, Updated 30 March 2006.

single country. However, the law does not clearly define the terms "import-sensitive" or "sufficiently competitive", often leading to subjective and inconsistent interpretations on product eligibility.

The last major statutory change in the US GSP programme was enacted 20 August 1996, where the provisions to redistribute the benefits of GSP among beneficiary countries were defined. This stipulated that, when the official statistics of the World Bank demonstrate that a beneficiary developing country has become a "high income"⁴ country, the country's eligibility for GSP benefits would be terminated. This had resulted in lower per capita income threshold and countries graduating from GSP sooner.

The Diminishing Effects of GSP

Two kinds of developments in the world trading system are reducing the effects of GSP on the US economy and the economies of beneficiary developing countries.

- *Firstly*, as multilateral trade agreements reduce tariffs worldwide, the margin between the GSP preferential rates and MFN rates becomes smaller. For example, US tariff rates, which averaged 5.4 per cent on industrial products before the Uruguay Round, came down to 3.5 per cent after the reductions competed. The estimated value of tariff relief on GSP-eligible products was reduced by about 40 per cent under the new reductions.
- *Secondly*, the growing number and size of other preferential tariff arrangements are also diminishing the value of tariff relief under GSP. The United States, for example, extends duty-free treatment to imports under the North American Free Trade Agreement (NAFTA), the US-Israeli Free Trade Agreement, the Caribbean Basin Initiative (CBI), the Andean Initiative, the Central American Free Trade Agreement (CAFTA)⁵, and the African Growth and Opportunity Act (AGOA). The EU is also expanding its preferential trading arrangements in Africa, Central and Eastern Europe, and elsewhere.

There were another 24 GSP Schemes provided to LDCs by different developed and developing countries (as reported by the countries at 2001).

15.4 Utilisation of Market Access Preferences

Analysis of market access conditions for LDCs is traditionally based on market access provided under trade preferences. However, trade preferences usually come with some conditionality (like the rules of origin, standards etc.), which the LDCs often fail to satisfy. Thus, merely granting tariff preferences or duty-free market access to

⁴World Bank statistics include countries with per capita incomes of over US\$ 8,600 in the "high income" category. Under the previous law, the per capita income threshold for graduation had been US\$ 11,800.

⁵The US has completed negotiations on free trade agreement with Central American countries, the CAFTA.

exports originating in LDCs does not automatically ensure that the trade preferences would be effectively utilised by beneficiary countries. Moreover, the design and structure of the legal framework through which these preferences are made available to LDCs does not properly reflect the priorities of stability and security, which are necessary to attract the export-oriented investment needed to generate improvements in supply side capacity.

The utilisation rate is one clear indicator of the effectiveness of trade preferences. It denotes the ratio of the number of imports that actually receive trade preferences at the time of customs clearance in the preference-giving country to the number of dutiable imports eligible for preferences. Higher or lower utilisation rates derive in part from the complexity of the conditions required to grant a product preferential treatment and from the capacity of exporters to comply with these requirements.

However, high utilisation rates recorded on an average basis or for particular product categories do not always mean that market access at preferential rates are effective. For example, in 2001, both US and Canada recorded very high utilisation rates on textiles and articles (71 per cent and 75.1 per cent respectively), mainly due to exports of hand-loomed fabrics from Bangladesh (Table 15.2). But the utility rate⁶ for the same textiles and articles was as low as 0.4 per cent and 2.9 per cent respectively in 2001. This meant that virtually all exports from Bangladesh, Cambodia and Nepal were subject to MFN duties when entering the markets of Canada and the United States. Such a low utility ratio within various GSP Schemes for these products clearly shows that lack of product coverage has been the main problem affecting the value of the trade preferences granted under the GSP schemes of US and Canada for Asian LDCs.

Table 15.2 Utilisation Rate of Textiles and Articles Imports from Effective LDCs under GSP Schemes (2001) (US\$ million)

	Value of Textiles & Articles Imports	Dutiable Imports by Value	Preferential Imports by Value	Product Coverage Rate (%)	Utilisation Rate (%)	Utility Rate (%)
Canada	91.4	85.8	2.5	3.8	75.1	2.9
EU	3 259	3 187	1 447	100	45.4	45.4
EU-EBA, 2002	3 648	3 424	1 847	100	54.0	54.0
Japan	54.5	47.5	25.2	100	53.1	53.1
United States	3 575	3 567	13.9	0.5	71.0	0.4

Source: Pierre Sauvé, 2005.

⁶The utility rate is defined as the ratio between imports that actually receive preferences and all dutiable imports, whether covered or not. It refers to the percentage of total dutiable imports that receive preferences. A lower value for this ratio means that a larger part of dutiable imports (whether covered or not) must receive MFN rates.

In 2002, the country that benefited most from the GSP scheme of the EU was Bangladesh. The top 10 products benefiting from the EU-GSP scheme were also from Bangladesh and consisted of clothing products under chapter 61 (articles of apparel and clothing accessories, knitted or crocheted), which accounted for 13.7 per cent of total exports from effective GSP beneficiaries. Preferential imports from Bangladesh had increased from US\$ 1,498 million in 2001 to US\$ 1,818 million in 2002, resulting in an increase in the utilisation rate. This was due mostly to changes that occurred in 2000, when the rules of origin for chapter 61 were relaxed somewhat to allow the utilisation of imported yarn. In recent years, the main beneficiaries of the GSP Scheme of Japan have been Bangladesh, Cambodia, Myanmar and Nepal. Utilisation rates have been close to 100 per cent for such products as garments, carpets and footwear.

15.5 Possible Improvements to Existing Preferential Schemes

To alleviate the possible adverse impact of preference erosion and the dismantling of quotas under MFA, industrialised countries should extend full duty-free and quota-free treatment to all products imported from LDCs with rules of origin matching LDCs' industrial capacities.

LDCs have reaped significant benefits through improved access from the revised GSP Scheme of Canada and, to some extent, the EBA Initiative of EU and the AGOA of US. Industrialised countries should address the gaps that still exist in their preferential programmes in terms of product coverage or rules of origin or other administrative requirements to extend meaningful preferential treatment to LDCs.

Issues of preferential treatment should emerge as an element in the final package negotiated during the Doha Round and these pledges should be turned into legally enforceable obligations. In the WTO, GSP has been treated as a privilege that may be granted or withdrawn by donor countries. Instead, preferential access regimes for LDCs should be made permanent and binding.

Because of strong lobby of textile and clothing industry in US, LDCs could not get duty-free access for their apparel exports in US. However, Bangladesh, Cambodia, and other small Asian suppliers should negotiate to devise a Special Preferential Trade Programme with US, which would respond to the particular situations of their garment sectors. However, such a programme may still be subjected to strict rules of origin and customs implementation requirements, and be linked to the use of fabric or intermediate materials from US.

In EU, current rules of origin are clearly hampering the utilisation of available trade preferences under EBA. In this regard, the obligation to follow the rules of origin should match the industrial capacity of LDCs. For example, development-friendly rules of origin for clothing should allow the utilisation of fabrics coming from all Asian countries, including China and India. Moreover, the basis for making value added calculations should be changed to allow Cambodian, Bangladeshi and other

small Asian garment suppliers to utilise higher priced fabrics with a view to entering new niche markets.

The most recent amendments to Canada's GSP Scheme for LDC countries (entered into force in January 2003) provides for duty-free treatment for all textiles and clothing from LDCs and full cumulation among all beneficiaries of the Canadian GSP Scheme, which means that textile inputs from China and India can be used. According to preliminary estimates, the trade effects of this new concession have been immediate and impressive. Garment exports to Canada increased more than seven-fold in the first nine months of 2003. Such positive steps taken by Canada is expected to inspire the needed changes and improvements in market access conditions in US and EU for all LDCs, including those in the Asian and Pacific region.

The predicament of small garment producers in Asian LDCs has underscored the need to design appropriate modalities for some new supplementary and compensatory forms of special and differential treatment. The level of preference erosion could be set as a floor for new assistance programmes focusing on the export supply capacity of LDCs through new and increased technical assistance and capacity building programmes as well as home country measures to encourage greater foreign direct investment in LDCs.

Remittances from citizens working overseas have already become the second largest source of external finance for many developing countries after FDI. Several Asian and Pacific LDCs are directly affected and they might want to see the DDA achieve a higher level of liberalisation in Mode 4 services trade. Progress in addressing this issue in a trade setting has remained limited, owing to difficulties in addressing various categories of workers at the lower end of the skill spectrum. Moreover, Mode 4 of GATS has been biased towards the movement of more highly skilled human capital. As a result, the development effects of greater labour mobility and the commensurate risk of draining scarce, highly skilled human resources from sending countries requires careful examination.

15.6 Summary

- GSP is a system where-by preferential treatment is granted in the form of reduced or duty-free tariff rate by developed countries to eligible products from developing and least developed countries. This preferential treatment is granted without any reciprocal obligation on the part of the developing countries.
- The primary purpose of the programme, which the industrial countries initiated in the 1970s, is to promote economic growth in developing countries and countries in transition by stimulating their exports. Currently around 28 GSP schemes are in operation.

- In 1971, the GATT Contracting Parties created the legal framework for the Generalized System of Tariff preferences by adopting the "Enabling Clause"⁷, which authorised developed countries to establish individual "Generalised Schemes of Tariff Preferences". According to the clause, preferential treatment under the GSP has to be non-discriminatory, non-reciprocal and autonomous.
- Over the years Bangladesh has transformed from an aid dependent country into a trading one. Bangladesh's total export in the previous fiscal year (2005-06) stood at US\$ 8.36 billion, with primary products (frozen food, fish products, agricultural products, tea, raw jute and others) accounting for 7 per cent whereas woven garments and knitwear together contributed around 74 per cent. The country currently exports 162 products to 173 markets, as of 2004-05 (Export Promotion Bureau, 2006). The European Union (EU) (53 per cent) and United States (US) (32 per cent) are the two largest markets of Bangladesh's exports, with Canada 3.87 per cent and India accounting for a further 1.66 per cent (as of 2004-05).
- Bangladesh at present enjoys preferential market access facility under 17 GSP Schemes run by various developed market economies, with EU, Japan, Canada, US and Australia being the major partners. Although subject to Rules of Origin of varying degrees of stringency, these GSP schemes offered two major benefits: (a) preferential market access in the form of reduced (or zero) tariff for particular products; and (b) greater market access in the form of enhanced quota or quota/ceiling free entry of particular products into domestic markets of the recipient countries.
- Access to market for the LDCs is traditionally provided under trade preferences which usually come with certain conditionality (like the rules of origin, standards etc.), and which the LDCs often fail to satisfy. Thus merely granting tariff preferences or duty-free market access to exports originating in LDCs does not automatically ensure that the trade preferences would be effectively utilised by beneficiary countries.
- Consequently, the issue of preferential treatment should be included as an element in the final package negotiated during the Doha Round whereby any such pledges committed in this regard should be turned into legally enforceable obligations. In the WTO, GSP is treated as a privilege that may be granted or withdrawn by donor countries. This certainly leads to instability for the exporting LDCs. So, preferential access regimes for LDCs should, instead, be made permanent and binding.

⁷The "enabling clause" involves a waiver from Article 1 of the GATT, which prohibits discrimination. The Enabling Clause was adopted originally for a period of ten years, and renewed in 1979, for an indefinite period of time.

- LDCs have reaped significant benefits through improved access from the revised GSP Scheme of Canada and, to some extent, the EBA Initiative of EU and the AGOA of US. Industrialised countries should address the gaps that still exist in their preferential programmes in terms of product coverage or rules of origin, or other administrative requirements to extend meaningful preferential treatment to LDCs.

15.7 Questions for Discussion

1. Why Preferential Market Access or GSP is important for LDCs like Bangladesh?
2. What are the GSP programmes currently enjoyed by the LDCs?
3. What are the major GSPs for Bangladesh? How much benefit Bangladesh has received under these GSPs in different years?
4. What are the implications of Rules of Origin (RoO) and SPS-TBT requirements under these GSPs for LDCs?
5. Are LDCs really benefiting from the GSP facilities? What remains to be done to ensure effective utilisation of the market preferences by LDCs?

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Training Manual on **WTO and Bangladesh Trade Policy**

Module

16

Doha Work _____

Programme and _____

Hong Kong _____

Outcome _____

Doha Work Programme and Hong Kong Outcome*

Learning Objectives

- This module will provide an overview of the outcome of the Hong Kong Ministerial Conference from Bangladesh's perspective.
- This module will help the learners to understand the strategies important for Bangladesh for the successful completion of the Doha Development Agenda.

16.1 Introduction

The Sixth WTO Ministerial Conference was held in Hong Kong, China from 13–18 December 2005. The Ministerial Declaration (WTO, 2005) is guiding the final set of discussions towards the successful conclusion of the Doha Round. It is well known that Ministerial Conference is the highest decision making platform at the WTO which provides political direction for the organisation. Trade, foreign, finance and agriculture Ministers of WTO Member countries and observers participate in the WTO Conference, which is held in a Member country at least once in two years. The Ministerial Conference is expected to arrive at decisions, through negotiations, on multilateral trade related issues. Prior to the Hong Kong Ministerial, five Ministerial Conferences were held. First Ministerial Conference in Singapore in 1996, agreed that developed countries would provide technical assistance to the least developed countries (LDCs) with a view to augment limited capacity of these countries to participate in the global trading system. Trade facilitation and capacity building were the highlighted issues during the Second Ministerial in Geneva, held in 1998. The Third Ministerial in Seattle in 1999 ended without consensus due to disagreement among the Members regarding their demands. At the Fourth Ministerial in Doha (Qatar), held on 9-13 November 2001, the "Doha Development Round (DDR)" was launched. the "Doha Round" was launched with the objective of establishing a balanced outcome of interests of the various Members in the WTO. A major focus was to bring a balance between negotiations in agricultural and industrial goods. This was the first Trade Round under the auspices of the WTO and it was perceived to be 'larger, deeper and fairer' compared to any of the previous Rounds under the GATT.

*Adapted from Bhattacharya, D., Rahman, M., Deb, U.K. and Khatun, F. 2006. Hog Kong Declaration of the WTO: Reflectives on the outcomes from Bangladesh Perspective.

It was considered *larger* since the Doha Round had built-in agenda of the Uruguay Round; *deeper* because it envisaged comparatively higher subsidies and tariff reductions; and *fairer* due to its development dimension of trade. Because of its explicit emphasis on the developmental dimensions of the trade talk, the Round came to be known as the 'Doha Development Round' (DDR). The Doha Ministerial reached consensus on initiating steps for implementation of WTO agreement, especially Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and public health. In Doha, China and Taiwan acceded to the WTO. The Fifth Ministerial Meeting was held in Cancun (Mexico) on 10-14 September 2003, failed to have a Ministerial Declaration since developing and developed members could not reach to any agreement. The major decisions taken at different WTO Ministerial Meetings are listed in Annex 16.1.

The agenda for discussion in the Hong Kong Ministerial was to develop a work programme to implement the agendas taken under the DDR. It may be recalled that the Doha Ministerial agreed on time schedules for negotiations and for reaching modalities for framework, and then translating those modalities into *single undertaking* by 1 January 2005. The Doha Declaration incorporated 20 important issues including agriculture, service, NAMA, TRIPS and environment (Table 16.1). The Member countries discussed different issues in light of the Doha Declaration. The Doha work programme suffered a major setback in September 2003 as the Cancun Ministerial ended in a deadlock without any declaration (for details, see CPD 2005). After

Table 16.1 Listed Issues in the Doha Declaration

Paragraph	Issues
Para 12	Implementation-related Issues and Concerns
Para 13-14	Agriculture
Para 15	Service
Para 16	Non-Agricultural Market Access (NAMA)
Para 17-19	Trade Related Intellectual Property Rights (TRIPS)
Para 20-22	Relationship between Trade & Investment
Para 23-25	Integration between Trade & Competition Policy
Para 26	Transparency in Government Procurement
Para 27	Trade Facilitation
Para 28	WTO Rules: Anti-Dumping & Subsidies
Para 29	WTO Rules: Regional Trade Agreements
Para 30	Dispute Settlement Understanding
Para 31-33	Trade & Environment
Para 34	Electronic Commerce
Para 35	Small Economics
Para 36	Trade, Debt & Finance
Para 37	Trade & Technology Transfer
Para 38-41	Technical Cooperation and Capacity Building
Para 42-43	Least Developed Countries
Para 44	Special & Differential Treatment

Source: Rahman and Moazzem, 2005.

Cancun, WTO members in Geneva started negotiations to put the work programme back on track and in July 2004 they reached to a framework agreement popularly known as "July package" which was passed by the WTO General Council. The *July package* provided the broad principles for continuing the work on liberalising agricultural trade, industrial tariffs, services and other areas. The July decisions extended the deadline for single undertaking under the DDR work plan from 1 January 2005 to 31 December 2005. During the run-up to the Hong Kong Ministerial, it was agreed that five clusters of negotiating issues would be discussed: (i) Agriculture; (ii) Non-Agricultural Market Access (NAMA); (iii) Services (GATS); (iv) Rules and (v) "Development" provisions.

Considering the slow pace of progress in negotiations in Geneva in the run-up to the Hong Kong Ministerial, the Member countries lowered their ambition levels to three core areas of market access, i.e. in the area of agriculture, industrial goods and services. In November 2005, WTO members acknowledged the fact that progress in negotiations were far from achieving an agreement in Hong Kong in a manner that could fashion a detailed framework for subsidy and tariff cuts on agriculture and NAMA. In this backdrop, it was hoped that in Hong Kong, members would strive to deliver at least a "Development Package" focussing on DF-QF market access for all exports originating in all LDCs. The first draft of the Hong Kong Ministerial Text was circulated on 26 November 2005. The second revised draft was circulated on 1 December 2005, and a further revised document was circulated on 7 December 2005. This latest document was the basis for negotiation at the Hong Kong Ministerial. At Hong Kong, Revision-1 of the Draft Ministerial Declaration was circulated on 16 December 2005, and Revision 2 was circulated on midday of 18 December 2005. The Revision 2 with some last minute amendments at the closing session of the Ministerial Conference was adopted in the late evening of 18 December 2005. The Hong Kong Declaration was very important for putting a meaningful end to the Doha Round negotiations. In Hong Kong, the Member countries decided to finalise all modalities to conclude Doha Round negotiations within 2006, so that members have sufficient time to reach an agreement.¹ Thus Member countries will have to work hard in the coming months and likewise Bangladesh will have to take more initiatives and participate more effectively.

The present study analyses the outcomes from the Hong Kong Ministerial and discusses the future actions to be taken by Bangladesh. It is divided into five sections. After the introductory first section, the second section discusses the major interests and achievements of Bangladesh in the Hong Kong Ministerial Conference. The third section attempts to explain the Hong Kong outcome while an overall assessment of the Hong Kong Ministerial is provided in the fourth section. Recommendations on

¹The agreement with the entire schedule should reach the US President before July 2007 to ensure easy acceptance of all decisions resulting from the Doha Round negotiations. This is because US President's 'Fast Track' or 'Trade Promotion Authority' (TPA) is going to end in July 2007 and the agreement should be presented before the Congress for approval 90 days prior to that.

Bangladesh's future strategy for a favourable negotiating outcome in the Doha Round are mentioned in the last section.

16.2 The Hong Kong Ministerial: Bangladesh's Major Interests and Achievements

Bangladesh's *primary* offensive interest in the context of Hong Kong was Market Access in the areas of industrial goods, services and agricultural commodities. *Secondary* priorities had been in improving the Special and Differential Treatment (S&DT) provisions, reducing trade distortion in cotton, ensuring food aid discipline, identifying and prohibiting harmful fisheries subsidies, and increasing real assistance for trade related supply-side capacities. It may be mentioned here, that the defensive interests of Bangladesh were serviced through the July 2004 text whereby Bangladesh and other LDCs were not required to undertake any obligations under the Doha Round, and in particular cases were given derogation and various waivers. Some of the important issues mentioned in the Hong Kong Declaration are discussed below.

16.2.1 Agriculture

Agriculture negotiations are related to three pillars: domestic support, market access and export subsidies. As agreed under paragraph 45 of the July Framework agreement, LDCs including Bangladesh are exempted from any tariff reduction commitment. Member countries which are not in a position to provide duty-free and quota-free market access shall provide market access for at least 97 per cent of products originating from LDCs by 2008 or no later than the start of the implementation period. However, it is not yet clear how agricultural commodities will be selected for the exclusion list comprising 3 per cent of the tariff lines.

On the issue of export subsidies, an end date for all export subsidies in agriculture by 2013 has been agreed. This was a major contentious issue between the EU, G20 and the developing countries. This was perceived to be a major success of the G20 countries. However, the elimination of export subsidies has limited value considering the fact that the share of export subsidies is only 3.5 per cent of the overall agricultural support provided by the EU (more than US\$ 3 billion annually).

On domestic support, it was agreed that there would be three bands for tariff reduction in final bound total AMS; in the overall cut in trade distorting domestic support, there would be deeper linear cuts in higher bands. However, the level of cuts at different bands would be decided later.

Future negotiations on agreement of agriculture are very important for Bangladesh. Two recent studies conducted at CPD (Dec 2005) clearly showed that liberalisation in global agricultural trade would have an impact on Bangladesh's agriculture sector. These studies revealed that Bangladesh had comparative advantage in the production of potatoes, corn, rice and different vegetables like brinjal, cauliflower, tomato, cabbage etc. So trade liberalisation in developed countries will increase the possibility

of export of these agricultural products from Bangladesh. Moreover, export of poultry, shrimp, mutton and different fruits including banana may also increase. On the other hand, production and cultivated area of crops like sugarcane and wheat may decrease in Bangladesh in future.

16.2.2 Cotton

In the Cancun Ministerial one of the major discussed issues was the detrimental effect of huge cotton subsidies provided by USA on the livelihood of cotton producers in Africa. In Hong Kong, Member countries agreed to address all trade-distorting policies affecting the cotton sector in all three pillars of market access, domestic support and export competition within the agriculture negotiations. The developed countries agreed to eliminate all forms of export subsidies for cotton in 2006. It can be mentioned here that, on 27 September 2002 Brazil requested consultations with USA regarding prohibited and actionable subsidies and also regarding legislation, regulations, statutory instruments and amendments providing such subsidies including export credits, grants, and any other assistance to US cotton producers, users and exporters.² The Dispute Settlement Body (DSB) of the WTO recommended and ruled US subsidy on cotton as against WTO agreement. In the Hong Kong Declaration, developed countries agreed to give binding commitments to give duty and quota free access for cotton exports from LDCs from the commencement of the implementation period of the Cotton Agreement (to be agreed by April 2006). However, LDCs were already enjoying such preferential market access. On cotton, the major issue is that of domestic support, which was not in the Revision 2 text, but was included through an amendment in the closing session. In the closing session, Member countries agreed that trade distorting domestic subsidies on cotton would be reduced more ambitiously than under whatever general formula is agreed, and it would be implemented over a shorter period of time than is generally applicable. The Members committed to give priority on negotiations to reach such an outcome. But it should be remembered that export subsidy is only a small fraction of total trade distorting domestic support. Many African countries have stated that the Cotton Agreement is not a complete solution as it fails to address trade distorting domestic subsidies properly. For example, domestic subsidy accounts for about 80-90 per cent of total domestic support on cotton, which is seriously harming cotton producers in African countries.

16.2.3 Food Aid

Food aid is a complex issue where USA and EU were expressing different opinions. Dumping of food aid in a country without any state of emergency damages food production in the recipient country. In effect this type of food aid is export subsidy in disguise, which may distort world food market. But the argument placed is that

²From WTO website at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds267_e.htm.

putting regulations on food aid would deprive the starving population of the world from aid. Therefore, advocates of regulations on food aid want to keep emergency aid out of such regulations. The discussion on food aid did not proceed much in Hong Kong negotiations. In paragraph 14 of Annex A, Members agreed that the WTO shall not stand in the way of the provision of genuine food aid and only commercial displacement is to be eliminated. They agreed to work on regulations to stop misuse of food aid provisions, and at the same time, to ensure supply of emergency food aid. Here, a fundamental sticking point is whether, except in exceptional, genuine emergency situations, member countries should move towards untied, in-cash food aid only.³ It was agreed that disciplines on in-kind food aid, monetisation and re-exports would be made so that there are no loophole for continuing export subsidisation. The disciplines on export credit, export credit guarantee or insurance programmes, exports and food aid by state trading enterprises will be completed by 30 April 2006 as part of the modalities. The issue of discipline in food aid remains essentially unsettled although the text mentions that the level of food aid and interests of the net food importing countries will be safeguarded. This is expected to take care of food aid receiving countries. Bangladesh and other net food importing countries will need to carefully follow the negotiations on this issue.

16.2.4 NAMA

Under Non-Agricultural Market Access (NAMA) negotiation in the WTO, the main discussed issues include the formula for determining tariff cuts, setting bound tariff

Table 16.2 Export Duty in the US Market, 2004

Country	Per capita GDP (US\$)	Export to US (US\$ billion)	Tariffs paid (US\$ million)	As %
Bangladesh	370	2.353	331	14.1
France	24,170	30.023	330	1.1
Norway	33,470	5.173	24	0.5
Singapore	30,170	14.899	96	0.6
Pakistan	460	2.228	240	10.8
Saudi Arabia	6,900	12.359	65	0.5

Source : USITC, 2004.

lines, flexibilities for developing countries, sectoral initiatives and measures to compensate erosion of preferences. In this regard Bangladesh's main demand was Special and differential provisions, especially duty and quota free market access for non-agricultural exports.

³Food Aid (para 14), Annex A, WTO Hong Kong Ministerial Declaration.

For Bangladesh, NAMA negotiation was a very important issue because non-agricultural products especially readymade garments (RMG) consists a large part of our total exports. Thus any change in industrial tariffs will have important impact on Bangladesh's export competitive capacity for two major reasons: (a) more favourable market access in countries where Bangladeshi exports face MFN tariffs; and (b) erosion of preferences in countries where Bangladeshi exports enjoy GSP facility. For Bangladesh the consequences of preference erosion will be severe. According to CPD research (Rahman and Shadat, 2005) Bangladesh will lose about US\$ 42.1 million due to preference erosion in the European Union (EU) market.

It has been found in a research conducted by CPD (Rahman, 2005) that Bangladeshi exports face more duty than those from France in the US market. In 2004, Bangladesh exported worth US\$ 2.35 billion to US and paid US\$ 331 million of duty. On the other hand, exports from France amounted to US\$ 30.02 billion for which US\$ 330 million of duty was paid. This reiterates the fact that for export competitiveness capacity, duty and quota free market access was very important for Bangladesh. CPD Modelling exercise (Bhattacharya et al. 2004) indicates that a zero-tariff access in the USA would have increased Bangladesh's export of apparels to US market by about US\$ 1.0 billion (or by 50%). However, since 2001 Bangladesh obtained zero tariff market access in Canada, which had helped Bangladesh's apparel exports to grow about 162% over 3 years, from US\$ 97.91 million in FY 2001-2002 to US\$ 256.40 million in FY 2003-2004.

On NAMA negotiations in Hong Kong, the Member countries agreed to use a non-linear Swiss-type formula with multiple coefficients for tariff reduction under which higher tariffs would be reduced at higher rates than lower tariffs. However, no decisions were taken on the value and number of coefficients to use in this formula. The level of coefficients is more important than the structure of the formula because it will determine the level of tariff cuts by the Member countries. The developing countries were against the Swiss formula as their tariff rates are usually high and under the formula they would have to reduce tariff at higher rates. A team of nine countries including India, South Africa, Brazil, Argentina, Egypt, Indonesia, Philippines, Namibia and Venezuela proposed an alternative formula, which gives developing countries some flexibility.

The Swiss formula was first used in Tokyo Round (from 1973 to 1979). Under the Tokyo Round, the tariff reductions were phased in over a period of eight years, involving an element of "harmonisation" — the higher the tariff, the larger the cut, proportionally. The ongoing NAMA negotiation will most likely consider the Swiss formula or any of its variants. In this paper, a comparative analysis of tariff reduction under the Swiss formula is discussed.

Swiss Formula: $t^1 = (a \times t^0) / (a + t^0)$

Where t^0 and t^1 are the initial and final tariff respectively, and a is the ambition

level and the coefficient which is to be negotiated. In effect, the Swiss formula is a non-linear formula depending on the existing tariff rates (t^0). It implies higher cut at higher tariff. On the other hand, an increase in the value of coefficient a will reduce the rate of tariff reduction and vice versa. In other words, the lower (higher) the coefficient, the higher (lower) the reduction in tariff profile. For example, two products with initial tariff of 10% and ambition level of 50 and 20 respectively.

a) First product: $t^1 = (50 \times 10)/(50 + 10) = 500/60 = 8.3$

b) Second product: $t^1 = (20 \times 10)/(20 + 10) = 200/30 = 6.6$

This means that with lower value of a there will be tariff cut at higher rates, and with higher a there will be lower tariff cut. Again considering initial tariff of 60% and 20% for the two products and a is 50 for the both, the Swiss formula shows,

c) First product: $t^1 = (50 \times 60)/(50 + 60) = 3000/110 = 27.3$

d) Second product: $t^0 = (50 \times 20)/(50 + 20) = 1000/70 = 14.3$

Thus under Swiss formula at higher tariffs there will be higher cuts.

Although LDCs are not expected to take any reduction commitments under NAMA, any reduction in the MFN tariffs on industrial goods by the developed and developing countries is expected to lead to significant preference erosion for Bangladesh and other LDCs. Besides, LDCs are also expected to bind a substantial number of industrial tariffs. In some of the developed countries, under Special and Differential provisions, LDCs will get duty-free access for all their industrial goods. However, in some others the share of goods will be 97 per cent, and it is apprehended that many industrial goods of export interest to LDCs would be included in the 'exclusion list'. Accordingly, items such as Bangladesh's apparels will have to enter markets of some developed countries, most notably that of the USA, with MFN duties.

16.2.5 Services

The Service sector is increasingly playing a very major role in the economy in terms of its contribution in GDP, export earnings and also in employment generation. These developments coupled with the growing recognition of the significance of trade in services ultimately culminated in services being included in the multilateral trading system under the General Agreement on Trade in Services (GATS). The GATS is the first multilateral agreement that provides legally enforceable rights to trade in all services incorporating 12 major service sectors and 160 sub-sectors under them. The major sectors include business services, communication, construction and architectural services, distribution, education, environmental services, financial services, health-related services, social services, tourism, recreation, cultural and sport, transport and other services.

In 1995 during GATS formulation, it was decided unanimously that the first round of

negotiations on GATS was to start no later than five years from 1995. Accordingly, the services negotiations started officially in January 2000. It was decided that the outstanding issues⁴ would be discussed in future negotiations. Guidelines and Procedures for the Negotiations on Trade in Services were adopted by the Special Session of the Council for Trade in Services on 28 March 2001. Member nations agreed on a guideline for service sector liberalisation through bilateral, plurilateral and multilateral negotiations. For negotiation a request-offer process was decided, where a Member would make a request to another Member to open up any of its service sub-sectors. In reply the later will give proposal regarding which are the sub-sectors it will liberalise and also to what extent. No agreement was reached on the outstanding issues of the Doha Ministerial. However, it was decided to negotiate on service sector liberalisation bilaterally. In Doha, Member countries decided to send their initial request lists to other Members within 30 June 2002 to obtain commitments for liberalisation of the service sector. Considering the requests recipient countries would send their initial proposal to requesting countries within 30 March 2003. Following this guideline, Member countries sent and received request-offers. In the Cancun Ministerial negotiations on services liberalisation could not make any progress due to emphasis on agriculture, NAMA, and the Singapore Issues. Prior to Cancun Ministerial, Special Modalities on Services Trade Liberalisation for LDCs were adopted on 3 September 2003. The modalities recognised the serious difficulties of LDCs in undertaking special commitments for services trade liberalisation. The lack of institutional and human capacities to analyse and respond to offers and requests was also recognised in the modalities.

The Cancun Declaration mentioned about the priority to the sectors and modes of supply of export interest to LDCs, particularly regarding movement of service providers under Mode 4⁵ (Detail in Annex 16.2). The July Package, adopted on 1 August 2004, set the new deadline of May 2005 for completion of the request-offer process. In paragraph 25, 26, and 27 and in Annex C of the Hong Kong Declaration decisions on services trade have been laid out. Service sector (including Mode 4) was not slated for negotiation at Hong Kong, and the Annex C of the Declaration was adopted without much amendments. Hong Kong Declaration (Article 3 of Annex C) calls for full and effective implementation of the LDC Modalities for the Special Treatment for Least Developed Country Members in the negotiations on Trade in Services with a view to the beneficial and meaningful integration of LDCs into multilateral trading system and also for expeditiously developing appropriate mechanisms for according special priority including to sectors and modes of supply of interests to LDCs [Article 9 (a)]. But there

⁴The outstanding issues were: Article 10: Safeguard Measures (e.g. control on migration of workers, solving financial difficulties); Article 13: Government Procurement (ensure preference for domestic suppliers); Article 15: Subsidy (provision for subsidy); Article 6: Qualification, Technical Scale and Licensing (ensure approval from both sides in case of exchange of professionals).

⁵GATS mentions about four modes of supply: Mode-1 Cross-border supply, Mode-2 Consumption abroad, Mode-3 Commercial presence, and Mode-4 Movement of natural persons.

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is very low probability for LDCs to reap real benefits out of this Declaration. In highly populated LDCs like Bangladesh, semi-skilled workers comprise a major part of the workforce and also of exportable manpower. Though the Hong Kong Declaration speaks of giving priority to service sectors of export interest to LDCs, the Mode – 4 of GATS covering movement of natural persons, mentions about export of skilled workers and professionals only. The possibility of Bangladesh gaining from such an arrangement is of suspect.

In addition to bilateral negotiations, the Hong Kong Declaration (Para 7 of Annex C) asks member countries to pursue the Request-offer negotiations on a plurilateral basis by 28 February 2006 or as soon as possible thereafter. A second round of revised offers shall be submitted by 31 July 2006 (Article 11 (c) of Annex C). Final draft schedules of commitments shall be submitted by 31 October 2006 and the members shall strive to complete the requirements in 9(a). Timelines for 2006 under Doha Work Programme to be negotiated at the WTO is reported in Annex 16.3.

The above Declaration is very important on the part of the LDCs. Because LDCs will have to analyse requests from other members for any specific sector, determine probable impacts in that sector with liberalisation, and negotiate with others in quick time. With the service sector emerging as a major contributor in the economy, Bangladesh will have to consider policies pertaining to this sector with care. So far though Bangladesh has received requests from many countries including USA, EU, Singapore and Japan for liberalising some important sectors like professional services, audio-visual services, construction and related architectural services, recreation, transport, law and accounting services, software and information services, e-commerce services, infrastructural and distribution services etc., it not submitted request and offer proposal for negotiation. Bangladesh needs to analyse the probable impacts of these requests before deciding on them. Bangladesh must negotiate for export of workers and professionals under Mode 4. Research suggests that Bangladesh can earn huge amount of foreign exchange through service exports under GATS Mode 4; through exporting additional 2 lakhs of service providers, Bangladesh can earn additional US\$ 3.5 billion from unskilled workers, US\$ 381 million from skilled workers, and US\$ 11.57 billion from professionals (Raihan and Mahmood, 2004). Thus Bangladesh should actively participate in GATS negotiation on Mode 4.

16.2.6 Fisheries Subsidies

It has been emphasised much to bring discipline in subsidies given on fisheries sector. Fisheries subsidies may lead to over capacity, over fishing and finally to exhaustion of fisheries resources. The Hong Kong Ministerial calls for identification and prohibition of harmful fisheries subsidies. The declaration pointed out that appropriate and effective Special and Differential Treatment should be an integral part of the negotiations for developing and least developed countries since fisheries is an

important sector for livelihood and food security in these countries. Fishery is an important source of income and employment for a large section of poor people and this sector plays an important role in poverty reduction in Bangladesh. But this sector suffers from lack of adequate support for its development. Bangladesh's fishery sector receives very little subsidy and so far this subsidy did not have any harmful impact on fish production in the country (Khatun, Rahman and Bhattacharya, 2004). Therefore, Bangladesh should play an active role to include the provision of Special and Differential Treatment in the fisheries subsidies negotiation, so that it retains flexibility to develop the fisheries sector.

16.2.7 Aid for Trade

Trade liberalisation on its own does not lead to economic growth and development. In reality, many developing countries and LDCs failed to benefit from trade liberalisation as they had no surplus and lacked knowledge over market access. In many cases they can not enter world market with their potential exports as they lack export related infrastructures like roads, port, electricity etc. and also can not comply with quality standards. Therefore, developing countries and LDCs need trade related capacity building assistance in order to benefit from market access and also to withstand any harmful effect of trade policy reforms. In this respect 'Aid for Trade' is very important. This idea has been introduced for successful completion of the Doha Development Round. In the G 8 summit in July 2005 in Gleneagles, Scotland, the World Bank and International Monetary Fund (IMF) together proposed the Aid for Trade Package. This package proposed financial and technical assistance to poor countries to remove obstacles to supply side capacity and to help them recover any harms from trade liberalisation.

In 2003 total trade related foreign assistance was US\$ 2.8 billion, which was only 4 per cent of total foreign aid. World Bank has committed to provide US\$ 3 billion of aid during the period 2004-06 as aid for trade, of which one-third will be spent for trade facilitation. It was known that IMF has committed to give aid of US\$ 78 million to Bangladesh and US\$ 32 million to Dominica Republic for facilitating greater participation of these two countries in world trade. Moreover, total development aid will be raised to US\$ 50 billion by 2010. As a result negotiations on aid for trade are very important for Bangladesh. However, it is an emerging concept and its governance structure is yet to be in place to mobilise and disburse the committed resources. The Director General of the WTO has constituted a Task Force in February 2006, comprising 13 Members. This task force concluded that additional, predictable sustainable and effective financing is fundamental for fulfilling the aid for trade mandate. Bangladesh needs to take adequate preparations to take advantage of these aid flows. However, there are some major concerns regarding aid for trade flow. Firstly, the amount of trade related aid and its sources are not mentioned. It is not clear whether these resources are additional or being diverted from other commitments. Secondly, whether there is a double or triple counting on account of resource commitments to

MDGs and PRSP. Thirdly, it is also not clear whether disbursement of these funds will fall under the IMF and the World Bank conditionality. Fourthly, these resources are for all developing countries, and it is not clear how this will be targeted to LDCs. Finally, it is not mentioned how long this aid for trade package will continue. For successful integration of developing nations and LDCs into the multilateral trading system a long-term provision for aid for trade is needed.

In the Doha Declaration, technical assistance and capacity building programmes have been clearly mentioned as a right of the poor countries. Paragraph 2, 16, 21, 24, 27, 33, 38, 39, 40, 42 and 43 of the Doha Declaration mention about trade related assistance; and also it has been included in the mandate for negotiation. Thus aid for trade is a right to the developing nations and LDCs. A full and effective 'Aid for Trade Package' should be broad, demand driven, sufficient and should be provided in greater volume and on a long-term basis. Thus, the Doha Development Round will conclude successfully if the developed nations take the provision for aid for trade as a negotiating tool.

16.2.8 Special and Differential Provisions

Annex F includes LDC specific Special and Differential Treatment (S&DT) proposals. Besides proposal 36 on Decision on Measures in favour of LDCs, which deal with DF-QF market access, there are four other LDC specific proposals which the members have agreed to adopt. These are: Proposal 23 relating to Understanding in Respect of Waivers of Obligations under the GATT 1994; Proposal 38 relating to Decision on Measures in Favour of Least Developed Countries; Proposal 84 relating to Agreement on Trade Related Investment Measures; and Proposal 88 relating to Decision on Measures in Favour of LDCs – Paragraph 1. The LDC specific S&D proposals provide this specific group of countries preferential treatment in a number of areas including: (a) waivers from taking obligations; (b) flexibility that allows LDCs to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs and their administrative and institutional capabilities; (c) allowing the LDCs to maintain, on a temporary basis, existing measures that deviate from their obligations under TRIMS; and (d) call for coherence whereby development partners were asked not to subject LDCs to conditionality on loans, grants and official development assistance that are inconsistent with their rights and obligations under the various WTO Agreements.

16.2.9 Waiver on TRIPS

Trade Related Intellectual Property Rights (TRIPS) Agreement got much importance in the Doha Declaration. Agenda for TRIPS negotiation was set through Doha Ministerial Declaration and also through Doha Declaration on the TRIPS agreement and public health. The Members agreed– to interpret and implement the TRIPS agreement in a manner supportive to Members' right to protect public health, promote access to medicines for all through ensuring availability of existing medicines and development of new medicines; to establish a multilateral system of notification and

registration of geographical indications for wines and spirits; to analyse the patent system for animals except micro organisms; to determine relationship between TRIPS and Convention on Biological Diversity (CBD); preserve heritage and culture [WT/MIN(01)/DEC/W/1]. Paragraph 29, 39, 40, 44 and 45 of the Hong Kong Declaration speak of the TRIPS agreement, which speak of renewal of Doha mandate on TRIPS and amendment to Article 31 of the TRIPS agreement.

The General Council of WTO on 6 December 2005 approved amendment in Article 31 of the intellectual property agreement. Article 31(f) of the TRIPS Agreement says that production under compulsory licensing must be predominantly for the domestic market. The concern was that this could limit the ability of countries that cannot make pharmaceutical products from importing cheaper generics from countries where pharmaceuticals are patented. As demanded by the Member countries, the General Council of WTO set aside this provision temporarily to make it easier for poorer countries to obtain cheaper generic versions of patented medicines. The Hong Kong Declaration (paragraph 40) welcomed this decision of the General Council.

According to the Marrakech Agreement that established the WTO, LDCs were given 10 years to implement the TRIPS Agreement. This extension was to expire on 1 January 2006. This period has now been further extended by another seven and half years upto July, 2013 with a possibility for further extension. LDCs have been asked to provide plans, within next two years, for implementation of the IP regime by their respective countries. Development partners are to provide the necessary support for implementation of this plan.

TRIPS agreement is very important for Bangladesh. The existing intellectual property rights and laws in Bangladesh are not adequate to preserve Biological Diversity, herbal medicines and knowledge, heritage and culture, and domestic natural resources. Research is also needed to invent new plant species and preserve the existing plant and animal species. Bangladesh needs to take timely measures toward amendment to the existing laws, initiatives for notification and registration of geographical indications, finding ways to use modern technology and knowledge in agriculture, industry and other sectors within the TRIPS agreement. The pharmaceutical sector in Bangladesh is much more developed compared to many other developing nations. Thus using the waiver on compulsory licenses⁶ Bangladesh can export pharmaceutical products to other countries.

16.2.10 TRIMS

One of the potential areas of S&DT agreed in Hong Kong relates Trade-Related Investment Measures (TRIMS). The transition period has been extended by seven years, i.e. till 2013. The LDC proposal was to extend it up to 2021. More importantly,

⁶Compulsory licence is an arrangement to allow a third party to use a patented right in return for a payment to the patent holder.

LDCs cannot only continue with old TRIMS (subject to notification) but also introduce new ones. One needs to explore to what extent Bangladesh can use this provision to support its strategic trade policy funding by withstanding the pressures from the World Bank and the IMF.

16.3 Duty-Free and Quota-Free Market Access: Expectation vs Reality

Ambition for market access of Bangladesh and other LDCs was justified; but a number of factors contributed to the non-realisation of this ambition. Indeed, from Bangladesh point of view, the adopted Declaration was of lower value in comparison to the Geneva text. Option 2 of the Annex F of the Geneva text was adopted with modification which effectively deprived Bangladesh. Regrettably, there was a self-deceptive attitude on the part of Bangladesh which impressed on others that DF-QF for all countries would pass through at the Conference. Bangladesh also failed to understand about the depth of the resistance on the part of the USA. The campaign for US TRADE Bill also generated a sense of false optimism.

Many also did not adequately appreciate that Bangladesh is situated at a 'peculiar' level of development. Bangladesh neither generates sympathy as Sub-Saharan African LDCs, nor does it command reverence as emerging developing economies such as India and Brazil. Too much emphasis on LDC cap did not deliver, particularly in case of apparels. When it was much needed, Bangladesh could not draw on the sympathy of the AGOA beneficiary African LDCs. Moreover, Bangladesh did not anticipate adequately that certain textile importing developing countries would play such an open and active role against Bangladesh. The role of Pakistan and, partly, Sri Lanka was to the detriment of Bangladesh's interests. Our South Asian solidarity was of no help to Bangladesh. Bangladesh failed to activate its political connections and mobilise political clout to withstand these pressures.

The initiative of Bangladesh to set up a separate group *G14 plus 1* comprising 14 LDCs from the Asia-Pacific region and also tsunami-hit Sri Lanka aimed at protecting the export interest for their apparels. Countries including Laos, Afghanistan, Cambodia, the Maldives, Nepal, and Sri Lanka responded positively to this initiative. It needs to be mentioned that, these 14 LDCs including Bangladesh did not get duty and quota free market access in USA under the US Trade Act 2000. Sri Lanka suffered terribly due to tsunami and though being a developing country it decided to join the group to obtain DF-QF market access. However, the initiative was done on a very ad hoc basis and at a late stage of the negotiations (on the fourth day). There was no analytical and conceptual background paper explaining the rationale, articulating the objective and setting the concrete goals. The initiative diverted scarce negotiating capacity at critical juncture of negotiations and probability of success from such initiative was limited.

16.4 Overall Assessment

Based on above discussions, we can arrive at the following overall assessment regarding the Hong Kong Declaration:

- The Ministerial Declaration does not adequately project the pro-development promises of the Doha "Development" Agenda. The bracketed texts of the latest Geneva draft (with brackets and options) were "cleaned" largely in favour of the developed countries.
- Among the developing countries, G20 succeeded in withstanding the pressure of the developed countries, and extract substantial dividends from Hong Kong. It is obvious that the advanced developing countries such as Brazil, China, India and South Africa will continue to exert formidable influence in the upcoming negotiations.
- LDCs as a group received a limited market access deal. Some progress has been achieved in the areas of export subsidy in cotton, and in a few cases of Special and Differential Treatment. Some promises have been made on "Aid for Trade".
- Bangladesh's ambitions from the Ministerial remain largely frustrated as it did not get meaningful market access, with limited progress in other areas including Mode-4.
- Bangladesh needs to reinvigorate its negotiating capacities during the last lap of the Doha Round. The country definitely needs to revisit its trade promotion and industrialisation strategies in the light of the Hong Kong outcomes.
- In order to realise the full potential of the Hong Kong Declaration, Bangladesh will need to devote more time, resources and energy over the next year. Otherwise, *there is a high and real possibility that Bangladesh may turn out to be a net loser from the final deals of the Doha Round.*

16.5 Agenda for the Future

Raising National Capacities

At the end of the day, Bangladesh has to competently fight for its national trade interests. What is necessary in such cases, apart from technical preparation, is political steadfastness, familiarity with the WTO process, effective political outreach and the nerve to withstand pressure. Regrettably, Bangladesh was not sufficiently endowed with all those.

Export Diversification

Export diversification should have always been a top priority for Bangladesh. Given the overwhelming dependence of Bangladesh on one product, apparels and clothing, and the real possibility of textiles being excluded from preferential market access opportunities reinforces the need for identifying new products which are to be promoted through appropriate trade and investment strategies.

Revisiting Export Strategies

Bangladesh also needs to revisit its export promotion strategies from another perspective. Bangladesh has quite often tried to promote its exports through tariff concessions. In the light of the Hong Kong Declaration, as well as MFN liberalisation, in general under the NAMA and Agriculture negotiations, this possibility is getting increasingly thin. Bangladesh now needs to put more emphasis on acquiring competitive advantage through efficiency gains in the area of trade supportive infrastructure (port, electricity, and telecommunications), as well as overall economic governance.

Work on Modalities for Market Access in USA

The Chairman in his concluding speech has mentioned that the modalities for designing the 3 per cent exclusion list will be thrashed out in Geneva in 2006 through negotiations on a framework. Whilst this may give the LDCs an opportunity to voice their concerns and interests in terms of items to be included in the inclusion list, it is difficult to imagine that developed countries such as the USA which opposed the idea of 100 per cent duty-free access for LDCs in Hong Kong would be ready to demonstrate a high degree of flexibility in negotiations pertaining to modalities on 'Exclusion List'.

Strengthening of MoC's Consultative Process on WTO

There is a mechanism of consultative process in place in the Ministry of Commerce (MoC) for seeking advice from the stakeholders on WTO related issues. An apex Advisory Committee and five Working Groups on WTO have been set up under the initiative of the MoC. This consultative process needs to be further strengthened to ensure more effective contribution to safeguarding Bangladesh's interests in the WTO. The consultations should be held more regularly, presence of major stakeholders should be ensured and the preparations for the meetings should be made in a manner that encourages concrete proposals to emerge from these meetings.

Further Strengthening of the WTO-Cell

The setting up of the WTO-cell within the Ministry of Commerce was a decision in the right direction. This has evidently strengthened the Ministry's capacity to deal with WTO related issues. The WTO-cell will need to be further strengthened with human and logistics support to enable the cell to work more effectively. Adequate attention should be given to skill upgrading, training and appropriate incentive package to attract and retain cadres. This is also essential to support the Geneva process with substantive inputs.

Strengthening of the Geneva Mission

Bangladesh's Mission in Geneva has been doing a commendable job under very difficult

conditions. However, in view of the tasks ahead and the demands of negotiations under the Doha Work agenda, the Mission needs to be further strengthened and there is a need to allocate more resources to the Mission. This would allow Bangladesh to participate more effectively in the various important meetings being held in Geneva in the context of the ongoing negotiations. Besides, Bangladesh is also looked upon by the other LDCs to fight for the interests of the LDCs as a group. Strengthening of the Geneva Mission is important from this perspective as well.

Dedicated Commerce Secretary to Deal with WTO Issues

In order to deal with and address WTO related issues in a more informed manner and on an ongoing basis many developing countries have restructured their administrative and bureaucratic set up. In many countries there is a dedicated Commerce Secretary supported by Joint Secretaries and other officers down the line to provide the necessary support. At present the Commerce Secretary of Bangladesh has to deal with both domestic and international trade related issues, which puts a lot of pressure on his time. The demands originating from the WTO work plan in the coming days call for an appropriate restructuring of responsibilities within the Commerce Ministry to enable it to deal adequately with the tasks at hand.

BFTI and Trade Related Capacity Building in Bangladesh

The decision to establish the Bangladesh Foreign Trade Institute (BFTI) as part of developing national capacities in trade related research, training and education was a commendable initiative. The BFTI was to be established on private-public partnership basis and was envisaged to provide support both to the GoB and the private sectors in trade related matters, including negotiations. Regrettably, the BFTI has been facing a lot of problems and is yet to live up to its initial promise. In view of the emerging needs, the GoB and the Ministry of Commerce should take all necessary initiatives to make BFTI up and running on an urgent basis.

Private Sector Representative in Geneva

It goes without saying that Bangladesh's private sector has interests in the ongoing negotiations in Geneva and their possible outcomes. The decisions made through the WTO negotiations are going to have important implications for Bangladesh's external sector performance and interests of the business. As such, there is a need for the private sector to be better informed about the negotiations in Geneva and to strategise accordingly. The private sector should seriously consider the idea of having a representative in Geneva who could monitor the negotiations and study the possible implications for business, and provide feedbacks to the trade bodies and Chambers, the Ministry of Commerce and the Geneva Mission. A number of countries have such representatives in Geneva whose works complement the work of their respective national Missions.



Setting up a National Committee to Review the Hong Kong Declaration and Recommend the Doables

The Ministerial Declaration coming out of Hong Kong needs careful scrutiny by all stakeholders in Bangladesh. This is required for three reasons. Firstly, the Declaration provides important guidelines for future negotiations in a number of key areas of interests to Bangladesh including NAMA, Agriculture and Services. Bangladesh will need to articulate its negotiating strategies in view of these guidelines. Bangladesh will also need to identify products which it would like to ensure for inclusion in the 97 per cent list of market access in a manner that best suits its export interests. Secondly, the Ministerial Declaration provides for a number of opportunities to Bangladesh. These include such areas as market access (DF-QF market access for all products in many developed countries and up to 97 per cent of tariff lines in some countries), waivers in TRIMs, extension in TRIPS and LDC modalities in GATS. In view of this, Bangladesh will need to design appropriate strategies to take advantage of the emerging opportunities. Thirdly, Bangladesh will need to get on with the task of designing a medium to long-term strategy to make the aid for trade package work for the purpose of trade related capacity building in Bangladesh. Bangladesh will need to make best use of the available windows of opportunity and try to make the most out of the flexibilities provided under the various S&D provisions, particularly in terms of TRIPS and TRIMs. Thus an in-depth analysis of attendant opportunities and risks will need to be carried out by the government, through wide and in-depth consultations with the trade bodies, experts, and other stakeholder groups. In implementing these tasks, the Ministry of Commerce will have to devise means and methods to effectively draw on other trade analysis capacities available in the country.

16.6 Summary

- The Sixth WTO Ministerial Conference was held in Hong Kong, China from 13–18 December 2005. The Ministerial Declaration (WTO, 2005) is going to guide the final set of discussions towards the successful conclusion of the Doha Round.
- The agenda for discussion in the Hong Kong Ministerial was to develop a work programme to implement the agendas taken under the DDR.
- Considering the slow pace of progress in negotiations in Geneva in the run-up to the Hong Kong Ministerial, the member countries lowered their ambition levels to three core areas of market access, i.e. in the area of agriculture, industrial goods and services.
- Bangladesh's *primary* offensive interest in the context of Hong Kong was Market Access in the areas of industrial goods, services and agricultural commodities. *Secondary* priorities had been in improving the Special and Differential Treatment (S&DT) provisions, reducing trade distortion in cotton, ensuring food aid discipline, identifying and prohibiting harmful fisheries subsidies, and increasing real assistance for trade related supply side capacities.
- Agriculture negotiations are related to three pillars: domestic support, market

access and export subsidies. As agreed under paragraph 45 of the July Framework agreement, LDCs including Bangladesh are exempted from any tariff reduction commitment.

- Trade liberalisation in developed countries will increase the possibility of export of such agricultural products as potatoes, corn, rice and different vegetables like brinjal, cauliflower, tomato, cabbage from Bangladesh.
- Food aid is a complex issue where USA and EU were expressing different opinions. Dumping of food aid in a country without any state of emergency damages food production in the recipient country.
- Under Non-Agricultural Market Access (NAMA) negotiation in the WTO, the main discussed issues include the formula for determining tariff cuts, setting bound tariff lines, flexibilities for developing countries, sectoral initiatives and measures to compensate erosion of preferences.
- For Bangladesh, NAMA negotiation was a very important issue because non-agricultural products especially readymade garments (RMG) consists a large part of our total exports.
- The Swiss formula was first used in Tokyo Round (from 1973 to 1979).
- The Service sector is increasingly playing a very major role in the economy in terms of its contribution in GDP, export earnings and also in employment generation.
- The Hong Kong Ministerial called for identification and prohibition of harmful fisheries subsidies.
- In the G8 summit in July 2005 in Gleneagles, Scotland, the World Bank and International Monetary Fund (IMF) together proposed the Aid for Trade Package. This package proposed financial and technical assistance to poor countries to remove obstacles to supply side capacity and to help them recover any harms from trade liberalisation.
- Annex F includes LDC specific Special and Differential Treatment (S&DT) proposals.
- According to the Marrakech Agreement that established the WTO, LDCs were given 10 years to implement the TRIPS Agreement. This extension was to expire on 1 January 2006. This period has now been further extended by another seven and half years up to July 2013 with a possibility for further extension.
- One of the potential areas of S&DT agreed in Hong Kong relates Trade-Related Investment Measures (TRIMs). The transition period has been extended by seven years, i.e. till 2013.
- Bangladesh's ambitions from the Ministerial remain largely frustrated as it did not get meaningful market access, with limited progress in other areas including Mode-4.

- Bangladesh needs to reinvigorate its negotiating capacities during the last lap of the Doha Round. The country definitely needs to revisit its trade promotion and industrialisation strategies in the light of the Hong Kong outcomes.
- In order to realise the full potential of the Hong Kong Declaration, Bangladesh will need to devote more time, resources and energy over the next year. Otherwise, *there is a high and real possibility that Bangladesh may turn out to be a net loser from the final deals of the Doha Round.*

16.7 Questions for Discussion

1. What were Bangladesh's major areas of interest and concern in the Hong Kong Ministerial Conference?
2. What is the Swiss Formula? What implications does it have for Bangladesh under the multilateral trading system?
3. How relevant is the of 'Aid for Trade' package for enhancing economic development in the LDCs?
4. What should be the future agenda for Bangladesh in the context of the ongoing negotiations under the Doha Development Round?

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Appendix 16.1 Major Decisions Taken in WTO Ministerial

Ministerial	Major Decisions Taken
First Ministerial: Singapore, 9-13 December 1996	<ul style="list-style-type: none"> • Because of the new commitments, increasing problem of multilateralism and remaining risks faced by the LDCs was acknowledged • Member countries decided to provide technical assistance to LDC members • A new of Plan of Action including Duty-Free Access was agreed
Second Ministerial: Geneva, 18-20 May 1998	<ul style="list-style-type: none"> • Integrated Framework for Trade Related Technical Assistance was approved with the following major elements: <ul style="list-style-type: none"> – Ensuring technical assistance according to the demand in LDCs – Increasing efficiency in trade related assistance – Increasing efficiency in trade facilitation – Training and human resource development – Providing assistance in formulating trade related law and policy to encourage trade and investment
Third Ministerial: Seattle, 30 November-3 December 1999	<ul style="list-style-type: none"> • The Conference ended in a deadlock without any declaration due to disagreement among the Member nations on important issues • As a result though developing nations were united regarding their demands, those did not get any specific legal framework
Fourth Ministerial: Doha, Qatar 9-13 November 2001	<ul style="list-style-type: none"> • Importance of implementation related issues and concerns was determined • Decisions taken on TRIPS Agreement and Public Health • China and Taiwan got accession to WTO • WTO waiver was agreed for the EU-ACP Cotton Agreement
Fifth Ministerial: Cancun, Mexico 10-14 September 2003	<ul style="list-style-type: none"> • Nepal and Cambodia accession to WTO was agreed • Many disagreements remained among developed, developing, and LDCs regarding agriculture and Singapore issues. The Singapore issues* were: <ul style="list-style-type: none"> – Investment – Competition policy – Transparency in government procurement – Trade facilitation • Cancun Ministerial ended without any agreement among the Member nations

Note: *These issues were first proposed during the Singapore Ministerial (1996), and henceforth, known as Singapore Issues.

Appendix 16.2 Four Modes of Supply under GATS

Mode 1: Cross-Border Supply	Cross-border supply is defined to cover services flows from the territory of one Member into the territory of another Member country. Electronic banking, telecommunication, satellite television, and services provided through internet fall into this category.
Mode 2: Consumption Abroad	This refers to situations where a service consumer, e.g. tourist or patient, moves into another Member country's territory to obtain a service.
Mode 3: Commercial Presence	This implies that a service supplier of one Member establishes a territorial presence, including through ownership or lease of premises, in another Member's territory to provide a service, e.g. domestic subsidiaries of foreign insurance companies or hotel chains.
Mode 4: Movement of Natural Persons	Consists of persons of one Member entering the territory of another Member to supply a service (e.g. accountants, doctors or teachers). The Annex on Movement of Natural Persons specifies, however, that Members remain free to operate measures regarding citizenship, residence or access to the employment market on a permanent basis.

Source: World Trade Organization.

Appendix 16.3 Doha Work Programme-Timelines for 2006

Major Issues	Agenda	Timeline	Comments
Agriculture Negotiations	Establish modalities for negotiations	30 April 2006	
	Complete disciplines on export credits, export credit guarantees or insurance programmes, exporting state trading enterprises and food aid	30 April 2006	
	Submission of draft Schedules based on modalities	31 July 2006	
NAMA Negotiations	Establish modalities for negotiations	30 April 2006	
	Submission of draft Schedules based on modalities	31 July 2006 as soon as possible	
Services negotiations	Submission of any outstanding initial offers	28 February 2006, or as soon as possible thereafter	
	Submission of plurilateral requests by Groups of Members		
	Develop appropriate mechanisms for according special priority including to sectors and modes of supply of interest to LDCs	31 July 2006	
	Second round of revised offers	31 July 2006	
	Final draft schedules of commitments	31 October 2006	
Trade Facilitation Negotiations	Submission and discussion of proposals on all three pillars (Articles, Special & Differential Treatment and Technical Assistance & Capacity Building)	February, 2006	8 proposals were put at Negotiating Group (15-16 February)
	First full draft report to the TNC	July, 2006	
Small Economies	Committee on Trade and Development to continue work in Dedicated Session and to monitor progress of small economies' proposals in negotiating	31 December 2006	
	Deadline for addressing proposals	July 2006	
	Monitoring progress on Agriculture and NAMA, with aim of providing responses to trade related issues	April-December 2006	
S&DT	Developed country Members to notify the means by which they will implement the decision on proposal 36 [Duty-Free, Quota-free (DF-QF) market access]	September 2006	
	Developing country Members declaring themselves in a position to do so to notify the means by which they will implement the decision on DF-QF	December 2006	
	CTD first review on all steps taken by Members to provide DF-QF	November 2006	
Implementation	General Council to review progress and take any appropriate action	31 July 2006	
	DG to report to TNC and General Council (notably on GIs and TRIPS/CBD)	February-June 2006	

(Continued Annex 16.3)

Major Issues	Agenda	Timeline	Comments
Integrated Framework	Task Force to provide recommendations to IFSC	April 2006	
	Enhanced Integrated Framework to enter into force	31 December 2006	
	Report by DG to the General Council	July 2006	
Aid for Trade	Create Task Force and provide recommendations to GC	July 2006	
	Setting up of Task Force	February 2006	
	DG to consult with Members and Agencies	March 2006 and May 2006	On 8 February the task force comprising 13 Members was set up
	GC–discuss Task Force recommendations	July 2006	
	Annual Meetings of the IMF/World Bank (Washington)–discussion of Aid for Trade package for DDA	September/October 2006	
	Operational of Aid for Trade programme and enhanced IF	December 2006	

Source: WTO, 2006.

Note: Besides the timeline for above mentioned issues, different time lines in 2006 for a number of negotiating issues like – Cotton Dispute Settlement Understanding, Environment, Trade Related Aspects on Intellectual Property Rights (TRIPS) and Rules regarding Anti-dumping, Subsidies and Countervailing Measures, Fisheries Subsidies & Regional Trade Agreements – were also placed.

Training Manual on **WTO and Bangladesh Trade Policy**

Module

17

Current Status of _____
Doha Round _____
Negotiations: _____
Implications and _____
Strategies for _____
Bangladesh _____

Current Status of Doha Round Negotiations: Implications and Strategies for Bangladesh

Learning Objectives

- This module will (i) provide an understanding on the status of negotiations in the Doha Round; (ii) help the learners to understand the issues and concerns that are relevant for Bangladesh in the context of ongoing negotiations on agriculture, NAMA, Services, TRIPS, SPS, Rules and other issues; (iii) acquaint the learners with the

negotiating strategies for Bangladesh taking into consideration of various challenges and concerns

17.1 Introduction

At the Fourth WTO Ministerial Conference in Doha, Qatar held during 9-14 November 2001, the "Doha Round" was launched with the objective of establishing a balanced outcome of interests of the various Members in the WTO. A major focus was to bring a balance between negotiations in agricultural and industrial goods. This was the first Trade Round under the auspices of the WTO and it was perceived to be 'larger, deeper and fairer' compared to any of the previous Rounds under the GATT. It was considered *larger* since the Doha Round had built-in agenda of the Uruguay Round; *deeper* because it envisaged comparatively higher subsidies and tariff reductions; and *fairer* due to its development dimension of trade. Because of its explicit emphasis on the developmental dimensions of the trade talk, the Round is known as the 'Doha Development Round' (DDR).

Milestones since the Launch of Doha Round are reported in Box 17.1. All the deadlines set in Doha were failed and the Cancun Ministerial (September 2003) ended without any Ministerial Declaration. In July 2004 (actually 1 August 2004), WTO Members agreed on a framework package to keep the Doha Round trade negotiations alive. This framework package is popularly known as "July Package" or "August Framework". Follow-ups on July Package continued but there were limited progress before the Sixth WTO Ministerial Conference was held in Hong Kong, China from 13–18 December 2005. In Hong Kong, WTO Members acknowledged that negotiations were far from achieving an agreement in a manner that could fashion a detailed framework for subsidy and tariff reduction on agriculture and NAMA. It was hoped in Hong Kong that WTO Members would strive to deliver at least a

"Development Package" that could include the offer of duty-free and quota-free market access to all developed countries for all exports from the Least Developed Countries (LDCs), but it was not fully achieved. Members agreed to conclude Doha Round Negotiations successfully in 2006 and submit comprehensive draft Schedules based on modalities no later than 31 July 2006. However, members failed to agree on modalities by July 2006. Doha Round Negotiations were suspended for an indefinite period through the General Council Meeting held in July 2006. On 16 November 2006, WTO Director General Pascal Lamy asked all the negotiating groups to hold informal meetings which will focus only on technical works. Accordingly, soft resumptions were made in February 2007. In that process, formal negotiations resumed after one year in July 2007, when Chairmen of the Agriculture and NAMA negotiating committees circulated their draft texts among members for negotiations. Following these drafts, negotiating proposals, working documents and revised drafts were prepared and circulated.

Box 17.1 Milestones since the Launch of Doha Round

- 9–14 November 2001: Doha Development Round launched at the fourth Ministerial Conference of the WTO in Doha, Qatar.
- 10–14 September 2003: Cancun Ministerial Conference ended without a Ministerial Declaration.
- 31 July 2004: Adoption of July Framework Agreement.
- 27–29 July 2005: WTO General Council Meeting discusses the progress in negotiations.
- 13–18 December 2005: Hong Kong Ministerial Conference held in Hong Kong, China. Adoption of the Hong Kong Ministerial Decision.
- 24 July 2006: Suspension of Negotiations.
- February 2007: Soft Resumption of Negotiations.
- 17 July 2007: Chair's First Draft on Agriculture and NAMA.
- 8 February 2008: Chair's Second Draft on Agriculture and NAMA.
- 27–29 February 2008: Fifth LDC Conference in Lesotho.
- 2 April – 23 May 2008: Intensive Phase of Negotiations.
- June 2008: A Possible Ministerial Conference?

Source: Compiled by Authors.

This module focuses on the current status of negotiations in the Doha Round. It discusses the current state of major negotiating issues and their implications for Bangladesh.

17.2 Doha Development Agenda: From Doha 'Heavy' to Doha 'Lite'

The DDR negotiations had its share of ups and downs in its course of the last seven years, since the Doha Round was launched in 2001. The negotiation history of the DDR also bears testimony to the fact that the WTO's focus remained on trade liberalisation and market access, *per se*, with issues related to the development goal

being pressed upon by the developing countries, and particularly by the LDCs. The Doha Declaration incorporated 20 key issues (Table 17.1) but number of issues currently being negotiated are much less. The issues under current negotiation are put in italics in Table 17.1.

Doha Declaration stated that the negotiations to be pursued under the terms of the Doha Declaration shall be concluded not later than 1 January 2005. The Fifth

Session of the Ministerial Conference will take stock of progress in the negotiations, provide any necessary political guidance, and take decisions as necessary. However, the Doha work programme suffered a major setback as the fifth Ministerial in Cancun (September 2003) ended without any Declaration. Real progress on negotiation was not evident until August 2004 in Geneva, with a set of decisions in the General Council often referred to as the *July 2004 package*. The *July 2004 package* provided the broad principles for continuing the work on liberalising agricultural trade, industrial tariffs, services and other areas.

In the run-up to the Sixth Ministerial Conference in Hong Kong in December 2005, it was agreed that five clusters of negotiating issues would be discussed: (i) Agriculture, (ii) NAMA, (iii) Services, (iv) Rules, and (v) "Development" provisions. Considering the slow pace of progress in negotiations in Geneva, the WTO Member countries lowered their ambition levels to three core areas of market access, i.e. in the areas of Agriculture, Industrial Goods and Services. This was the movement, with respect to the initial and latest Doha Development Agendas, that came to be known as the transition from Doha 'Heavy' to Doha 'Lite.'

The Hong Kong Declaration was important for identifying milestones towards successful completion of the Doha Round negotiations. Member countries decided to finalise all modalities to conclude the Doha Round negotiations within 2006. However, the General Council, at its modalities meeting in July 2006, supported a recommendation by Director General Pascal Lamy to suspend the Doha negotiations. After a year, in mid-2007, the G4 (US, EC, India and Brazil) attempted to revive the stalled negotiation process. Although the G4 Potsdam meeting collapsed over Agriculture and NAMA, a positive outcome was that the negotiating process was once again multilateralised and negotiating baton was passed back to the wider membership.

Table 17.1 Key issues listed in the Doha Declaration

Paragraph	Issues
Para 12	<i>Implementation related Issues and Concerns</i>
Para 13-14	<i>Agriculture</i>
Para 15	<i>Service</i>
Para 16	<i>Non-Agricultural Market Access (NAMA)</i>
Para 17-19	<i>Trade Related Intellectual Property Rights (TRIPS)</i>
Para 20-22	<i>Relationship between Trade & Investment</i>
Para 23-25	<i>Integration between Trade & Competition Policy</i>
Para 26	<i>Transparency in Government Procurement</i>
Para 27	<i>Trade Facilitation</i>
Para 28	<i>WTO Rules: Anti Dumping & Subsidies</i>
Para 29	<i>WTO Rules: Regional Trade Agreements</i>
Para 30	<i>Dispute Settlement Understanding</i>
Para 31-33	<i>Trade & Environment</i>
Para 34	<i>Electronic Commerce</i>
Para 35	<i>Small Economics</i>
Para 36	<i>Trade, Debt & Finance</i>
Para 37	<i>Trade & Technology Transfer</i>
Para 38-41	<i>Technical Cooperation and Capacity Building</i>
Para 42-43	<i>Least Developed Countries</i>
Para 44	<i>Special & Differential Treatment</i>

Source: WTO, 2001.

On 17 July 2007, the Agriculture and NAMA Chairmen circulated their draft modalities and by November 2007, the chair of the negotiating group on Rules, Ambassador Guillermo Valles Galmés of Uruguay, circulated his draft texts on anti-dumping and subsidies and countervailing measures, including fisheries subsidies. Director General Pascal Lamy stated that the texts were ambitious and balanced and in all three areas, they enabled negotiators to work in a more intensive manner in the coming weeks. By December 2007, Pascal Lamy reported to the General Council that the Doha negotiations were close to achieving the major goal of establishing modalities in Agriculture and NAMA. Revised draft modalities for Agriculture and NAMA were circulated in February 2008. These modalities are vital for a successful conclusion of the DDR negotiations in the key areas of Agriculture and NAMA, by end-2008.

17.3 Current Status of Doha Round Negotiations

The ongoing discussions under the Doha Round are currently being held under five clusters of negotiating issues: a) Agriculture; b) Non-Agricultural Market Access (NAMA); c) Services (GATS); d) Rules; and e) Development provisions.

Whilst negotiations are being held in the respective negotiation-groups for all the five clusters of issues, those on agriculture and NAMA appear to be the most advanced. The revised drafts of the respective chairs of agriculture and NAMA have added clarity to the issues and brought out major points of convergence and divergence. Any deal is likely to involve trade-offs by major players with regard to these two issues through horizontal discussions. However, key players will also be alert to what other Members are willing to give up in Rules and Services and they will strategise accordingly.

There are differences among Member countries with regard to priorities, ambition levels and specific interests in particular areas. One set of broad groupings relate to developed, developing and LDC Members. Market access in agriculture and NAMA distinguishes the broad Groups of Developing and Developed Countries respectively, with developed Members having relatively more interest in opening up markets for industrial goods in the developing countries and developing countries having more interest in opening up markets for agricultural products in the developed countries. There are also issue specific coalitions around specific areas of interest where Developing Countries and LDCs are members (G11, G20, G77, and G90) and they have common interests.

17.3.1 Agriculture

After the Chairperson circulated his revised draft "modalities" paper in July and August 2007, the talks entered their most intensive phase so far. As a follow up of the Revised Draft on Modalities, Ambassador Falconer, sent Members 16 working documents on export competition (4 Documents), domestic support (4 Documents) and market access (8 documents). These were sent by the Chairperson during 6

November 2007 to 4 January 2008. The working documents reflect the progress made. They were designed to focus on the discussions and help the Chairperson prepare the next revised draft "modalities" paper. On 8 February 2008, Committee on Agriculture in its Special session circulated the latest Draft Modalities for Agriculture (TN/AG/W/4/Rev.1; 8 February 2008; 08-0611). Major Issues of the revised draft modalities proposed in February 2008 are:

Market Access: Revised Draft Modalities has proposed different rate of reduction in bound tariffs for developed and developing countries. Proposed reduction in bound tariff for developed countries would be in four tariff bands. Proposed reduction in tariff for developing countries would also be in four bands. In brief, Revised Draft has followed the principle of higher rate of tariff, deeper the level of cut. It is proposed that the developed countries shall reduce their bound tariffs in equal installments over five years, and developing countries shall reduce their final bound tariffs in equal annual installments over eight years. It is pertinent to mention here that non-ad valorem tariffs will be converted to ad valorem tariff equivalents (AVEs) following the formula agreed in July 2006. Some special provisions (i.e. more flexibility) are proposed for recently acceded members (RAMs) and small and vulnerable economies.

Domestic Support: Overall Trade Distorting Support (OTDS): According to the proposal, reduction in OTDS will be under three bands. The base level of OTDS shall be the sum of; (a) the Final Bound Total AMS specified in Part IV of a Member's schedule plus (b) for developed country Members, 10 per cent of the average total value of agricultural production in the 1995-2000 base period (this being composed of 5 per cent of the average total value of production for product-specific and non-product-specific AMS respectively). For developing country Members it shall be 20 per cent and base period shall be 1995-2000 or 1995-2004 as may be selected by the member concerned; plus (c) the higher of average Blue Box payments as notified to the Committee on Agriculture, or 5 per cent of the average total value of agricultural production, in the 1995-2000 base period.

For developing country Members, the base period shall be 1995-2000 or 1995-2004 as may be selected by the Members concerned. As regards tiered formula, it was proposed that developed country Members with high relative levels of OTDS in the second tier (at least 40 per cent of the total value of agricultural production in the 1995-2000 periods) shall undertake an additional effort.

As regards implementation period, for developed country Members, the reductions shall be implemented in six steps over five years. For Members in the first two tiers the base OTDS shall be reduced by one-third on the first day of implementation. The remaining reductions shall be implemented annually in five equal steps.

Developing country Members with no AMS commitments shall not be required to undertake reduction commitments in their base OTDS and NFIDCs (net food importing developing countries) shall be exempted from reduction commitments.

Very recently acceded Members and small low income RAMs with economies in transition shall not be required to undertake reduction commitments on their base OTDS.

AMS Reduction: Developed country Members with high relative levels of Final Bound Total AMS (at least 40 per cent of the total value of agricultural production) shall undertake an additional effort in the form of a higher cut than would otherwise be applicable for the relevant tier. For developed country Members, reductions in Final Bound Total AMS shall be implemented in six steps over five years. The reduction in Final Bound Total AMS applicable to developing country Members shall be two-thirds of the reduction applicable for developed country Members. NFIDCs and recently-acceded Members with economies in transition will not be required to undertake reductions in Final Bound Total AMS.

The Revised Draft has proposed that the *product-specific AMS limits* shall be specified in the Schedules of all developed country Members, other than the United States shall be the average of the product-specific AMS during the Uruguay Round implementation period (1995-2000), as notified to the Committee on Agriculture. For the United States only, the product-specific AMS limits specified in their Schedule shall be the resultant of applying proportionately the average product-specific AMS in the (1995-2004) period to the average product-specific total AMS support for the Uruguay Round implementation period (1995-2000), as notified to the Committee on Agriculture. Where a Member has (after the base period specified), introduced product-specific AMS support above the *de minimis* level provided for under Article 6.4 of the Uruguay Round Agreement on Agriculture, and it did not have product-specific AMS support above the *de minimis* level during the base period, the product-specific AMS limit specified in the Schedule may be the average amount of such product-specific AMS support for the two most recent years prior to the date of adoption of these modalities, for which notifications to the Committee on Agriculture have been made.

The *de minimis* levels shall be reduced by no less than [50] [60] per cent [effective on the first day of the implementation period] [through five equal annual installments]. Furthermore, where, in any year of the implementation period, a lower level of *de minimis* support than that resulting from application of that minimum percentage reduction would still be required to ensure that the Annual or Final Bound OTDS commitment for that year is not exceeded, a Member shall undertake such an additional reduction in what would otherwise be its *de minimis* entitlement. For developing country Members with Final Bound Total AMS, commitments shall be reduced by at least two-thirds of the reduction rate specified above. The timeframe for implementation shall be three years longer than that for developed country Members. Developing country Members with no Final Bound Total AMS commitments, or with such AMS commitments, but that either allocates almost all that support for subsistence and resource-poor producers, or that are NFIDCs shall continue to have the same access as under their existing WTO obligations to the

limits provided for product-specific and non-product-specific *de minimis*. Recently-acceded Members shall not be required to undertake reduction commitments in *de minimis*.

It is pertinent to mention that there will be cap for products as well as for support under different Boxes. It is proposed that the *Blue Box* support shall not exceed 2.5 per cent of the average total value of agricultural production in the 1995-2000 base periods. For all Members other than the United States, the limit to the value of support that may be provided to specific products as Blue Box entitlements shall be the average value of support provided to those products during the 1995-2000 periods. For the United States, the limits shall be [110] [120] per cent of the average product-specific amounts that would result from applying proportionately the legislated maximum permissible expenditure under the 2002 Farm Bill for specific products to the overall Blue Box limit of 2.5 per cent of the average total value of agricultural production during the 1995-2000 period. In case of Green Box, it is proposed that it shall be minimally trade distorting. Revised draft also proposed to allow some flexibilities for developing countries on account of food stock holding payments under the Green Box.

Domestic Support for Cotton: The Revised Draft proposed that AMS support for cotton shall be reduced using the formula proposed in the Revised Draft. The reductions for trade-distorting domestic support on cotton shall be implemented over a period which is one-third of the implementation period.

Export Subsidy: The revised draft mentioned that developed country Members shall eliminate their remaining scheduled export subsidy entitlements by the end of 2013. This shall be effected on the two basis ways. Firstly, budgetary outlay commitments being reduced by 50 per cent by the end of 2010 with the remaining budgetary outlay commitments being reduced to zero in equal annual instalments so that all forms of export subsidies are eliminated by the end of 2013. Secondly, quantity commitment levels being reduced to zero in equal annual instalments from the applicable commitment levels.

The draft also proposed that Developing country Members shall eliminate their export subsidy entitlements by reducing to zero their scheduled export subsidy budgetary outlay and quantity commitment levels in equal annual installments by the end of 2016.

The draft mentioned that in accordance with the Hong Kong Ministerial Declaration, developing country Members shall, furthermore, continue to benefit from the provisions of Article 9.4 of the Agreement on Agriculture until the end of 2021, i.e. five years after the end-date for elimination of all forms of export subsidies.

Special Products (SPs) and Special Safeguard Mechanisms (SSM), Sensitive Products (SePs) and Special Agricultural Safeguards (SSG): Each of the developing country Members shall be entitled to self-designate Special Products guided by indicators based on the criteria

of food security, livelihood security and rural development. There shall be a minimum entitlement of 8 per cent, and a maximum entitlement of [12] [20] per cent, of tariff lines available for self-designation as Special Products. On the other hand, developed country Members shall have the right to designate up to 4 to 6 percent of dutiable tariff lines as sensitive products.

Revised Draft has outlined some modalities for SSM and SSG. It has mentioned that SSM may be invoked for all products, and a price-based and a volume-based SSM shall be available. However, most of the key provisions to understand the implementation of the future SSM (i.e. level of triggers and additional duties) are bracketed and remain controversial. It is also argued that some elements (such as provisions related to scope of product identification, bound rates, price fall requirement for price-based SSM) might constraint the possibility to resort to SSM significantly. In case of SSG, two contradicting options are suggested. The first option suggests maintenance of the SSG and reducing its scope, while second option states that SSG should be eliminated.

Food aid: There is commitment to maintain adequate levels of food aid. General disciplines for all food aid transactions would be observed. Food Aid will be needs driven and provided fully in grant form and will not be tied to commercial exports of goods or services. It is also proposed that food aid will not be linked to market development objectives of donor.

Two types of food aid—emergency and non-emergency—will be allowed. Emergency food aid would be provided after declaration and assessment by UN agencies, while non-emergency food aid will have to maintain general discipline plus need assessment. Food aid will take into account of local market conditions of the same or substitute products. Donors are encouraged to procure food aid from local or regional sources and they will be encouraged to shift towards cash based food aid.

17.3.2 Non-Agricultural market Access (NAMA)

Major objectives of the NAMA negotiations in the Doha Round are: (i) Tariffication of NTBs; (ii) Elimination of Non-Tariff Barriers; and (iii) Gradual Reduction of Tariffs. The current negotiations on NAMA aim at: (i) reducing tariffs, including reduction or elimination of tariff peaks, high tariffs and tariff escalation; (ii) eliminating (or accelerated reduction of) tariffs in particular sectors (the so-called sectoral); (iii) reducing non-tariff barriers; and (iv) provision of special and differential treatment and less than full reciprocity in reduction commitments by the developing countries and LDCs.

The draft modalities mentioned that, the coefficient in the Swiss Formula¹ to be used for tariff reduction purposes, would be 8-9 for industrial countries and for developing

¹A detailed elaboration of the Swiss Formula is available in Module 16.

countries the coefficient will be between 19 and 23. The reduction will be much steeper for products with higher tariffs (Tariff peaks). With a Swiss coefficient of 9, the higher the rate of tariff the deeper will be the tariff reduction, and consequently, the average annual tariff cuts will be higher in those cases. With a current base tariff of 12 per cent for apparels in the EU, the tariffs will come down to 5.14 per cent i.e. and the reduction will be to the tune of 6.86 per cent. If the reduction is carried out in 5 instalments the average yearly tariff cut would be 1.4 per cent; and to compare, if it is done in 7 instalments the average yearly tariff cut will be about 1.0 per cent. Although, the tariff cut will be deep enough, the difference between the annual rates of reduction under the two regimes (5 instalments and 7 instalments) are not significant, only to the tune of 0.39 per cent each year. Since LDCs including Bangladesh, receive preferential treatment in the EU, a slower pace of reduction is likely to result in slower pace of preference erosion.

The NAMA Chair proposed Annex 2 and Annex 3 in the NAMA draft on modalities with a view to mitigating the adverse affect of preference erosion for the LDCs, and for developing countries. Instead of reductions of tariffs in 5 instalments, the Chair has proposed reductions in 7 instalments for selected items in the EU (Annex 2 of the Draft NAMA Modalities) and the USA (Annex 3 of the Draft NAMA Modalities). Annex 2 of the Draft Modalities contains 23 items at HS 8 digit level whilst Annex 3 has 16 items at the HS 8 digit level. In both cases the selected items are predominantly apparels, but also included a few other items. The situation in USA is somewhat different, since tariffs on items in Annex-3 vary widely, between 8 – 32 per cent. The tariff peak of 32 per cent will come down sharply to 7.0 per cent i.e. by about 25 per cent. Thus, if carried out in 5 instalments this will mean an average yearly tariff cut of 5.0 per cent, whereas if done in 7 instalments the average yearly cut will be about 3.6 per cent, a difference of 1.4 per cent each year.

The Draft Modalities of July 2007 and February 2008, despite their limitations, represent a step forward in the negotiations in that, in the case of the NAMA text at least, the text proposes language that the Chair believes is as close to the final as possible. Unlike the text proposed by the Agriculture negotiations, the NAMA Chair proposes a single position, rather than a series of alternative options.

The draft presented by Ambassador Don Stephenson stipulates that LDCs shall be exempted from tariff reductions. However, they are expected to 'substantially increase their level of tariff binding commitments'. In this context the Maseru Declaration calls for flexibilities for LDCs to determine the level of bindings of their tariff lines. 'LDCs will be the judge' the Declaration states. The Maseru declaration also calls for "An agreement to eliminate all non-tariff barriers on products originating in LDCs."

The February draft mentions about 'recommitting full implementation of the Decision' that was taken in the Hong Kong Ministerial Meeting. With respect to implementation of the DF-QF decision, the draft asks donor Members to inform WTO Members of the products that will be covered under the commitment to provide duty-free and quota-free

market access for at least 97 per cent of the products originating from the LDCs. US is not at this point ready to specify which products that the US will provide zero-tariff access on. Neither does US appear to be ready to declare a time line for phase-in of the exclusion list. With regard to the phasing out of the 3 per cent exclusion list, the February 2008 draft asks Members to 'notify the steps and possible time-frames within which they will progressively achieve full compliance with the Decision'.

With respect to the *developing countries in a position to do so*, the NAMA February 2008 draft uses the same language as for the developed country members. Brazil, India and China are preparing their respective lists of offer in the context of DF-QF decision. Brazil has indicated that they will provide zero-tariff for virtually all products; India and China have also indicated providing market access for a large number of products.

With regard to *Rules of Origin* the NAMA February 2008 draft offers a better language regarding the use of simple and transparent RoO in trade preferential schemes. The draft particularly recommends the use of document TN/MA/W/74 which was submitted by the LDCs themselves. However, use of the language 'as appropriate' to some extent dilutes the text. In this context, the Maseru Declaration calls for an 'agreement by Members to base their RoO for products originating in LDCs on the model RoO in TN/CTD/W/30, TN/MA/W/74 and TN/AG/GEN/20', which would make the text more concrete and LDC-friendly. As is known, this document in its eight Articles, provide a detailed methodology for estimation of RoO, both for wholly obtained items, and for those relating to substantial transformation.

17.3.3 Services

The first phase of the negotiations ended successfully in March 2001 when members agreed on the guidelines and procedures for the negotiations, a key element in the negotiating mandate. By agreeing these guidelines, Members set the objectives, scope and method for the negotiations in a clear and balanced manner.

After the first stage of the negotiations (till 18 March 2001), the Services Council established negotiating guidelines and procedures (Article XIX: 3; Code: S/L/93). The main method of market access negotiation under the GATS was decided to be the request-offer approach. The market access negotiations started in early 2002. According to the schedule, countries were to make request for liberalisation by 30 June 2002. The deadline for initial offers of market access to be made by individual countries was scheduled for 31 March 2003. The deadline for concluding the negotiations was fixed as 31 December 2004. More than 160 proposals were submitted since 2000. Bangladesh prepared a request to submit it to some developed countries in the mode 4 across the sector, which finally was not submitted. A number of countries submitted requests to Bangladesh to open some sectors. At the aggregate level, the interests of the countries (in descending order) in opening sectors were: tourism, financial services, business services, communications, transport, construction, recreation, environment, distribution, health and education.

At the third stage of negotiations, countries raised the questions regarding the benefits of liberalisation and its speed and extent. The need for assessment of liberalisation was reiterated by many countries. However, problems in classification of services, its application in countries and lack of statistics limited the progress in this regard. A draft of modalities for the treatment of autonomous liberalisation was adopted at this stage.

Currently, WTO Members are waiting for modalities in Agriculture and NAMA. Members with strong interest in services trade do not agree with this approach and insist that the "level of ambition" in Agriculture and NAMA must match the "level of ambition" in Services. A possible text in Services is being discussed although there are divergent views with regards to the need to have such a text in the first place.

Bolivia, Cuba and Venezuela argued that there was no need for a Services modalities text since Annex C of the HK Declaration and the built-in flexibility for developing countries in the GATS already provided sufficient parameters to conclude the negotiations. African and ASEAN groups, as well as Brazil and India, also raised doubts about the usefulness of developing a modalities paper. They have indicated they would participate in the exercise provided that their issues and concerns are adequately reflected in the paper. Developed (such as Australia, Canada, Chinese Taipei, the EC, Japan, Korea, New Zealand, Norway, Switzerland, and the USA) countries remain keen to see a draft text emerge as soon as possible.

LDC group has focused more specifically on the HK Declaration to "give priority to the sectors and modes of supply of export interest to LDCs, particularly with regard to movement of service providers under Mode 4". LDC group has also requested that developed country Members establish 'appropriate mechanisms' to facilitate effective access for LDCs' services and service suppliers to foreign markets before presenting their final market access offers. Ministers acknowledged in Hong Kong that LDCs were not expected to undertake new market opening commitments. Developed countries have only offered limited improvements in a few sectors involving skilled workers. USA provides 65,000 HI visa per annum. An LDC text circulated on 28 March 2006 focused on a mechanism requiring developed country Members to grant "permanent, non-reciprocal, special priority solely to LDCs, notwithstanding any provisions of the GATS". According to some Members, this mechanism would create a new or modified GATS obligation, as well as require existing GATS obligation (MFN) to be waived.

The legal effect of the elements of the LDC proposal is being examined in view of the WTO procedures. How a mechanism could be developed to create, modify or waive obligations at the level of GATS agreement, which do not have the 'Enabling Clause', is a matter of contention. The current Chair of the Committee on Trade in Services Ambassador Fernando de Mateo of Mexico will hold a dedicated session on "special priority", to be precise on LDC Modality. A signalling conference will be held to indicate the offers by countries and push forward the liberalisation issue further.

The Maseru Declaration of the LDC Trade Ministers' meeting in Lesotho reiterated the LDC interests in Services, including special priority.

17.3.4 Rules and Dispute Settlement

Chairman of the rules negotiations, Uruguay's Ambassador Guillermo Valles Galmés released 'draft consolidated Chair's text of the AD and SCM agreement' (TN/RL/W/213) on 30 November 2007. Interestingly, there are no square brackets or blanks in the drafts. According to the Chair, this is not because there is no disagreement among Members regarding the text, but for giving emphasis on the entire text considering the interrelation of different issues. Director General Pascal Lamy mentioned the texts as "ambitious and balanced in all three areas they cover and will enable negotiators to work in a more intensive manner in the coming weeks." However, first meeting on proposed changes ended without any consensus. Major debate is on proposed changes in determination of anti-dumping duties.

Chair's Draft Text on Anti-dumping Duty: Chair's text has 93 pages with proposed amendments in different areas. The most important amendment proposed is with regards to the determination of anti-dumping duty. The Agreement on Implementation of Article VI of GATT 1994 mentioned that "the amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2". In order to clarify it, Chair proposed that determination of anti-dumping duty may be made on the basis of: "(i) individual import transactions; (ii) all import transactions by an importer from an exporter or producer; (iii) all import transactions from an exporter or producer. Chair also proposed that in determining the existence or amount of liability for any duty, or the entitlement to any refund, the authorities may disregard the amount by which the export price exceeds the normal value for any comparisons." This supports the practice of 'zeroing' as a method of calculation of anti-dumping duty, which is widely used in USA.²

Chair's Draft Text on Fisheries: Chair's draft text included a new annex (Annex VIII) on fisheries subsidies. This annex includes eight articles: Article I (Prohibition of certain fisheries subsidies); Article II (general exceptions); Article III (S&D treatment of developing country Members); Article IV (general discipline on the use of subsidies); Article V (fisheries management); Article VI (notifications and surveillance); Article VII (transitional provisions); and Article VIII (dispute settlement). Chair's text explicitly mentioned about prohibition of eight specific types of subsidies. LDCs are exempted from proposed rules on prohibition of fisheries subsidies under S&DT.

Regional Trading Agreements: The General Council on 14 December 2006 established a provisional mechanism of transparency for all RTAs. Under the new transparency

²When exporting country's domestic price (normal value) is higher than the U.S. price, the difference is treated as the dumping amount for that sale. When, however, the US price is higher, the dumping amount is set to zero rather than its calculated negative value. All dumping amounts are then added and divided by the aggregate export sales amount to yield the company's overall dumping margin. Zeroing, thus eliminates "negative dumping margins" from the dumping calculation.

mechanism, Members will announce any RTA earlier and notify it to the WTO. RTAs will be reviewed by different committees. The Committee on Regional Trade Agreements will conduct the review of RTAs falling under Article XXIV of General Agreement on Tariffs and Trade (GATT) and Article V of the General Agreement on Trade in Services (GATS). The Committee on Trade and Development will conduct the review of RTAs falling under the Enabling Clause (trade arrangements between developing countries). The negotiating group is now pursuing a two-track approach: a) identifying issues for negotiation in formal meetings; and b) holding open-ended informal consultations on more procedural issues related to transparency of RTAs.

Dispute Settlement Understanding: A number of special sessions were held in 2007 on the DSB where Chairman of the special session to the General Council, Ambassador Ronald Saborío Soto presented reports. Chairman's reports mainly mentioned about progress made on various proposals submitted by different countries. LDCs submitted a proposal (TN/DS/W/17) on October 2002 to modify the Dispute Settlement Understanding (DSU). LDC's proposals include modification of following articles: a) Article 4.10 of the DSU should be changed to read as follows: "During consultations, Members should give special attention to the particular problems and interests of developing countries Members especially those of least developed country Members"; b) Where a LDC is involved in the consultations, due consideration should be given to the possibility of holding such consultations and other meetings in the capitals of LDCs; c) Modification of Article 8.10 to the effect that in any dispute involving a developing country, there must be at least one panelist from a developing country; d) Dissenting judgments should be allowed in the DS system through a rule that the Members of the panel or Appellate Body should each deliver a judgment and the final decision be taken on the basis of a majority; e) Compensation under Article 22.2 of the DSU should be made mandatory and a strong case for monetary compensation can be made.

17.3.5 Aid for Trade

Issues for debate centre around the operationalisation of A4T, such as,

- What mechanism should be used for financing, implementing and monitoring? Make use of existing mechanisms, like the Enhanced IF, or create a new mechanism?
- The debate on management mechanism, which is in relation to implementation of aid, includes the role of WTO in these tasks.

First Global Review held on 20-21 November 2007 in order to take stock of what is happening, to identify what should happen next and how to monitor and evaluate in a better way. However, the outcome was not very encouraging in terms of additional funds and new commitments.

The WTO, together with regional banks and governments organised regional reviews

on A4T in Peru, Lima on 13-14 September 2007; in Manila, the Philippines on 19-20 September 2007; and in Dar-es-Salaam, Tanzania on 1-2 October 2007. The main objectives of these regional reviews were to underline the importance of trade in development policies, identify the main capacity constraints to export growth, emphasise the importance of comprehensive national and regional trade strategies and encourage developing countries to prepare A4T strategies.

17.3.6 Trade Related Intellectual Property Rights (TRIPS)

WTO Members resumed discussion on the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD) at the regular session of the Council for TRIPS on 14 and 15 March 2006.

Mainly developing countries believe that harmonisation of the objectives of biodiversity conservation and intellectual property protection would best be achieved by amending the TRIPS Agreement to require patent applicants to disclose the origin of genetic resources and associated traditional knowledge used in their invention, along with evidence of prior informed consent and benefit-sharing. Developed countries, mainly, believe that patents need not require such disclosure. Paragraph 39 of the Hong Kong Declaration called for progress on this issue by no later than July 2006.

The major issue of current debate on TRIPS is disclosure proposal. Under the TRIPS Agreement, countries have no obligation to examine whether there is misappropriation of genetic resources and traditional knowledge in patent applications. Hence developing countries made a proposal (IP/C/W/474) for an amendment to the TRIPS Agreement so that it would be mandatory for countries to have in their national patent laws a requirement for patent applicants to disclose the countries of origin of biological materials and traditional knowledge used in their inventions, as well as evidence of prior informed consent and benefit-sharing arrangements with the countries of origin and relevant local communities.

The disclosure proposal was discussed in the TRIPS Council under the agenda items of the review of Article 27.3 (b) of TRIPS, the relation between the TRIPS agreement and the Convention on Biological Diversity (CBD), and the protection of traditional knowledge and folklore. It is also being negotiated under the "implementation issues" of the Doha negotiations.

Though originally advocated by mainly India and Brazil, the disclosure requirement for patent applications relating to genetic resources and traditional knowledge is being supported by majority of the WTO Members including Peru, the ACP Group, the Africa Group and the LDC Group. They demand that the issue should be included in the current negotiations in the "horizontal process" of the Doha Round negotiation.

However, developed countries such as Japan, South Korea, the US, Australia,

Newzealand and others continued to argue that amending the TRIPS Agreement would not solve the problems of bio-piracy and erroneous patenting.

The *Maseru Declaration*, adopted by the Trade Ministers of the Least Developed Countries (LDCs) during the meeting in Maseru, Lesotho on 27–29 February 2008, demanded the following as regards TRIPS: (i) Mandatory disclosure of source and origin of biological resources and associated traditional knowledge and proof of prior consent; (ii) Incentives for technology transfer to LDCs; (iii) Establishment of a monitoring mechanism to review the technology transfer situation; (iv) A commitment to expedite the process of ratifying the Protocol amending the TRIPS Agreement; (v) Provide financial and technical assistance; (vi) ensure compatibility between the Convention on Biological Diversity (CBD) and TRIPS.

17.3.7 Trade Facilitation

A number of Member countries have submitted proposals so far as regards transparency and predictability of trade rules relating with Article X, reduction of incidence and diversity of fees and charges, streamlining of documents and simplification of formalities in connection with Article VIII and non-discrimination and MFN treatment with respect to goods in transit.

On 18 July 2007, a document was circulated among Members, which was supported by the LDCs. LDCs proposed a 'positive list' approach in case of commitments to be made by developing and LDCs as regards technical assistance and capacity building (TACB) and S&DT. A minimal set of commitments are to be made which would be determined individually by developing Members to be implemented after entry into force; and a set of commitments to be made that would be implemented after the conclusion of a transition period of X years determined on a self-assessment of capacity for LDCs after the entry into force of the trade facilitation agreement.

Following this proposal, a proposal is submitted by EC which focused on 'negative list' approach, where each developing country and LDCs shall notify to all other Members which obligations it needs technical assistance and capacity building for, and additional time which shall not exceed [N] years, to implement and be made available on Members' site of the WTO Internet portal.

In the Maseru declaration, LDCs demanded priority in case of availing technical and financial support for conducting the self-assessments and priority needs exercise at national level. Besides, they demanded assistance to determine the cost implications of proposed trade facilitation measures. It is expected that adequate financial and technical assistance and capacity building for the development of required infrastructure in LDCs will be provided through a coordinated and sustained flow of funding. It is demanded that LDCs shall not be required to undertake mandatory commitments until their acquisition of the necessary capacity to implement such provisions. The LDCs should be the ones to determine whether such implementation capacity has been acquired; and LDCs shall individually

notify their implementation plans after the entry into force of any new trade facilitation agreement.

17.3.8 Role of LDCs and Advanced Developing Countries

Some of the developed countries appear to be under the impression that since LDCs are not expected to undertake any obligation under the Doha Round, they should not expect much. In reality this is not the case. LDCs feel that all negotiating outcomes are likely to have important implications for their economies.

In view of the above, LDCs are trying to play a proactive and offensive role. This was most vividly articulated in Lesotho in February 2008. The LDC Ministerial Meeting held in Maseru, Lesotho during 27-29 February 2008, had articulated and reiterated major demands of the LDCs. Trade Ministers from the group of least developed countries (LDCs) met there to promote their interests, to push for a WTO agreement to be successful by 2008. The declaration identified several specific desired negotiating outcomes based upon the current state of the Doha Round talks. In the Maseru Declaration, LDCs asked the developed countries to identify the remaining 3 per cent in their draft commitment schedules, and to remove duties and quotas on them by the end of the Doha Round implementation period. In the agriculture talks, they proposed for the elimination of all forms of export subsidies by the end of 2013, review and clarification of green box disciplines, full access to Special Safeguard Mechanism (SSM). In services there was a call for full and effective implementation of the modalities for the special treatment for LDCs.

Advanced developing countries (Brazil, India, and China) are aware that the Hong Kong ministerial decision on duty free-quota free (DF-QF) market access has identified them as a separate group. So their obligation in this round favouring the LDCs, has become an issue.

17.4 Implications for Bangladesh

Ongoing negotiating proposals have important implications for Bangladesh. Some of these are listed below:

17.4.1 Agriculture

Developing countries have both defensive and offensive interests in the context of the Doha negotiations on agriculture. Domestic support and tariff reduction are two key factors in the agriculture negotiation area where the US is the key protagonist. The US formally offered to reduce its farm subsidies, but it is interested to bind this at a level (from where reduction would start) that is way above the applicable US subsidy level at present. Bangladesh's interest is to support the demand of the developing countries to have significant reduction in the US farm subsidies. With respect to tariff reductions, the European Commission (EC) is the main focus of negotiations. The EU is willing to offer 50 per cent reduction in agriculture tariffs, whereas the G20 wanted a reduction of 65 per cent. Bangladesh's interest is to get the

EU agree to reduction commitments which the developing countries are asking for. It is, however, to be appreciated that de-subsidisation and withdrawal of support programmes from farm sector could push up global prices for food. Ensuring food security must be seen as a top priority by Bangladesh, in view of the emerging scenario.

17.4.2 NAMA

Revised NAMA draft includes 40 items for which the tariff reduction will be slow (in 7 instalments, not in 5 instalments). Given that Bangladesh is able to actually realise preferential market access for about 60 per cent of her overall apparels export to the EU, inclusion of Bangladesh's items of interest in Annex-2 will have impact on interest of Bangladesh (and also other LDCs) in two ways. If the GSP utilisation rate of the particular tariff line is high, then LDCs will benefit from slower pace of tariff reduction (in 7 instalments as against 5). If the GSP utilisation rate is relatively low, then a slower reduction will not benefit the LDCs.

Table 17.2 Revised NAMA Draft and Annex 3 (US List): Implications for Bangladesh

	Number of Included Products	Number of Items Exported by Bangladesh	Export Value (Million \$)	Per cent of the Total Export of BD to USA	Number of Annex-3 Items in Bangladesh's Top 30 Exports to USA
NAMA Draft: July 2007	16	16	1882.27	53.87	11
NAMA Revised Draft: Feb 2008	25	25	2138.6	61.20	17
Increase in Coverage	9	9	256.33	7.34	6

Source: Rahman et al., 2008.

In the revised February 2008 NAMA draft, 25 Items have been included. Bangladesh exports all these items and they account for approximately 62.0 per cent of her export to the US market. Since Bangladesh does not receive preferential access for her export of apparels in the US market, a slower pace of reduction will be to the detriment of Bangladesh's interest. However, if some of these items are included in the 97 per cent DF-QF list of the US, the scenario will be reversed.

If Annex-3 tariff lines are included in the 97 per cent coverage, a slower reduction will benefit LDCs. If Annex-3 tariff lines are included in the 3 per cent 'exclusion list', then a slower pace of reduction will not be in the interest of LDCs such as Bangladesh. Bangladesh should strategise accordingly.

Services: Developing countries and LDCs have both defensive and offensive interests in the area of Services. The services sector, the major proportion of GDP in most developing countries including that of Bangladesh, contributes more than 50 per cent to the country's GDP. Within the services export of Bangladesh, most significant component is remittance earnings. Bangladesh has high export potential in low-skill categories and

from this perspective, gaining market access in Mode 4 (temporary movement of natural persons) needs to be given highest priority. Bangladesh should stress the poverty alleviation potential of TMNP. There is, however, large divergence with regards to the need to have a 'Services' text in the first place. Nevertheless, despite the apparent differences in the interests of various LDC groups, a common LDC agenda in the Doha negotiations may be possible, particularly focusing on Mode 4.

17.4.5 Trade Facilitation

Trade facilitation through infrastructural support is a key priority for Bangladesh. In fact, this is one of the four Singapore issues where a consensus was reached to bring it within WTO negotiations. In this regard, it is important for countries such as Bangladesh to enhance their trade efficiency through improvements in trade related infrastructure. Aid for trade could help LDCs in this context by way of offering assistance to strengthen trade related infrastructure, particularly for export-oriented industries. Bangladesh's task will be to design large scale projects, such as new port facilities, power generation capacities, 'state of the art' roads etc. and to try to receive the required aid in support of such initiatives.

17.4.6 Trade-Related Intellectual Property Rights (TRIPS)

TRIPS is one of the areas where the decision in the Hong Kong Ministerial Conference was viewed to have addressed some of the LDCs concerns. Although LDC have been exempted until 1 July 2013 with regard to protection for trademarks, copyright, patents and other intellectual property obligations, taking advantage of these derogations, especially by building up a competitive pharmaceutical industry in Bangladesh, remains a key challenge.

17.4.7 Rules

Rules have emerged as one of the most difficult areas in the Doha Round negotiations. The issue of 'zeroing', in the estimation of anti-dumping duties, has virtually pitched the US against all other WTO Members. Anti-dumping and subsidies, counter-veiling measures (CVMs), 'essential goods and services'—are three areas that fall into the Rules area. Bangladesh's priority should be to emphasise on simple and transparent rules which would enable her to benefit from, and take advantage of the DF-QF market access for its products in real terms.

17.5 Strategies for Bangladesh

In view of the current state of negotiation at the WTO, Bangladesh needs to adopt a comprehensive and coordinated strategy for advancing its interests in the ongoing negotiations which may include:

17.5.1 Agriculture

- The issue of market access for agricultural products of Bangladesh is

important. Bangladesh has to identify her agricultural products which need to be included in the 97 per cent list for which duty and quota-free market access will be provided.

- Advanced developing countries might also provide duty and quota-free market access for products originated in LDCs. Bangladesh has to negotiate for this.
- Reduction in domestic support by developed countries is likely to increase comparative advantage of some agricultural products of Bangladesh (fruits, vegetables, etc.). Therefore, Bangladesh might support the proposals as regards OTDS reduction and reduction in export subsidy.
- Elimination of export subsidies as well as domestic supports is likely to increase food prices globally. Increase in food prices will negatively affect net food importing countries like Bangladesh.
- Bangladesh may be able to offset the negative pressure if it can export more of other agricultural products, particularly fruits and vegetables. However, major constraint to increase exports of such commodities will be SPS compliance and supply side capacity. Therefore, Bangladesh might demand for appropriate support under Aid for Trade to materialise the possibilities.

17.5.2 NAMA

- Bangladesh has somewhat diverse interests compared to other, particularly African LDCs. However, it is important that Bangladesh projects a common front with these LDCs. Bangladesh's support for "cotton" issue is likely to help her maintain this coalition.
- Developing countries, in general, are supportive of LDC demands. Bangladesh should continue to provide issue specific support to developing countries, as it is doing in the various groups.
- Bangladesh needs to highlight the issue of preference erosion. In this context a proposal needs to be developed to compensate for preference erosion through trade and non-trade measures in the WTO.
- With respect to DF-QF, Bangladesh should prepare a proposal to the effect that the decision is implemented in a commercially meaningful way.
- With respect to the US market Bangladesh should immediately get on with the task of designing a 97 per cent request list. It is unlikely that US will provide zero-tariff access for major apparel items. However, it may be possible to get some items of apparels in the list, with appropriate justification. GoB will need to sit with all concerned stakeholders and may get on with the task of preparing the list.
- Bangladesh, and other LDCs, should prepare a proposal with respect to a concrete timeframe for phase-in of the remaining 3 per cent exclusion list.

- With regard to the LDC proposal for Rules of Origin (RoO), a case needs to be developed for a proposal in tune with the Canadian GSP which stipulates 25 per cent domestic value addition and was found to be the most LDC-friendly so far.

17.5.3 Services

- Developed country Members are strongly against the idea of granting market access for low skilled labour under Mode 4. Bangladesh has to argue her case for commitments on market access and national treatment to LDCs in the sectors and modes of supply of export interest to LDCs, in particular commitments on the temporary movement of persons supplying services (Mode 4), as identified by LDCs. Market access for natural persons in Mode 4 has both strong development and poverty alleviation dimensions. Bangladesh has to identify sectors of export and import interests, and modes of supply that represent its development priorities.
- In view of the uncertainty in getting a fruitful market access in the NAMA negotiation, Bangladesh needs to pursue the services negotiations with equal effort.
- Bangladesh has the possibility to protect domestic services sectors where necessary and to limit offers in those sectors where the impact of liberalisation is not clear.
- Bangladesh, along with other LDCs should make improved proposals on market access and domestic regulations in Services.
- When plurilateral requests are made, Bangladesh should examine those in view of her interest and priority.

17.5.4 Rules and Dispute Settlement

- A moratorium on anti-dumping duty on LDC exports for a certain period of time would enhance their export. At the same time, this will also help LDCs to develop their institutional settings to effectively monitor trade distorting practices by domestic industries. It is perceived from the discussion that such a provision of LDC exports would not be easily ensured under S&D treatment, since practice of dumping is trade-distorting.
- A plausible option would be to extend the limit of *de minimis* for anti-dumping for LDC export, which is 2 per cent in the existing Agreement. LDCs, however, have not yet submitted any proposal in the negotiating committee.
- Bangladesh should take a leading role to submit a proposal emphasising both on moratorium on anti-dumping action on LDC export and extension of the *de minimis* limit.

17.5.5 Fisheries Subsidy

- The exemption from proposed rules on prohibition of fisheries subsidies to LDCs will help develop their fisheries sectors. In the Maseru Declaration, LDCs have demanded approval of Article III.1 of Annex VIII of the Chair's draft text of the 30 November 2007 on Fisheries Subsidies which exempts LDCs from the prohibited subsidies to the fishing sector that are listed in Article I.1 of the text.
- Since LDCs are not yet ready to adequately undertake the required activities for fisheries management, they need technical assistance to develop institutional, operational and management capacity of fisheries sector. In the Maseru declaration LDCs have demanded provision for adequate technical assistance to meet information requirements under the Notification and Surveillance on subsidies Implementation of the provision of technical assistance, particularly for the information requirements of Article VI.5. Bangladesh should demand technical assistance for improving institutional, operational and management mechanisms of its fisheries sector.
- Bangladesh, as well as other LDCs, needs to be careful so that their use of subsidy does not deplete, harm, or create overcapacity of highly migratory fish stocks.

17.5.6 Dispute Settlement Understanding

- LDCs' participation in the DSB is rather rare. This does not necessarily imply that LDCs do not have any issue that needs to be placed in the DSB. LDCs find the DSB system complex, lengthy and expensive. More importantly, LDCs lack institutional capacity to raise their issues in the DSB. According to Advisory Centre on WTO Law (ACWL), LDCs proposal to change disciplines under S&D treatment would not ensure their increasing presence in the DSB, since major weaknesses are not in the DSB process. Lack of awareness about rights on the part of industrialists of LDCs is a major weakness. Besides, some of the proposed changes are not compatible with the basic principles of DSB.
- The proposal submitted by the LDCs is already considered outdated by major negotiating countries. Hence, LDCs have to either revive the proposal or submit a fresh proposal to negotiate for ensuring better participation in the DSB.
- In order to enhance LDCs participation in the DSB, there needs to be more support to strengthen the ACWL to enhance their capacity of dealing exclusively with LDC complaints. However, till now neither developing countries, nor LDCs have proposed for enhancement of the capacity of the ACWL. A proposal could be submitted by Bangladesh in this respect.
- Bangladesh lodged complaints in the DSB only once. The case involved India's

anti-dumping duties on lead acid battery import from Bangladesh. It was not an easy task for Bangladesh to lodge complaint in the DSB because of limited expertise in anti-dumping matters within the statutory authority, or in the country to ascertain the merit of a dumping case, lack of adequate funds to pursue the case to the end and constraints in terms of taking political decision.

- Private sector of Bangladesh should play a more proactive role in raising complaints about trade distorting practices of other countries. Private sector, with support of the government, may make use of the services of the ACWL regarding their queries on trade practices and trade related matters involving other countries. Government should take necessary measures to raise awareness among local industrialists as regards their rights in the WTO, and opportunities and scope of raising issues related to trade distorting practices of other countries.

17.5.7 Aid for Trade

- Funds under A4T are grants and free of conditionality. Hence Bangladesh should take advantage of the A4T. The timing for approaching funds under A4T is now as there is considerable good will from both the donors and the recipient countries.
- The government has to prepare its own list of projects. These projects should be large in size as opposed to small in case of EIF.
- Bangladesh should also take ownership in determining her A4T plans, involving all stakeholders, both in the public, private and regional stakeholders.
- Bangladesh can be a potential candidate for 2-3 good infrastructural projects, for example, ports, Dhaka-Chittagong road.
- Bangladesh should also generate resources on its own to develop and implement its trade strategy from other sources such as government itself, multilateral donors, regional banks, private sector and private investors.
- Bangladesh can take lessons from the IF which suffered from implementation gap, and utilise the A4T resources to meet her requirements.
- In order to benefit from A4T, a prioritised national plan as well as political commitment are needed.

17.5.8 Trade Related Intellectual Property Rights (TRIPS)

- The Doha Mandate provides that negotiations on outstanding implementation issues shall be an integral part of the Work Programme. The relationship between the TRIPS Agreement and CBD is a critical implementation issue for developing countries. Bangladesh, along with developing countries should also reiterate that in order to make the Doha Round a 'Development Round'

complete, it is crucial to correct the imbalance in the TRIPS agreement caused by its failure to protect genetic resources and traditional knowledge.

- In order to meet the obligations under TRIPS agreement Bangladesh should also identify its priority needs for technical assistance. TRIPS Council set a deadline for providing information on technical and financial assistance needs, preferably before 1 January 2008. New deadline for LDCs to implement TRIPS obligation is 1 July 2013, under a decision in 2005 to extend the TRIPS implementation deadline for LDCs. However, the application of pharmaceutical patent for LDCs was extended to 2016. It is important that Bangladesh immediately takes steps to identify its needs to meet the compliance deadlines.

17.5.9 Trade Facilitation

- It seems that modalities to carry out needs assessments prior to the entry into force of the new Agreement on Trade Facilitation need to be clarified and strengthened. Needs assessments, as they are conducted at present, are not adequate and should be followed by cost assessments so that cost implication of all measures requiring capacity building is known.
- Scheduling of commitments should be carried out using a "positive list" approach, indicating what the country could be able to implement from day one.
- In the context of the LDCs' need for technical assistance and capacity building, both during the negotiations and the implementation period, various solutions should be explored and should not be limited to the bilateral approach suggested by the EC and its partners.
- It is important to develop a link between trade facilitation and aid for trade. In conjunction with trade facilitation measures, the development of infrastructure, including roads, railways, ports, bridges and border posts, is needed if LDCs and other low-income countries are to use trade as a mechanism to reduce the cost of production and supply, and so be able to use trade as a mechanism to ensure sustainable economic growth and poverty alleviation.

17.6 Summary

- The Doha Round was launched in 2001 with the objective of establishing a balanced outcome of interests of the various Members in the WTO. A major focus was to bring a balance between negotiations in agricultural and industrial goods. It was perceived to be 'larger, deeper and fairer' compared to any of the previous Rounds under the GATT.
- The main five clusters of current negotiating issues are: Agriculture, Non-

Agricultural Market Access (NAMA), Services (GATS), Rules, and Development provisions.

- LDCs have not been asked to undertake commitments under the Doha Development Round. However, the negotiated outcomes will have important implications for the economies of the LDCs, both from offensive and defensive perspectives, which include DF-QF market access, preference erosion (market access in agriculture and NAMA), market openings in services (GATS Mode-4), disciplines (Rules), and availability of resources (Aid for Trade). Fast pace reduction under sectorals are also becoming an issue since this could lead to an accelerated pace of erosion of preferences.
- The revised draft on Agriculture and NAMA were put forward by chairs of the respective Negotiating Committees on 8 February 2008. With regard to Rules of Origin the NAMA February 2008 draft offers a better language regarding the use of simple and transparent RoO in trade preferential schemes.
- Revised Draft Modalities on Agriculture has proposed different rate of reduction in bound tariffs for developed and developing countries. Proposed reduction in bound tariff for developed and developing countries would be in four different tariff bands.
- According to the proposal in the Revised Draft Modalities on Agriculture, reduction in OTDS will be under three bands. As regards implementation period, for developed country Members, the reductions shall be implemented in six steps over five years. For Members in the first two tiers the base OTDS shall be reduced by one-third on the first day of implementation. The remaining reductions shall be implemented annually in five equal steps.
- The Revised Draft Modalities on Agriculture mentioned that developed country Members shall eliminate their remaining scheduled export subsidy entitlements by the end of 2013, while Developing country Members shall eliminate their export subsidy by the end of 2016.
- Developed country Members are strongly against the idea of granting market access for low skilled labour under Mode 4. Bangladesh, along with other LDCs should make improved proposals on market access and domestic regulations in Services.
- The major issue of current debate on TRIPS is disclosure proposal. Under the TRIPS Agreement, countries have no obligation to examine whether there is misappropriation of genetic resources and traditional knowledge in patent applications.
- A moratorium on anti-dumping duty on LDC exports for a certain period of time would enhance their export. At the same time, this will also help LDCs to develop their institutional settings to effectively monitor trade distorting practices by domestic industries.

- Funds under A4T are grants and free of conditionality. Hence Bangladesh should take advantage of the A4T. The timing for approaching funds under A4T is now as there is considerable good will from both the donors and the recipient countries.

17.7 Questions for Discussion

1. What are the major negotiating blocs in the current negotiations under the Doha Round?
2. What is the current status of negotiation on agriculture and NAMA?
3. What is the current status of negotiation on services and TRIPS?
4. What is the current status of negotiation on rules and subsidies?
5. What are the implications of the discussions under major negotiating blocs for Bangladesh?
6. How can Bangladesh safeguard its interest in the concluding phase of the Doha Round negotiations?

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Appendix

1

ASSIGNMENTS

Assignments

For effective learning, assignments are often used as a complementary learning tool. Teachers and trainers have their own way to make learning effective by way of selecting topics for assignments and the demand they put on trainees in carrying out those assignments. Here, we have suggested some assignment topics and also have taken the liberty of providing some tips in this context.

Successful assignments depend on careful and thorough instructions and preparation, and on explicit criteria for evaluation. It is thus useful to provide clear guidelines about assignments, which may include the following:

1. *Purpose of the Assignment:* Clearly stating the objective of learning and skill development expected as a result of successful completion of the assignment.
2. *Timeline for Submission:* When is the assignment due? How strictly the deadlines are to be followed?
3. *Clarity:* What is the expected outcome from the assignment?
4. *Specifications:* Is this a written or oral presentation? What is the length, what are the requirements? In case of writing assignments attention should be given to the order, sequencing and head lines of various sections (title page, table of contents, abstract, introduction, procedures/methodology, discussion, results, conclusion, and any other items appropriate to the assignment) length.
5. *Working Group:* Is it an individual or group assignment?
6. *Format Requirements:* Type size, typeface, margins, spacing.
7. *Grading and Evaluation Criteria:* An explanation as to of how the assignment will be evaluated (quality of data and information, methodology, quality of analysis, comprehensiveness of literature review, drafting skill, recommendations).

Assignments may cover various issues including oral presentation, analysis, feature writing, answering specific questions. Three to five assignments during the Training Course may be given. These could cover one or several assignment themes.

Assignment Theme 1

On issues related to the multilateral trading system, GATT and basic principles and functions of the WTO.

Assignment Theme 2

On issues related to Agriculture, NAMA, GATS, and Standards.

Assignment Theme 3

On issues related to TRIPS, Trade Remedies and Dispute Settlement, and S&D Treatment.

Assignment Theme 4

On issues related to Doha Work Programme, Hong Kong Ministerial, GSPs, and Development Dimensions in WTO.

Assignment Theme 5

On the current state of Doha Round negotiation and implications for Bangladesh's negotiating strategy.

Appendix

2

Case Study

Case Study*

Case Study on Special and Differential Treatment

Provision of Duty-Free & Quota-Free Market Access to LDCs

PART - I

(Background Material)

- 1 This case study attempts to increase participants' understanding of the substantive aspects of the work programme on special and differential treatment (S&DT) as well as how the process of negotiations on S&DT have been carried out in the WTO, in particular by making reference to the proposal to provide duty-free and quota-free market access to products from the LDCs.
- 2 Paragraph 44 of the Doha Ministerial Declaration reaffirmed that "provisions for special and differential treatment are an integral part of the WTO Agreements", and directed that "all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational." Ministers also directed the Committee on Trade and Development:
 - (i) to identify those special and differential treatment provisions that are non-binding in nature and to consider the legal and practical implications for developed and developing Members of converting these S&DT provisions into mandatory provisions;
 - (ii) to examine additional ways in which special and differential treatment provisions could be made more effective, and to consider ways in which developing countries, in particular the least developed countries, may be assisted to make best use of special and differential treatment provisions; and
 - (iii) to consider how special and differential treatment may be incorporated into the architecture of WTO rules.

*This case study was prepared by Dr. Shishir Priyadarshi, Director, Development Division, WTO Secretariat. This case study is and is only designed as a hypothetical simulation exercise and is not intended to represent the position of any particular Member or group of Members.

- 3 This has provided the basis of the work that Members have carried out since the Doha Ministerial Conference. A very large number of Agreement-specific proposals (88 in all) were made, mainly by the LDCs and the African Group, and although the Special Session considered many of the proposals, both in open-ended informal meetings and smaller plurilateral consultations, positions could not be bridged on most of them by the stipulated deadline of July 2002, and even by the extended deadline of December 2002.
- 4 In its report to the General Council in February 2003, the Special Session reported that "an important area of difference has been the interpretation of some aspects of the Doha Mandate". While Members recognised the importance that Ministers attached to the S&DT work programme, and accepted the need to review all S&DT provisions 'with a view to strengthening them and making them more precise, effective and operational', there were significant differences on how this could be achieved. Some Members considered that one way to make S&DT provisions more precise, effective and operational, was to make them mandatory by changing the existing language of some of the 'best endeavour' provisions, and that doing so was part of the mandate. Others did not wish to consider amending the text of the Agreements or otherwise altering what they considered to be the existing balance of rights and obligations. Some delegations held the view that such proposals might be best referred to negotiating bodies, while others did not consider that this was a course consistent with the Doha Mandate.
- 5 In the course of the work carried out in the period from May 2003 to September 2003, Members did finally agree to make recommendations for possible adoption by Ministers at Cancun on 25 Agreement-specific proposals. During consultations carried out in Cancun, a number of developing countries expressed concern about the value of these recommendations and reiterated that the proposed package should be strengthened. Accordingly, in an endeavour to meet these concerns a further three recommendations were included at Cancun. However, these 28 recommendations have yet to be adopted by the Members, and therefore remain merely as agreed to in principle.
- 6 A number of systemic and institutional cross-cutting issues were also raised both in Members' submissions and the subsequent discussions on those submissions. These included issues relating to the principles and objectives of special and differential treatment; definition of developing countries; further differentiation amongst them; and the issue of graduation. The discussions showed that there were major differences of opinion on most cross-cutting issues. Many developed countries felt that these issues were important and should be examined in greater depth. These Members felt that an improved understanding on these issues would facilitate consensus on the Agreement-specific proposals. They also felt that differentiation amongst developing country Members would be necessary if special and differential treatment was to be made effective and targeted. On the other hand, many developing country Members questioned whether consideration

of these issues was within the mandate of the Doha Ministerial Declaration. They also expressed strong reservations about any kind of further differentiation amongst developing countries. The question of the definition of developing countries was also raised, with some Members saying that a definition was necessary to make special and differential treatment more precise, effective and operational and to confer legal predictability and certainty regarding the beneficiaries. A large number of developing countries however disagreed, saying that any attempt to differentiate amongst, or define a developing country went beyond what the Ministers had mandated at Doha.

- 7 The section on S&DT in the August 2004 Decision of the General Council mandated the Special Session to expeditiously complete the review of all the outstanding Agreement-specific proposals and report to the General Council, with clear recommendations for a decision, by July 2005. The Special Session was also instructed to address all other outstanding work, including on the cross-cutting issues. However, by July 2005 the Special Session was not in a position to make recommendations on any of the Agreement-specific proposals and had not been able to address the cross-cutting issues. It was therefore proposed that the Special Session continue its work on the remaining Agreement specific proposals and report on them with "clear recommendations for a decision" to the General Council by the Hong Kong Ministerial Conference.
- 8 However, in spite of numerous consultations held by the Chairman, differences persisted amongst Members on how to proceed. Finally, work was resumed, on the basis of an agreement that the LDC proposals be taken up as a matter of priority. Consequently, in the lead up to the Hong Kong Ministerial Conference, work in Geneva focussed on the five remaining LDC proposals. These proposals, inter alia, sought bound duty-free and quota-free market access for all products originating from LDCs; flexibility in the TRIMS Agreement; simplification of the waiver process for LDCs; and improved coherence agreements with other international organisations to ensure more targeted technical assistance and capacity-building programmes.
- 9 Of these proposals the LDCs made it very clear that the proposal to provide them duty-free and quota-free (DF-QF) market access was the most important. They believe that while recent initiatives undertaken by major trading partners in favour of LDCs such as the 'Everything But Arms' and African Growth and Opportunity Act are welcome, these efforts must be improved by expanding the product coverage to include all products from all LDCs. In addition, the LDCS also want these schemes to build in the important dimension of predictability and security of these access conditions, including by binding the DF-QF access which is provided. The LDCs believe that binding these measures are critical to strengthening the supply capacities in LDCs and necessary for the improvement of secure and beneficial market access for these countries.

- 10 Accordingly, the LDCs had proposed that Members take a commitment to provide a contractual status to duty-free and quota-free preferential market access through the negotiation of a legal instrument to make market access secure, stable and predictable. They also proposed that duty-free quota-free treatment should be provided to all products, and that rules of origin requirements should be realistic and flexible to match the industrial capacity of LDCs in order to ensure the effective and full utilisation of preferences.
- 11 Keeping these objectives in mind the LDCs put the following language¹ on the table:
 The General Council agrees that developed country Members shall provide bound duty-free and quota-free market access for all products originating from all LDCs by no later than the start of the implementation of the Doha Round.
- 12 Clearly, the LDCs are seeking bound DF-QF market access for all products originating from all LDCs. However, when this proposal was first discussed, most developed country Members said that it would not be possible for them to bind the duty-free and quota-free access provided autonomously by them. A number of them also said that this should be pursued by the LDCs as part of the ongoing agriculture and non-agriculture negotiations. Reservations were also expressed about universal coverage as far as mentioning 'all' LDCs and 'all' products is concerned.
- 13 For the LDCs maintaining the words 'bound' in the context of DF-QF market access and the word 'all' in reference to the LDCs which would be provided this access, and in reference to the products that would be eligible for this access, is an attempt to operationalise commitments that they feel have already been made in previous Decisions and at the Doha Ministerial Conference.
- 14 Clearly, there are a number of issues, which would need to be discussed and a possible compromise achieved during the negotiation simulation exercise are:
- binding the DF-QF access;
 - reference to 'all' LDCs;
 - reference to 'all' products;
 - DF-QF access to be also given by developing countries.
- 15 This case study will take the participants, who would be divided into three groups, through the different stages of the negotiating process, right upto the stage that

¹This is a simplified version of the language which the LDCs were pushing for in the process at Geneva. This language would be the starting point of the simulated negotiations amongst the participants.

the proposal was adopted at the Hong Kong Ministerial Conference, with a number of amendments.

- 16 It is expected that each group would chose a chief spokesperson and would prepare an opening statement. Separate briefing notes, specific to each group, which would help the groups in preparing their positions are also being provided.

PART - II

(Briefing Notes for the Individual Groups)

S&DT - CASE STUDY

Position of 'ALPHA' Group of Countries on the DF-QF Proposal* (LDCs)

The Alpha group is the proponent of this proposal. To this extent they are the main protagonists of this negotiation exercise and have to be well prepared to logically present and argue out their case. They could take a stand along the following lines, on the key elements of the proposal:

- As a background, it is this group of countries which has made a number of proposals and are key players in the work programme on S&DT. They hold the position that the LDCs experience peculiar problems, which constrain their participation in the multilateral trading system, because of which they have not been able to derive the anticipated benefits.
- They believe that although some of the S&DT provisions have provided a certain degree of flexibility, the entire scheme of the provisions and the present approach needs fundamental improvement. They feel that the special needs of the least developed country Members needs to be fully recognised and incorporated by all Members in their policies within the framework of the WTO rules.
- They strongly feel that the multilateral system has not delivered the anticipated benefits and hold the view that market access holds the key to enhanced development. They feel that that even though Ministers at Doha agreed that "Members will work towards providing LDCs DF-QF market access for all their products" nothing substantial has been done in the intervening years.
- Therefore, for this group of countries maintaining the words 'bound' in the context of DF-QF market access and the word 'all' in reference to the LDCs which would be provided this access, and in reference to the products that would be eligible for this

*This case study was prepared by Dr. Shishir Priyadarshi, Director, Development Division, WTO Secretariat. This case study is and is only designed as a hypothetical simulation exercise and is not intended to represent the position of any particular Member or group of Members.

access, is an attempt to operationalise commitments that they feel have already been made in previous decisions and at the Doha Ministerial Conference.

- While they welcome the initiatives undertaken in favour of LDCs such as the 'Everything But Arms' and the 'African Growth and Opportunity Act', they feel that these are all autonomous measures and lack long term security and predictability.
- Consequently, the most important aspect of their proposal that they have been insisting on is the inclusion of an appropriate phrase that 'binds' the DF-QF access. They feel that only this would provide certainty and improve the benefits that countries can derive from the implementation of the DF-QF access measures.
- However, many developed country Members feel that agreeing to bound DF-QF market access would create a legally binding commitment on preferential schemes which are essentially unilateral. They have stated that binding market access raises legal questions as it implies binding preferential tariffs in the schedules, which otherwise only has bound rates that are levied on an MFN basis.
- On the other hand, the Alpha group should insist on a formulation that makes this market access secure (the question is whether agreeing to provide this access in a "stable, secure and predictable manner" would be sufficient).
- Many of the developed countries are also opposed to any reference to 'all' LDCs. This stems from their concern that some of the LDCs are already very competitive in certain sectors (such as textiles) because of which they are not prepared to accept any text that it makes it mandatory upon them to provide DF-QF access to 'all' LDCs.
- Some of them also hold the view that extending DF-QF treatment to all LDCs could undermine some of the existing preferential schemes, such as AGOA.
- Some of the developed countries are also opposed to any reference to 'all' products. This reservation also stems from their concerns about certain sectors where they think some LDCs are already very competitive, as well as because certain products such as rice, are very sensitive for some of them, and they feel that they simply cannot accept a reference to 'all' products.
- The Alpha group of countries will therefore have to be ready with their strategy to counter the arguments that may be adduced vis-à-vis the issue of 'all' LDCs and 'all' products.
- One possibility, the merits of which would need to be closely assessed by the Alpha group, would be whether or not to accept DF-QF for a certain percentage of tariff lines (the percentage could be as high as 95 per cent +). This would give developed countries which are having a problem in giving DF-QF access for all products, some additional time to provide DFQF access for 100 per cent products.
- The main attraction of such an approach would be that (i) it would allow certain products to be excluded from the DF-QF access (though the debate on the

percentage of tariff lines that should be allowed DF-QF access is likely to be contentious); and (ii) it would provide some more time for these Members to achieve comprehensive coverage.

- However, it also needs to be borne in mind that excluding even 1 per cent of tariff lines could actually result in the exclusion of an entire sector, such as for instance textiles.
- The members of the Alpha group should also insist that the accompanying Rules of Origin are flexible enough to allow the LDCs to maximise the gains from the DF-QF access. Restrictive Rules of Origin would leave very little scope for the LDCs, especially with limited manufacturing capacity, to increase their exports to developing countries. They could introduce this idea at an appropriate stage.
- The Alpha group could also make the point that Members must be flexible towards their proposals because they represent the least developed of the WTO Members, who as it is have such a small share of world trade.
- The Alpha group should ideally also seek similar duty-free and quota-free access from the developing countries, especially the bigger developing countries.

S&DT - CASE STUDY

Position of 'BETA' Group of Countries on the DF-QF Proposals* (ODCs)

- The Beta group of countries hold the position that they have not been able to benefit from the multilateral trading system because of a large number of constraints, both structural and economical. For this reason they feel that developing countries should have recourse to S&DT provisions which takes into account their particular capacity constraints and which are suitable to their circumstances.
- They have made a number of proposals as part of the S&DT work programme and have pursued them with a lot of effort, but clearly without too much progress.
- Though generally supportive of the proposals made by the LDCs, they are nonetheless, reluctant to accept any suggestion that additional flexibilities be only provided to the LDCs and not to all developing countries, especially where the original S&DT provision is for all developing countries.
- They were therefore somewhat reluctant to accept the suggestion that the focus should be only on the proposals made by the LDCs. However, they could not express this reservation too openly and went along with the general view that in the limited time available an effort be made to address the LDC proposals.

*This is not intended to represent the position of any particular Member or group of Members, and is only designed as a hypothetical simulation exercise.

- The Beta group of countries have been generally supportive of the proposal to provide LDCs DF-QF market access.
- They tend to oppose any suggestion that this market access should also be provided by those developing countries that are in a position to do so. They feel that this is an attempt by the developed countries to divert attention from the main issue, and to create a wedge between the LDCs and the developing country.
- If, however, discussions proceed and the Beta group finds itself being pushed and have no option then they could suggest that only those developing countries "declaring themselves in a position to do so" should be asked to provide duty-free and quota-free access to the LDCs.
- They feel that this would remove any arbitrariness in determining which developing country is in a position to provide DF-QF access, because with the insertion of the words 'declaring themselves' the process will become one of self determination. This is a suggestion that would therefore have to be made by this group.
- The second important thing that developing countries, especially those that would be expected to provide DF-QF market access to the LDCs, want is flexibility in coverage, both in the context of the LDCs to whom they would provide this access and the products for which this access will be provided.
- To this extent, the Beta group of countries while supporting the need for developed countries to provide DF-QF access to 'all' LDCs for 'all' products, are themselves not willing to accept this commitment for themselves.
- The third concern that this group of countries has is in relation to the possible affect that providing DF-QF access to LDCs could have on their existing markets. Some developing countries are very concerned that providing DF-QF access to the LDCs would erode their export opportunities.
- For this reason, they would like a mention in the operative paragraph of the decision that while providing this DF-QF access to the LDCs, "the impact on other developing countries" shall be taken into account.

S&DT - CASE STUDY

Position of 'GAMMA' Group of Countries on the DF-QF Proposal"* (DCs)

The main concerns that the Gamma group of countries have on the key elements of the LDC proposal are as follows

*This is not intended to represent the position of any particular Member or group of Members, and is only designed as a hypothetical simulation exercise.

- Members of this group are strongly opposed to any move to introduce the word 'bound' in the language of the proposal.
- They feel that agreeing to bound DF-QF market access would create a legally binding commitment on preferential schemes which are essentially unilateral. They also feel that binding DF-QF market access raises legal questions as it implies binding preferential tariffs in the schedules, which otherwise only have bound rates that are levied on an MFN basis.
- An alternative that could be suggested by this group is to make a 'binding commitment' rather than to 'bind' this DF-QF access. An advantage is that the legal implications of using the phrase 'binding commitment' are not clear. Some of the Gamma Members feel that this moves away from the classic interpretation of the word 'bound' and to this extent solves the problems associated with inscribing two 'bound rates' in a Members MFN schedule.
- Another possibility that could be explored is the inclusion of words to the effect that this commitment is being taken to provide DF-QF access on a "lasting basis".
- Another alternative to the use of the word 'bound' is to suggest the inclusion of a phrase at the end of the text on the language which says that this DF-QF access should be provided "in a manner that ensure stability, security and predictability".
- Thus, as the simulation exercise proceeds, this group could make suggestions to amend subparagraph (a) of the text along the following line..."undertake a [binding] commitment to provide [on a lasting basis] duty-free and quota-free market access for products originating from LDCs by year x [in a manner that ensures stability, security and predictability]".
- Most Gamma group of countries are also opposed to any reference to 'all' LDCs. This stems from their concern that some of the LDCs are already very competitive in certain sectors (such as textiles) because of which they are not prepared to accept any text that it makes it mandatory upon them to provide DF-QF access to 'all' LDCs.
- Some of them also hold the view that extending DF-QF treatment to all LDCs could undermine some of the existing preferential schemes, such as AGOA. Introducing this could actually make the LDCs start debating the issue amongst themselves and take away the focus from the developed countries.
- Similarly, the Gamma group of countries are also opposed to any reference to 'all' products. This reservation also stems from their concerns about certain sectors where they think some LDCs are already very competitive, as well as because certain products such as rice, are very sensitive for some of them, and they feel that they simply cannot accept a reference to 'all' products.
- Clearly, for these reasons, the Alpha group of countries are opposed to providing DF-QF market access for 'all' products from 'all' LDCs.

- In order to break the deadlock, at an appropriate stage the Gamma group could suggest the following language as a second sub paragraph (b) "Members facing difficulty in providing market access according to (a) shall provide duty-free and quota-free market access for [x per cent] of products originating from LDCs, defined at the tariff line level, by year [x]. These Members shall take steps to progressively achieve comprehensive coverage in fulfilment of the obligations set out in (a) above".
- The main attraction of this proposal as a possible middle ground is: (i) it allows certain products to be excluded from the DF-QF access (though the debate on the percentage of tariff lines that should be allowed DF-QF access will be very contentious); and (ii) it provides for an additional period for Members to achieve comprehensive coverage.
- The Gamma group of countries are also of the view that only products 'originating' in LDCs be given this enhanced market access. They would like to ensure that goods which are merely imported by the LDCs and are then re-exported are not eligible for this DF-QF access. For this reason they would like fairly stringent Rules of Origin, so that this kind of circumvention is avoided and may at some stage also wish to include this into the debate.
- Another important point that the Gamma group should insist is that this DF-QF access must be provided not only by developed countries but also by some of the advanced developing countries. Consequently this group should at some stage propose that "developing countries in a position to do so" must also provide the LDCs duty-free and quota-free market access.

Appendix

3A

BENCHMARK _____

TEST _____

**Benchmark
Test**

**Training Programme on
WTO and Bangladesh Trade Policy**

Participant's Name:

(A) Please answer the following questions

1. When was the GATT established?
 2. What is the current number of the WTO Members?
 3. When Bangladesh became a Member of the WTO?
 4. Who is the present Director General of the WTO?
 5. What is the full meaning of NAMA?
 6. What are the Full meanings of SPS and TBT?
 7. What is the name of the current round of negotiations?
 8. Write down the four modes of supply under GATS:
 - a. Mode 1:
 - b. Mode 2:
 - c. Mode 3:
 - d. Mode 4 :
-

9. Name of three pillars of the Agreement on Agriculture are:

- a. _____ b. _____ c. _____

10. How many rounds of SAPTA negotiations had been held?

11. The G90 is an umbrella group for which three partly overlapping groupings:

- a. _____ b. _____ c. _____

12. Number the hierarchy of RTAs (1 for lowest, 5 for highest):

Customs Union _____ PTA _____ Common Market _____ FTA _____ Economic Union _____

(B) Fill in the gaps

13. WTO was established in _____

14. Hong Kong Ministerial meeting was the _____ Ministerial Meeting of the WTO.

15. As per SAFTA Framework Agreement, LDCs' tariffs on items in the residual list will be brought down to 0-5% over a span of _____

16. As per SAFTA Framework Agreement, items in the *Negative List* are to be reviewed _____ years.

17. Cairns Group was founded in _____

18. SAFTA was signed in _____

19. The Doha Round of trade negotiations started since _____

20. Entry of China into the WTO in _____

21. The name given to the WTO agreement that replaced the Multi-fibre Agreement is _____

(C) Please tick the correct answer(s)/best option(s)

22. One of the basic principles of the WTO is:

- a. Non-discrimination b. Prohibiting fair competition
 c. Discrimination d. Stability, predictability

23. Major objectives of Market Access negotiation are:
- Tariffication of NTBs
 - Fixation of NTBs
 - Gradual Reduction of Tariffs
24. What is the major dispute as regard Bangladesh's current growth trend?
- Diminishing return from manufacturing
 - Rising income inequality
 - Volatility of growth
 - Weakening of institutional support
25. Which one of the following is likely to affect Bangladesh's export performance?
- Deterioration in terms of trade
 - Product quality
 - Phase-out of MFA quota
 - Export basket's lack of diversity
26. After the ATC expires in 2005, what type of WTO-approved trade law developed countries may use to maintain protection of its textile and clothing industries?
- Safeguards or Anti-dumping
 - Quota Abolition
 - Tariff Escalation
 - Tariff Peaks
27. Trade diversion is best defined as when:
- Export is diverted from RTA members to non-RTA member
 - Import is diverted from more efficient RTA member to less efficient RTA member
 - Import is diverted from more efficient non-RTA member to less efficient RTA member
 - Intra-regional trade of RTA members during post-RTA period declines compared to per RTA period
28. Bangladesh is NOT a Member of which of the following RTAs:
- BIMST-EC
 - D8
 - AFTA
 - Bangkok Agreement
29. During FTA negotiations, a member will be interested in a 'Revenue Compensation Mechanism', if and when:
- It is a major exporter among FTA members
 - It is a major importer among FTA members
 - It is a major intra-regional importer with high import tariffs in place
30. Globalisation is a process of:
- Integration of national economics with regional economics
 - Integration of local economic system with international markets and institutions
 - Getting membership at the WTO
 - Trade liberalisation

31. The degree of openness is defined by:
- The extent of globalisation in the economy
 - The share of globalisation and exports in the economy
 - The share of exports and imports in the GDP
 - The share of remittance in the foreign exchange earning
32. The major challenges of globalisation in Bangladesh are:
- Sustained flow of concessional resources of adequate level
 - Improving the quality of foreign aid
 - Utilisation
 - Access to labour market in the area of services
33. Is the WTO member-driven?
- Yes No
34. Euro came into circulation in January 1995.
- True False
35. WTO is a rule based organisation.
- True False
36. Bangladesh has both "offensive" and "defensive" interests in the ongoing WTO Negotiations.
- True False
37. No import restrictive trade measure is allowed under the WTO principles.
- True False
38. What was the WTO known as before 1995?
- a. UNCTAD b. ILO c. ITO d. GATT
39. Doha Development Round was suspended from
- July 2007
 - January 2007
 - July 2006
 - January 2006
40. Who is the world's biggest exporting nation?
- Japan
 - USA
 - Germany
 - China

41. A tariff-rate quota is:
- a. A system whereby a country can impose an import tariff or quota
 - b. A low tariff rate on a fixed quantity of imports, and higher rates on additional imports
 - c. A system whereby different tariff rates are charged on imports from different countries
 - d. A quota on tariff rates
42. Bilateral aid is:
- a. Technical aid given by IMF
 - b. Given directly by one country to another.
 - c. Aid with repayment in inconvertible currency.
 - d. A loan at bankers' standards.
43. "Dumping" refers to:
- a. Exporting products no one in the producing country wants
 - b. Exporting products at a price below the cost of production
 - c. Exporting only the lowest quality products
 - d. Tossing unwanted cargo into the ocean during transport
44. The GATT negotiations that created the WTO were known as the:
- a. Kennedy Round
 - b. Tokyo Round
 - c. Malaysia Round
 - d. Uruguay Round
45. The "Uruguay Round" accomplished all of the following except:
- a. Creation of the WTO
 - b. Creation of the GATT
 - c. Reduction of overall tariffs
 - d. Liberalised government rules on trade in services
46. The European Union:
- a. Consists of all countries that have adopted the Euro as official currency
 - b. A trading bloc of Western European countries
 - c. Has imposed significant trade barriers among its member countries
 - d. Has improved the prosperity of its members, reducing their demand for imports from the US
47. Which of the following is not currently a member of the Euro Zone?
- a. France
 - b. Sweden
 - c. Austria
 - d. Finland

48. Which one of these countries is not a Member of the WTO?
a. China b. Saudi Arabia c. Russia d. Albania
49. If protection is used by a country, what type is preferred by the WTO?
Tariffs Quotas
50. 'Open Regionalism' is best described as
- Greater emphasis on 'multilateralism' as against 'regionalism'
 - More emphasis on regional economic cooperation compared to multilateral liberalisation
 - Emphasis on regional cooperation, but at the same time bringing down MFN tariffs
 - Bringing down tariffs for RTA partners, but raising tariffs for non-RTA partners

Answers of the Benchmark Test

1. 1947
2. 149
3. 1 January 1995
4. Pascal Lamy
5. Non-agricultural Market Agreement
6. Sanitary and Phytosanitary (SPS); Technical Barrier to Trade (TBT)
7. Doha Development Round
8. Mode 1: cross-border supply
Mode 2: consumption abroad
Mode 3: commercial presence
Mode 4: presence of natural persons
9. a. Market access
b. Domestic support
c. Export subsidies
10. Four Rounds
11. a. The ACP Group
b. The Africa Group
c. The Group of LDCs
12. Custom Union 3, PTA 1, Common Market 4, FTA 2, Economic Union 5
13. 1995
14. 6 th
15. 10 years
16. Every four years or earlier as may be decided
17. 1986
18. January 2004
19. 2001
20. 2001
21. Agreement on Textiles and Clothing
22. Non-discrimination

23. Gradual Reduction of Tariffs
24. Rising income inequality
25. Export basket's lack of diversity
26. Safeguards or Anti-dumping
27. Import is diverted from more efficient non-RTA member to less efficient RTA member
28. AFTA
29. It is a major intra-regional importer with high import tariffs in place
30. Integration of local economic system with international markets and institutions
31. The extent of globalisation in the economy
32. Sustained flow of concessional resources of adequate level
33. Yes
34. False
35. True
36. True
37. False
38. GATT
39. July, 2006
40. Germany
41. A low tariff rate on a fixed quantity of imports, and higher rates on additional imports
42. is given directly by one country or another
43. Exporting products at a price below the cost of production
44. Uruguay Round
45. creation of the GATT
46. a trading bloc of Western European countries
47. Sweden
48. Russia
49. Tariffs
50. More emphasis on regional economic cooperation compared to multilateral liberalisation

Appendix

3B

FINAL TEST

9. Name three Agreements which are invoked in requests for consultation under the Dispute Settlement Mechanism of the WTO:

- a. _____ b. _____ c. _____

10. Who are the Members of the Group on Cotton?

B. Fill in the gaps

11. Number the hierarchy of RTAs (1 for lowest, 5 for highest):

Customs Union _____ PTA _____ Common Market _____ FTA _____ Economic _____ Union _____

12. The name given to the WTO agreement that replaced the Multi-fiber Agreement is _____

13. G20 was initiated during the _____ Ministerial.

14. Regulation of treatment of imported fruit to prevent pest spreading is covered under _____
 Regulation on quality, grading and labeling of imported fruit is covered under _____

15. For implementation of Appellate body report Members may have "reasonable time" of up to _____ months to implement (extendible to _____ months)

16. In 1971, the GATT Contracting Parties created the legal framework for the Generalized System of Tariff Preferences by adopting the _____

17. Major difficulties in terms of ensuring compliance with SPS and TBT regulations are three-fold:

Firstly _____

Secondly _____

Thirdly _____

18. The length of consultation stage in the Dispute Settlement Mechanism is _____ days.

19. Work in between the Ministerial Conferences is handled by three bodies: _____ , _____ , _____

20. Integrated Framework (IF) was agreed by six multilateral agencies, such as ITC, UNCTAD, _____, UNDP, _____ and the WTO.
21. What are the five steps in the settlement of disputes under WTO?
- Step 1: Consultations
- Step 2: _____
- Step 3: The Panel at work
- Step 4: _____
- Step 5: Implementation.
22. Name the WTO two major articles of GATT 1947 based on which dispute settlement mechanism was established under WTO:
- a) _____
- b) _____
23. Bangladesh at present preferential market access facilities under _____ GSP schemes run by various developed economies.
24. What were Bangladesh's major concerns in the case of India's imposition of anti-dumping duty on Lead Acid Battery import from Bangladesh?
- a) Initiation of the investigation and failure to immediately terminate the investigation
- b) _____
- c) _____
- d) Treatment of evidence
- e) Failure to provide public notice.
25. Currently (FY 2006-07) the share of services in total GDP is about _____
26. Objectives of NAMA negotiations are three fold:
- (a) Bringing down the non-tariff barriers (NTBs),
- (b) Conversion of NTBs through putting in place their tariff rate equivalents, and
- (c) _____
27. Following types of S&D provisions can be found in the UR Agreements:
- a. Increasing trade opportunities of Developing countries
- b. _____
- c. Lesser obligations by developing countries

- d. _____
 e. Technical assistance

C. Please tick the correct answer(s)/best options:

28. Rules of Origin means laws, regulations and administrative procedures which determine a product's
- | | |
|-----------------------|---------------------------|
| a. Shipment | b. Country of destination |
| c. Country of origin. | d. Quality |
29. Which one of the following is non-tariff barrier?
- | | |
|---------------------------|--|
| a. Tariff escalation | b. Tariff Rate Quota |
| c. Non-ad valorem tariffs | d. Sanitary and Phytosanitary Measures (SPS) |
30. In the early two years after Doha, the general feeling was that the development dimension of the DDA was focussed mainly around the
- | | |
|----------------------------------|----------------|
| a. S&DT work programme | b. Agriculture |
| c. Non-agriculture market access | d. Services |
31. Objective of multilateral trading system is to move towards a global trade regime by way of:
- | | |
|-------------------------------------|------------------------------------|
| a. Adopting protectionism | b. Gradual liberalisation of trade |
| c. Enhance inequality among nations | d. Improving factors of production |
32. 'Open Regionalism' is best described as:
- Greater emphasis on 'multilateralism' as against 'regionalism'
 - More emphasis on regional economic cooperation compared to multilateral liberalisation
 - Emphasis on regional cooperation, but at the same time bringing down MFN tariffs
 - Bringing down tariffs for RTA partners, but raising tariffs for non-RTA partners
33. Does the TRIPS Agreement apply to all WTO Members?
- | | |
|--------|-------|
| a. Yes | b. No |
|--------|-------|
34. Trade diversion is best defined as when
- Export is diverted from RTA members to non-RTA member
 - Import is diverted from more efficient RTA member to less efficient RTA member
 - Import is diverted from more efficient non-RTA member to less efficient RTA member
 - Intra-regional trade of RTA members during post-RTA period declines compared to per RTA period

35. In agriculture, date for elimination of all forms of export subsidies is:
a. 2013 b. 2010 c. 2015 d. 2018
36. Bangladesh's primary offensive interest in the context of Doha Round negotiation is
a. TRIPS b. market access
c. Agriculture d. SPS measure
37. During FTA negotiations a member will be interested in a 'Revenue Compensation Mechanism', if and when
a. It is a major exporter among FTA members
b. It is a major importer among FTA members
c. It is a major intra-regional importer with high import tariffs in place
38. Globalisation is a process of:
a. Integration of national economics with regional economics
b. Integration of local economic system with international markets and institutions
c. Getting membership at the WTO
d. Trade liberalisation
39. EBA was introduced in:
a. 1995 b. 2001 c. 2000 d. 1997
40. Trade Facilitation means:
a. Imposition of new duties
b. Strengthen documentation procedure
c. Simplification of customs procedures
d. Increasing non-tariff barriers
41. The major challenges of globalisation in Bangladesh are:
a. Sustained flow of concessional resources of adequate level
b. Improving the quality of foreign aid
c. Utilisation
d. Access to labour market in the area of services
42. The market access provisions of GATS (Article XVI) cover six types of restrictions that must be maintained. The restrictions related to:
a. The number of service supplies b. Standard of service
c. Local legal entity d. Non-convertible currency

43. No import restrictive trade measure is allowed under the WTO principles.
- a. True b. False
44. Why standards in trade is important?
- a. To get duty free access b. To define product or service
c. To show the investment capacity
45. A tariff rate quota is:
- a. A system whereby a country can impose an import tariff or quota
b. A low tariff rate on a fixed quantity of imports, and higher rates on additional imports
c. A system whereby different tariff rates are charged on imports from different countries
d. A quota on tariff rates
46. WTO Committee on Trade and Environment, 1995 — established with the mandate to identify the relationship between:
- a. Geographical indications
b. Trade measures and environmental measures
c. Environment and social issues
d. SPS and TBT
47. WTO rulings don't allow governments to take the environmental measures they need to protect their natural resources.
- a. True b. False
48. The European Union:
- a. Consists of all countries that have adopted the Euro as official currency
b. A trading bloc of Western European countries
c. Has imposed significant trade barriers among its member countries
d. Has improved the prosperity of its members, reducing their demand for imports from the US
49. During the conclusion of Uruguay round, Bangladesh committed to liberalise which service sector?
- a. Telecommunication and tourism b. Banking & insurance
c. Transport and communication d. Health
50. Which is/are the barrier(s) for temporary movement of natural persons?
- a. Lack of education b. Economic needs tests
c. Strict visa procedures d. Lack of own government initiatives

Answers of the Final Test

1. a. Market access b. Domestic support c. Export subsidies
2. Mode 1: cross-border supply
Mode 2: consumption abroad,
Mode 3: commercial presence
Mode 4: presence of natural persons
3. January 2004
4. 151
5. Most Favoured Nation
6. a. Copyright and rights related to copyright b. Industrial property
7. World Intellectual Property Organization (WIPO)
8. a. Safeguard b. Antidumping c. Subsidy/countervail
9. a. (GATT) b. (SCM) c. (AD)
10. Benin, Burkina Faso, Chad and Mali
11. Custom Union 3, PTA 1, Common Market 4, FTA 2, Economic Union 5
12. Agreement on Textile and Clothing
13. Cancun
14. SPS, TBT
15. 15, 18
16. "Enabling clause"
17. Firstly, Inadequacy of infrastructure;
Secondly, Inadequacy of human resource; and
Thirdly, Inadequacy of investment in health and hygiene
18. 60
19. The General Council
The Dispute Settlement Body; and
The Trade Policy Review Body
20. IMF, World Bank
21. Step 2: Request of a Panel Step 4: Adoption decision or Appeal
22. a. article XXII, Consultation b. article XXIII, Nullification or Implement
23. 17
24. b. determination of margin c. determination of injury and causation

25. 60 per cent
26. c. Reduction of the final tariff rates in a phased manner to be determined through negotiations
27. b. Safeguarding the interests of the developing countries
d. Provisions relating to transitional periods
28. country of origin
29. Sanitary and Phytosanitary Measures (SPS)
30. S&DT work programme
31. gradual liberalisation of trade
32. More emphasis on regional economic cooperation compared to multilateral liberalisation
33. Yes
34. Import is diverted from more efficient non-RTA member to less efficient RTA member
35. 2013
36. Market access
37. It is a major intra-regional importer with high import tariffs in place
38. Integration of local economic system with international markets and institutions
39. 2001
40. Simplification of customs procedures
41. Sustained flow of concessional resources of adequate level
42. The number of service supplies
43. False
44. To define product or service
45. A low tariff on a fixed quantity of imports, and higher rates on additional imports
46. Trade measures and environmental measures
47. False
48. A trading bloc of Western European countries
49. Telecommunication and tourism
50. b. Economic Needs Tests c. Strict visa procedures

Appendix

4

Evaluation _____

of the _____

Course _____

Evaluation of the Course

Training Programme on WTO and Bangladesh Trade policy

A. OBJECTIVES	Strongly Disagree	Disagree	Agree with Some Reservation	Agree	Strongly Agree
	(1)	(2)	(3)	(4)	(5)
1. The overall training design corresponded to my learning objectives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. I have achieved my learning objectives by participating in the training workshop	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. DURATION AND CONTENTS					
3. The duration of the training programme was appropriate to cover the training contents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. The contents covered in the training were at the right level for me	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. FACILITIES					
5. The training materials were well-prepared and useful aids for learning	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. The training room and facilities provided a suitable learning environment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. The organisers did a good job providing support/logistics to the training workshop	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

D. RESULTS

- | | | | | | |
|--|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 8. My knowledge related to the training content increased as a result of this training | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. I learned new skills from this training workshop | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. I have a better understanding of the key concepts on the WTO and trade policies | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. I feel comfortable transferring the knowledge and skills to others | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

E. RELEVANCE

- | | | | | | |
|--|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 12. The training content is directly related to my job responsibilities | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. The knowledge and skills I have acquired will improve my present work | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. The knowledge and skills that I have acquired will help improve my future work | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

F. GENERAL QUESTIONS/ COMMENTS AND ASSESSMENTS

15. Would you **recommend** this programme to others? Yes No
16. What are your **suggestions** for improving this training programme? Please be specific.
-
-
17. What **follow-up** training would be useful for you in the future? Please be specific.

18. Please give your rating from **1 (very bad)** to **5 (excellent)** on the specific training sessions of the workshop in terms of its relevance, effectiveness, content, teaching methods and presenters' performance. Please note that specific sessions are listed on the left column.

Session	1	2	3	4	5
An Overview of the Course	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
An Introduction to the International Trading System and the WTO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Agreement on Agriculture (AoA)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Non-Agricultural Market Access (NAMA)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
General Agreement on Trade in Services (GATS)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dispute Settlement Mechanism in the WTO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trade Related Intellectual Property Rights (TRIPS)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
WTO and Regional Trade Agreements (RTAs)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sanitary and Phytosanitary (SPS) Measures in the WTO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The Development Dimension in the WTO and Aid for Trade	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Special and Differential Treatment in the WTO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
WTO Negotiation Groups: An Introduction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
A Guide to WTO Related Information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	1	2	3	4	5
Evolution of Bangladesh's Trade Policy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Generalized System of Preferences (GSPs) Applicable for Bangladesh	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Doha Work Programme and Hong Kong Outcome	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Current Status of Doha Round Negotiations: Implications and Strategies for Bangladesh	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Appendix

5

Glossary

Glossary*

A

accession: Becoming a member of the WTO, signing on to its agreements. New members have to negotiate terms:

— bilaterally with individual WTO members

— multilaterally, (1) to convert the results of the bilateral negotiations so that they apply to all WTO

members, and (2) on required legislation and institutional reforms that are need to meet WTO obligations.

accounting rate: In telecoms, the charge made by one country's telephone network operator for calls originating in another country.

ACP: African, Caribbean and Pacific countries. Group of countries with preferential trading relations with the EU under the former Lomé Treaty now called the Cotonou Agreement.

Advisory Centre on WTO Law: Entity based in Geneva that provides legal counseling on WTO law and dispute settlement to developing and transition countries that are WTO members on a subsidized basis, depending on the income level of the requesting government. 72 WTO members are eligible to request assistance.

ad valorem tariff: A tariff rate charged as percentage of the price. *See* "specific tariff".

Agenda 2000: EC's financial reform plans for 2000-06 aimed at strengthening the union with a view to receiving new members. Includes reform of the CAP.

Agenda 21: The Agenda for the 21st Century — a declaration from the 1992 Earth Summit (UN Conference on the Environment and Development) held in Rio de Janeiro.

Aggregate Measure of Support: Measure of the total support given to an activity as a result of policies such as production subsidies and market price support policies. Used in the WTO Agreement on Agriculture.

* Compiled from *World Trade Organization*, http://www.wto.org/english/thewto_e/glossary_e/glossary_e.html and *World Bank*, <http://www.worldbank.org/research/trade/glossary.htm>.

AGOA (African Growth and Opportunities Act): U.S. legislation providing duty-free access for a large number of products for 35 African economies.

agricultural product: Defined for the coverage of the WTO's Agriculture Agreement, by the agreement's Annex 1. This excludes, for example, fish and forestry products. It *also* includes various degrees of processing for different commodities.

Amber Box: Domestic support for agriculture that is considered to distort trade and therefore subject to reduction commitments. Technically calculated as "Aggregate Measurement of Support" (AMS).

Andean Community: Bolivia, Colombia, Ecuador, Peru and Venezuela.

anti-dumping duties: GATT's Article 6 allows anti-dumping duties to be imposed on goods that are deemed to be dumped and causing injury to producers of competing products in the importing country. These duties are equal to the difference between the goods' export price and their normal value, if dumping causes injury.

APEC: Asia Pacific Economic Cooperation forum.

Appellate Body: An independent seven-person body that considers appeals in WTO disputes. When one or more parties to the dispute appeals, the Appellate Body reviews the findings in panel reports.

Applied rates: Duties that are actually charged on imports. These can be below the bound rates.

Article XX: (i.e. 20) A GATT article listing allowed "exceptions" to the trade rules.

ASEAN: Association of Southeast Asian Nations. Eight ASEAN members are members of the WTO — Brunei, Cambodia, Indonesia, Malaysia, Myanmar, the Philippines, Singapore and Thailand. The other ASEAN members — Laos and Vietnam — are negotiating WTO membership.

ATC: The WTO Agreement on Textiles and Clothing which integrated trade in this sector back to GATT rules, expired on 1 January 2005.

automaticity: In disputes, the "automatic" chronological progression for settling trade disputes in regard to panel establishment, terms of reference, composition and adoption procedures.

B

Basel Convention: A multilateral environmental agreement dealing with hazardous waste.

Berne Convention: A treaty, administered by WIPO, for the protection of the rights of authors in their literary and artistic works.

binding, bound: *see* "tariff binding".

BIT: bilateral investment treaties.

border protection: Any measure which acts to restrain imports at point of entry.

box: In agriculture, a category of domestic support. **Green box:** supports considered not to distort trade and therefore permitted with no limits. **Blue box:** permitted supports linked to production, but subject to production limits, and therefore minimally trade-distorting. **Amber box:** supports considered to distort trade and therefore subject to reduction commitments.

BSE: Bovine spongiform encephalopathy, or "mad cow disease".

BTA: Border tax adjustment.

C

Cairns Group: Group of agricultural exporting nations lobbying for agricultural trade liberalization. It was formed in 1986 in Cairns, Australia just before the beginning of the Uruguay Round. Current membership: Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand and Uruguay.

CAP: Common Agricultural Policy — The EU's comprehensive system of production targets and marketing mechanisms designed to manage agricultural trade within the EU and with the rest of the world.

Capacity-building: In trade context, activities supported by the donor community aimed at strengthening the ability of stakeholders in developing countries to develop national trade policy, undertake analysis and identify their interests in international trade negotiations.

Caricom: The Caribbean Community and Common Market, comprising 15 countries.

carry forward: When an exporting country uses part of the following year's quota during the current year.

carry over: When an exporting country utilizes the previous year's unutilized quota.

Cartel: Arrangement between firms to control a market – for example, to fix prices or limit competition between members of the cartel.

CBD: Convention on Biological Diversity

Ceiling binding: Often used to describe a situation where there is a large difference between the tariff that is actually applied and the level at which the tariff is bound in GATT (the 'ceiling').

C.I.F.: Cost, insurance and freight. The cost of a good delivered to the importing country's port.

Circumvention: Getting around commitments in the WTO such as commitments to limit agricultural export subsidies. Includes: avoiding quotas and other restrictions by altering the country of origin of a product; measures taken by exporters to evade anti-dumping or countervailing duties.

CITES: Convention on International Trade in Endangered Species. A multilateral environmental agreement.

Codex Alimentarius: FAO/WHO commission that deals with international standards on food safety.

commercial presence: Having an office, branch, or subsidiary in a foreign country. In services, "mode 3" *see* "modes of delivery".

Compensatory Adjustment: Measure taken, after withdrawing of a (tariff or other) concession, to compensate for such withdrawal (GATT Art. XXVIII).

Competition policy: Legislation and regulations designed to protect and stimulate competition in markets by outlawing anticompetitive business practices such as cartels, market sharing or price fixing.

compulsory licensing: For patents: when the authorities license companies or individuals other than the patent owner to use the rights of the patent — to make, use, sell or import a product under patent (i.e. a patented product or a product made by a patented process) — without the permission of the patent owner. Allowed under the WTO's TRIPS (intellectual property) Agreement provided certain procedures and conditions are fulfilled. *See also* government use.

Computable general equilibrium (CGE) models: Mathematical characterizations of the economy, used to predict the impact of policy changes taking into account both direct effects as well as indirect effects that work through labor and other markets.

Concertina approach: Method of reducing tariffs by lowering the highest rates first, then the next highest, etc.

Content, Domestic or Local: Rules establishing a minimum proportion (by value or volume) of a product that has must be domestically or locally produced in order to obtain a benefit (e.g., a tariff concession or permission to be offered for sale).

Contestability: A market is contestable if new suppliers can enter it easily. The threat of such entry is a discipline on the incumbent suppliers and can prevent prices from rising far above costs, because any excess profits will be rapidly followed by entry.

Contingent Protection: Trade barriers that are imposed if certain circumstances (contingencies) are met. Examples include anti-dumping or countervailing duties (to offset subsidies) and safeguards. *Also* called Administered Protection.

Copyright: Instrument to protect the right of authors of original works (print, audio, video, film, software) from unauthorized copying and use. Generally for the life of the author, plus 50 years.

Cotonou Agreement: Partnership agreement between the EU and the ACP countries signed in June 2000 in Cotonou, Benin. Replaces the Lomé Convention. Its main objective is poverty reduction, "to be achieved through political dialogue, development aid and closer economic and trade cooperation."

Counter trade: Form of barter committing the exporter to offset the value of his exports, in whole or in part, by imports from his trading partner. *Also see* Offset Requirement.

counterfeit: Unauthorized representation of a registered trademark carried on goods identical or similar to goods for which the trademark is registered, with a view to deceiving the purchaser into believing that he/she is buying the original goods.

countervailing measures: Action taken by the importing country, usually in the form of increased duties to offset subsidies given to producers or exporters in the exporting country.

Credit (for autonomous liberalisation): Mechanism through which developing countries are granted recognition in WTO talks for unilateral liberalization of the trade regime that has occurred in the period before negotiations commence. Past efforts by developing countries to establish such a mechanism were not successful.

CTD: The WTO Committee on Trade and Development.

CTE: The WTO Committee on Trade and Environment.

CTG: Council for Trade in Goods — oversees WTO agreements on goods, including the ATC.

Customs Duty: Charge levied on imports and listed in importing country's tariff schedules. Duties may be specific or ad valorem or a combination of the two (ad valorem with a specific minimum, or the greater of the two).

customs union: Members apply a common external tariff (e.g. the European Union).

Customs Valuation: Establishment, according to defined criteria, of the value of goods for the purpose of levying ad valorem customs duties on their importation.

D

decoupled income support: Support for farmers that is not linked to (is decoupled from) prices or production.

Deep integration: Inter-governmental cooperation in designing and applying domestic policies such as taxes, health and safety regulations, and environmental standards. May involve either harmonization of policies or mutual recognition; generally occurs in the context of regional integration agreements.

deficiency payment: A type of agricultural domestic support, paid by governments to producers of certain commodities and based on the difference between a target price and the domestic market price or loan rate, whichever is the less.

Degressivity: Mechanism to ensure that the application of a measure gradually becomes less severe over time. For example, a tariff set at 50 percent that is reduced by 10 percentage points each year and becomes zero in year 5.

de minimis: Minimal amounts of domestic support that are allowed even though they distort trade — up to 5 per cent of the value of production for developed countries, 10% for developing.

Differential and more favorable treatment: *See* Special and Differential Treatment and Enabling Clause.

Digits, digit-level (tariffs): A reference to the codes used to identify products. Categories of products are subdivided by adding digits. *See* Harmonized System.

distortion: When prices and production are higher or lower than levels that would usually exist in a competitive market.

domestic support: (Sometimes "internal support") In agriculture, any domestic subsidy or other measure which acts to maintain producer prices at levels above those prevailing in international trade; direct payments to producers, including deficiency payments, and input and marketing cost reduction measures available only for agricultural production.

DSB: Dispute Settlement Body — when the WTO General Council meets to settle trade disputes.

DSU: Dispute Settlement Understanding, the WTO agreement that covers dispute settlement — in full, the Understanding on Rules and Procedures Governing the Settlement of Disputes.

dumping: Occurs when goods are exported at a price less than their normal value, generally meaning they are exported for less than they are sold in the domestic market or third-country markets, or at less than production cost.

Duty-drawback Scheme: A duty drawback scheme (often administratively demanding) is a form of Border Tax Adjustment whereby the duties or taxes levied on imported goods are refunded, in whole or in part, when the goods are re-exported. The idea is to reduce the burden on exporters while maintaining tariffs for revenue or protective purposes. *See also* Temporary Admission.

E

EC: European Communities (official name of the European Union in the WTO).

Economic needs test: Measure requiring a demonstration that an import (of goods, but more usually, natural service providers) cannot be satisfied by local producers or service providers.

EEP: Export Enhancement Programme — programme of US export subsidies given generally to compete with subsidized agricultural exports from the EU on certain export markets.

Effective Rate of Protection: A measure of the protection afforded by an import restriction calculated as a percentage of the value added in the product concerned. Takes into account the protection on output and the cost raising effects of protection on inputs.

EFTA: European Free Trade Association.

electronic commerce: The production, advertising, sale and distribution of products via telecommunications networks.

Emergency Action: *See* Safeguard Measure.

Enabling Clause: 1979 GATT Decision on "Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries". One of the so-called Framework agreements, it enables WTO members, notwithstanding the nondiscrimination requirements, to "accord differential and more favorable treatment to developing countries, without according such treatment to other contracting parties." *See also* Generalized System of Preferences.

enquiry point: an official or office in a member government designated to deal with enquiries from other WTO members and the public on a subject such as technical barriers to trade or sanitary/phytosanitary measures.

Escape Clause: Clause in a legal text allowing temporary derogation from its provisions under certain specified emergency conditions. *See also* Safeguard Measure (GATT Art. XIX.)

EST: Environmentally-sound technology.

EST&P: Environmentally-sound technology and products.

EU: European Union, in the WTO officially called the European Communities.

Europe Agreement: Free trade agreement between the EU and various Central and Eastern European countries.

Everything But Arms (EBA): A 2001 EU initiative to grant least developed countries duty- and quota-free access for their exports.

ex ante, ex post: Before and after a measure is applied.

Exchange Control: Restrictions imposed by a government or central bank over the holding, sale, or purchase of foreign exchange. Typically used when the exchange rate

is fixed and the central bank is unable or unwilling to enforce the rate by exchange-market intervention.

Exhaustion: In intellectual property protection, the principle that once a product has been sold on a market, the intellectual property owner no longer has any rights over it. (A debate among WTO member governments is whether this applies to products put on the market under compulsory licences.) Countries' laws vary as to whether the right continues to be exhausted if the product is imported from one market into another, which affects the owner's rights over trade in the protected product. *See also* parallel imports.

export-performance measure: Requirement that a certain quantity of production must be exported.

Export Processing Zone (EPZ): A designated area or region in which firms can import duty-free as long as the imports are used as inputs into the production of exports. Traditional EPZs are fenced-in industrial estates specializing in manufacturing for exports. Modern ones have flexible rules that may permit domestic sales upon payment of duties when leaving the zone. EPZs generally *also* provide a liberal regulatory environment for the firms involved as well as infrastructure services.

Export promotion: A strategy for economic development that emphasizes support for exports through removal of anti-export biases created by policy. May be associated with policies such as duty drawbacks, export subsidies, marketing support or matching grants for exporters.

Externality: Occurs when the action of one agent (person, firm, government) affects directly other agents, making them better or worse off. Beneficial effects are called positive externalities; harmful ones negative externalities.

F

FDI: Foreign direct investment.

food security: Concept which discourages opening the domestic market to foreign agricultural products on the principle that a country must be as self-sufficient as possible for its basic dietary needs.

Foreign trade zone: An area within a country where imported goods can be stored or processed without being subject to import duty. *Also* called a "free zone," "free port," or "bonded warehouse." *See also* Export Processing Zone.

Framework Agreements: The GATT "Agreements Relating to the Framework for the Conduct of International Trade," resulting from the Tokyo Round: (1) Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries (the "Enabling Clause"); (2) Declaration on Trade Measures

Taken for Balance-of-Payments Purposes; (3) Safeguard Action for Development purposes; and (4) Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance.

Free on board (fob): The price of a traded good including its value and the costs associated with loading it on a ship or aircraft, but excluding international transportation (freight) costs, insurance and payments for other services involved in moving the good to the point of final consumption.

free trade area: Trade within the group is duty free but members set their own tariffs on imports from non-members (e.g. NAFTA).

free-rider: A casual term used to infer that a country which does not make any trade concessions, profits, nonetheless, from tariff cuts and concessions made by other countries in negotiations under the most-favoured-nation principle.

G

G7: Group of seven leading industrial countries: Canada, France, Germany, Italy, Japan, United Kingdom, United States.

G77: Group of developing countries set up in 1964 at the end of the first UNCTAD (originally 77, but now more than 130 countries).

G8: G7 plus Russia.

G20: International forum of finance ministers and central bank governors representing 19 countries plus the EU. Created in 1999 by the G7 with the aim to promote discussion, study and review of policy issues among industrialized and emerging market countries to promote international financial stability. The Managing Director of the IMF, the President of the World Bank, and the Chairpersons of the International Monetary and Financial Committee and Development Committee of the IMF and World Bank participate in G20 deliberations.

G24: Established in 1971, an inter-governmental group of 24 developing countries that has the objective to concert the position of the developing countries on monetary and development finance issues. The only formal developing country grouping within the IMF and World Bank. Meets twice a year, preceding the Spring and Fall meetings of the two institutions.

GATS: The WTO's General Agreement on Trade in Services.

GATT: General Agreement on Tariffs and Trade, which has been superseded as an international organization by the WTO. An updated General Agreement is now the WTO agreement governing trade in goods. **GATT 1947:** The official legal term for the old (pre-1994) version of the GATT. **GATT 1994:** The official legal term for new version of the General Agreement, incorporated into the WTO, and including GATT 1947.

general obligations: Obligations which should be applied to all services sectors at the entry into force of the GATS agreement.

generic: Copies of a patented drug, or of a drug whose patent has expired (sometimes *also* related to trademarks).

geographical indications: Place names (or words associated with a place) used to identify products (for example, "Champagne", "Tequila" or "Roquefort") which have a particular quality, reputation or other characteristic because they come from that place.

government use: For patents: when the government itself uses or authorizes other persons to use the rights over a patented product or process, for government purposes, without the permission of the patent owner. *See also* compulsory licensing.

Graduation: Concept linking the rights and obligations of a developing country to its level of development. Referred to in WTO Trade Policy Review Mechanism. Generally used in the context of GSP and similar types of preferential treatment of low income countries as a mechanism or set of criteria to determine when countries cease to be eligible for preferences.

Grandfather Clause: A clause exempting signatories from certain treaty obligations for legislation or regulations that were adopted before accession to the treaty and that are inconsistent with the treaty.

Gray-Area Measure: Measure whose conformity with contractual obligations is unclear: for example, voluntary export restraints under pre-WTO rules of the GATT.

green box: Domestic support for agriculture that is allowed without limits because it does not distort trade, or at most causes minimal distortion.

Green room: Used to describe discussions in the WTO among a subset of countries, generally the major OECD members and a small number of developing countries.

GRULAC: Informal group of Latin-American members of the WTO.

GSP: Generalized System of Preferences — programmes by developed countries granting preferential tariffs to imports from developing countries.

GTAP: The Global Trade Analysis Project, based at Purdue University in the United States. It provides data and models for computable general equilibrium modeling.

H

Harmonized System: An international nomenclature developed by the World Customs Organization, which is arranged in six-digit codes allowing all participating countries to classify traded goods on a common basis. Beyond the six-digit level, countries are free to introduce national distinctions for tariffs and many other purposes.

harmonizing formula: Used in tariff negotiations for much steeper reductions in higher tariffs than in lower tariffs, the final rates being "harmonized" i.e. closer together.

HIPC: Highly Indebted Poor Countries Initiative. An agreement among official creditors to help the most heavily indebted countries to obtain debt relief.

HLM: WTO High-Level Meeting for least-developed countries, held in October 1997 in Geneva.

I

Impairment: Damage to, or weakening of, benefits accruing under contractual rights and obligations (GATT Art. XXIII).

Import Substitution: Theory of and approach to development that focuses on providing domestic substitutes for all imported manufactures via trade protection and various types of industrial policies.

Infant Industry: Infant industry arguments suggest that new (non-traditional) industries must be protected from import competition while they are establishing themselves. This is a so-called 'second-best' argument in that it does not address the fundamental market failures that cause industries to fail to develop (such as financial market imperfections).

initial commitments: Trade liberalizing commitments in services which members are prepared to make early on.

integration programme: In textiles and clothing, the phasing out of Multifibre Arrangement restrictions in four stages starting on 1 January 1995 and ending on 1 January 2005.

Integrated Framework for Trade-related Technical Assistance (IF): Joint activity and donor-financed trust fund managed by six agencies (IMF, ITC, UNCTAD, UNDP, World Bank and WTO) to work with LDCs to undertake diagnostic studies aimed at assisting countries to identify key constraints to better integration into the world economy and to provide follow-up trade-related technical and financial assistance.

intellectual property rights: Ownership of ideas, including literary and artistic works (protected by copyright), inventions (protected by patents), signs for distinguishing goods of an enterprise (protected by trademarks) and other elements of industrial property.

internal support: *See* "domestic support" (agriculture).

International Office of Epizootics: Deals with international standards concerning animal health.

Intra-industry trade: Trade in which a country both exports and imports goods that are classified to be in the same industry.

IPRs: Intellectual property rights.

ITA II: Negotiations aimed at expanding ITA's product coverage.

ITA: Information Technology Agreement, or formally the Ministerial-Declaration on Trade in Information Technology Products.

ITC: The International Trade Centre, originally established by the old GATT and is now operated jointly by the WTO and the UN, the latter acting through the UN Conference on Trade and Development (UNCTAD). Focal point for technical cooperation on trade promotion of developing countries.

L

Labeling: Requirement, either mandatory or voluntary, to specify whether a product satisfies certain conditions relating to the process by which it was produced.

LCA: Life cycle analysis — a method of assessing whether a good or service is environmentally friendly.

LDCs: Least-developed countries.

Licensing (of imports or exports): Practice requiring approval to be granted by the relevant government authority, or by a body designated by such authority, as a prior condition to importing or exporting.

- Automatic licensing: where approval is freely granted – for example, licensing for keeping statistical records.
- Nonautomatic licensing: where approval is not freely granted. This may be used as a restriction itself, or it may be used to administer a quota. The license may be subject to certain conditions being met: for example, a requirement to export; the use to which the imported good is to be put; the purchase of a specified quantity of the domestically produced like product; or the availability on the domestic market of the domestically produced like product.
- Discretionary licensing: nonautomatic licensing (*see* above).

Linking Scheme: An import licensing requirement that forces an importer to purchase specified amounts of the same type of product from domestic producers before they can apply for import licenses. An example is a two-tier quota allocation system for licenses in which obtaining a license to buy or sell on a market is linked to the amount bought or sold in a second market.

Lisbon Agreement: Treaty, administered by the World Intellectual Property

Organization (WIPO), for the protection of geographical indications and their international registration.

local-content measure: Requirement that the investor purchase a certain amount of local materials for incorporation in the investor's product.

M

Madrid Agreement: Treaty, administered by the World Intellectual Property Organization (WIPO), for the repression of false or deceptive indications of source on goods.

MAI: Multilateral Agreement on Investment. Effort by the OECD in the late 1990s to establish a set of disciplines on investment-related disciplines. Negotiations failed and were suspended in 1998.

mailbox: In intellectual property, refers to the requirement of the TRIPS Agreement applying to WTO members which do not yet provide product patent protection for pharmaceuticals and for agricultural chemicals. Since 1 January 1995, when the WTO agreements entered into force, these countries have to establish a means by which applications of patents for these products can be filed. (An additional requirement says they must *also* put in place a system for granting "exclusive marketing rights" for the products whose patent applications have been filed).

Market Access: Refers to the conditions under which imports compete with domestically produced substitutes. These are determined by the extent to which foreign goods are confronted with discriminatory taxes and other regulations.

Markup: A measure of the difference between unit price of a good and its marginal cost of production. In WTO terms sometimes used to indicate the extent to which an applied tariff exceeds the bound rate.

Matching grant: Subsidy that is conditional on a co-payment or contribution by an industry or enterprise.

Maximum (Minimum) Price System (for imports): Price(s) decreed by the authorities of the importing country and above (below) which price(s) imports may not enter the domestic market. Actual import prices below the decreed minimums trigger a protective action, such as the imposition of additional duties or of a quantitative restriction. Different terms are used in different countries and different sectors: basic import price, minimum import price, reference price, and trigger price.

MEA: Multilateral environmental agreement.

Members: WTO governments (first letter capitalized, in official WTO style).

MERCOSUR: Argentina, Brazil, Paraguay and Uruguay.

metadata: Explanatory notes and other technical details for statistical tables (literally, a set of data that describes and gives information about other data).

MFA: Multi-fibre Arrangement (1974-94) under which countries whose markets are disrupted by increased imports of textiles and clothing from another country were able to negotiate quota restrictions.

MFN: Most-favoured-nation treatment (GATT Article I, GATS Article II and TRIPS Article 4), the principle of not discriminating between one's trading partners.

MFN: (most-favoured-nation) tariff: Normal non-discriminatory tariff charged on imports (excludes preferential tariffs under free trade agreements and other schemes or tariffs charged inside quotas).

modality: A way to proceed. In WTO negotiations, modalities set broad outlines — such as formulas or approaches for tariff reductions — for final commitments.

Mode of supply: Term used in the GATS context to identify how a service is provided by a supplier to a buyer.

modes of delivery: How international trade in services is supplied and consumed. Mode 1: cross border supply; mode 2: consumption abroad; mode 3: foreign commercial presence; and mode 4: movement of natural persons.

Montreal Protocol: A multilateral environmental agreement dealing with the depletion of the earth's ozone layer.

multifunctionality: Idea that agriculture has many functions in addition to producing food and fibre, e.g. environmental protection, landscape preservation, rural employment, food security, etc. *See* non-trade concerns.

multi-modal: Transportation using more than one mode. In the GATS negotiations, essentially door-to-door services that include international shipping.

Mutual Recognition: The acceptance by one country of another country's certification that a product has satisfied a product standard. Often based on formal agreements between countries if the standards are mandatory.

N

NAFTA: North American Free Trade Agreement, comprising Canada, Mexico and the US.

national schedules: In services, the equivalent of tariff schedules in GATT, laying down the commitments accepted — voluntarily or through negotiation — by WTO members.

national treatment: The principle of giving others the same treatment as one's own nationals. GATT Article 3 requires that imports be treated no less favourably than the

same or similar domestically-produced goods once they have passed customs. GATS Article 17 and TRIPS Article 3 *also* deal with national treatment for services and intellectual property protection.

natural persons: People, as distinct from juridical persons such as companies and organizations.

Necessity test: Procedure to determine whether a policy restricting trade is necessary to achieve the objective that the measure is intended to attain.

Negative list: In an international agreement, a list of those items, entities, products, etc. to which the agreement will not apply, the commitment being to apply the agreement to everything else. Contrasts with Positive List.

Nominal rate of protection: The proportion by which the (tariff-inclusive) internal price of an import exceeds the border or world price. *See also* Effective Rate of Protection.

non-agricultural products: In the non-agricultural market access negotiations, products not covered by Annex 1 of the Agriculture Agreement. Fish and forestry products are therefore non-agricultural, along with industrial products in general.

non-trade concerns: Similar to multifunctionality. The preamble of the Agriculture Agreement specifies food security and environmental protection as examples. *Also* cited by members are rural development and employment, and poverty alleviation.

Normal Value: Price charged by an exporting firm in its home market. Used to compare with the price charged by the firm on an export market to determine if there is dumping. (GATT Art. VI). *See also* Dumping.

notification: A transparency obligation requiring member governments to report trade measures to the relevant WTO body if the measures might have an effect on other members.

NTBs: Non-tariff barriers, such as quotas, import licensing systems, sanitary regulations, prohibitions, etc. Same as "non-tariff measures".

NTMs: Non-tariff measures, such as quotas, import licensing systems, sanitary regulations, prohibitions, etc. Same as "non-tariff barriers".

nuisance tariff: Tariff so low that it costs the government more to collect it than the revenue it generates. Sometimes, a tariff that does not have any protective effect — some countries defend this as necessary in order to raise revenues.

nullification and impairment: Damage to a country's benefits and expectations from its WTO membership through another country's change in its trade regime or failure to carry out its WTO obligations.

O

Offset Requirement: Requirement, stipulated by the authorities of the importing

country, that exporters to that country compensate for their exports by, say, purchasing products of the importing country or investing in the importing country. *Also see* Counter trade.

offer: In a negotiation, a country's proposal for its own further liberalization, usually an offer to improve access to its markets.

P

panel: In the WTO dispute settlement procedure, an independent body is established by the Dispute Settlement body, consisting of three experts, to examine and issue recommendations on a particular dispute in the light of WTO provisions.

Para Tariff: Charges on imports that act as a tariff but are not included in country's tariff schedule. Examples include a statistical tax, stamp fees, etc.

parallel imports: When a product made legally (i.e. not pirated) abroad is imported without the permission of the intellectual property right-holder (e.g. the trademark or patent owner). Some countries allow this, others do not.

Paris Convention: Treaty, administered by the World Intellectual Property Organization (WIPO), for the protection of industrial intellectual property, i.e. patents, utility models, industrial designs, etc.

Patent: A right granted to its owner to exclude all others from making, selling, importing or using the product or process described in the patent for a fixed period of time, generally 20 years. To be patentable, inventions have to be novel, non-obvious, and be useful or have industrial applicability.

peace clause: Provision in Article 13 of the Agriculture Agreement saying agricultural subsidies committed under the agreement cannot be challenged under other WTO agreements, in particular the Subsidies Agreement and GATT. Expired at the end of 2003.

Phytosanitary Regulation: Pertaining to the health of plants. *See* SPS Measure.

piracy: Unauthorized copying of materials protected by intellectual property rights (such as copyright, trademarks, patents, geographical indications, etc) for commercial purposes and unauthorized commercial dealing in copied materials.

Plurilateral agreement: In WTO, an agreement to which membership is voluntary, dealing with an issue that is not covered by the WTO. In 2002 there were two plurilateral agreements—on civil aircraft policies and government procurement.

Positive List: In an international agreement, a list of those items, entities, products, etc. to which the agreement will apply, with no commitment to apply the agreement to anything else.

Poverty Reduction Strategy Paper (PRSP): Document describing a country's macroeconomic, structural and social policies and programs to promote growth and reduce poverty, as well as associated external financing needs. PRSPs are prepared by governments through a participatory process involving civil society and development partners, including the World Bank and IMF, and provide the basis for concessional lending and debt relief under the enhanced HIPC initiative.

PPM: Process and production method.

Precautionary principle: Policy under which measures are motivated by the possibility that use of certain technologies (e.g., biotechnology, genetically modified organisms, pesticides) could be harmful to human or animal health and safety or the environment, although there is no certainty to that effect.

Predatory pricing: Action by a firm to lower prices so much that rival firms are driven out of business, after which the firm raises prices again to exploit the resulting monopoly power.

Preference: Preferential treatment. In GATT terms, this represents a derogation, in the sense of treatment that is more favorable than MFN. *See also* Generalized System of Preferences and Special and Differential Treatment.

Price discrimination: The practice of charging different customers different prices for the same good in order to exploit their different degrees of enthusiasm for it – for example, lower off-peak fares exploit workers' need to travel in the rush hour, while allowing less urgent personal travel to take place at other times. When this occurs internationally and the lower price is charged for export, it is called dumping.

price undertaking: Undertaking by an exporter to raise the export price of the product to avoid the possibility of an anti-dumping duty.

Prisoner's dilemma: A situation where agents with perfect information that act rationally (i.e. pursue their "selfish" best interests) are confronted with a set of payoffs (or rewards) in which not cooperating is the dominant strategy, even though cooperation would in principle increase their joint payoffs.

Producer support estimate: A measure of the aggregate value of the gross transfers from consumers and taxpayers to farmers due to policy measures. *Also* called producer subsidy equivalent.

product-mandating: Requirement that the investor export to certain countries or region.

Protocol of Accession: Legal document recording the conditions and obligations under which a country accedes to an international agreement or organization.

protocols: Additional agreements attached to the GATS. The Second Protocol deals with the 1995 commitments on financial services. The Third Protocol deals with movement of natural persons.

prudence, prudential: In financial services, terms used to describe an objective of market regulation by authorities to protect investors and depositors, to avoid instability or crises.

PSI: Preshipment inspection — the practice of employing specialized private companies to check shipment details of goods ordered overseas — i.e. price, quantity, quality, etc.

Q

QRs: Quantitative restrictions — specific limits on the quantity or value of goods that can be imported (or exported) during a specific time period.

Quad: Canada, EU, Japan and the United States.

Quantitative Restriction or Quota: Measure restricting the quantity of a good imported (or exported). Quantitative restrictions include quotas, nonautomatic licensing, mixing regulations, voluntary export restraints, and prohibitions or embargoes.

- Global Quota: quota specifying the total volume, or value, of the product to be imported (exported) without regard to the country or countries of origin (destination) of the product.
- Bilateral quota: quota applied to imports from (exports to) a specific country.
- Quota by country: quota which not only specifies the total volume, or value, of the product to be imported (exported), but *also* allocates the trade between the various countries of origin (destination).

Quota rent: The economic rent received by the holder of a right to import under a quota. Equals the domestic price of the imported good, net of any tariff, minus the world price, times the quantity of imports.

R

Real exchange rate: The nominal exchange rate adjusted for inflation. Unlike most other real variables, this adjustment requires accounting for price levels in two currencies. The real exchange rate is: $R = EP^*/P$ where E is the nominal domestic-currency price of foreign currency, P is the domestic price level, and P* is the foreign price level. Equivalent to the real price of foreign goods; i.e., the quantity of domestic goods needed to purchase a unit of foreign goods. *Also* defined as the relative price of traded goods in terms of non-traded goods.

reform process/programme: The Uruguay Round Agriculture Agreement starts a reform process. It sets out a first step, in the **process**, i.e. a **programme** for reducing

subsidies and protection and other reforms. Current negotiations launched under Article 20 are for continuing the reform **process**.

regionalization: Recognition that an exporting region (part of a country or a border-straddling zone) is disease-free or pest-free (or has a lower incidence).

Remedy: Legal term to describe a measure recommended by a WTO dispute settlement panel that aims to bring the policies of a member found to have violated WTO rules or disciplines into compliance with its obligations.

Request-Offer Procedure: Negotiating procedure based on the tabling, by each party, of a list of concessions requested of other parties, followed by an offer list of the concessions that could be granted if its request were met.

Retaliation: Imposition of a trade barrier in response to another country increasing its level of trade restrictions.

Revealed Comparative Advantage (RCA): The ratio of a country's exports of a good to the world's exports of that good divided by that country's share of exports of manufactures in the world exports of manufactures. The index for country i good j is $RCA_{ij} = 100(X_{ij} / X_{wj}) / (X_{it} / X_{wt})$ where X_{ij} is exports by country i (w =world) of good j (t =total for all goods). A value of the index above (below) one, is interpreted as a revealed comparative advantage (comparative disadvantage) for the good.

Rollback: The phasing out of measures inconsistent with the provisions of an agreement.

Rome Convention: Treaty, administered by the World Intellectual Property Organization (WIPO), United Nations Educational, Scientific and Cultural Organization (UNESCO) and International Labour Organization (ILO), for the protection of the works of performers, broadcasting organizations and producers of phonograms.

Round: In WTO context, a multilateral trade negotiation. There have been 8 rounds: Geneva (1947), Annecy (1949), Torquay (1950-1), Geneva (1955-6), Dillon (1960-1), Kennedy (1963-7), Tokyo (1973-9) and Uruguay (1986-94). A ninth multilateral negotiation was launched in Doha, Qatar at the end of 2001.

rules of origin: Laws, regulations and administrative procedures which determine a product's country of origin. A decision by a customs authority on origin can determine whether a shipment falls within a quota limitation, qualifies for a tariff preference or is affected by an anti-dumping duty. These rules can vary from country to country.

S

S&DT: (Sometimes "SDT") "Special and differential treatment" provisions for developing countries. Contained in several WTO agreements.

SACU: Southern African Customs Union comprising Botswana, Lesotho, Namibia, South Africa and Swaziland.

safeguard measures: Action taken to protect a specific industry from an unexpected build-up of imports — generally governed by Article 19 of GATT. The Agriculture Agreement and Textiles and Clothing Agreement have different specific types of safeguards: "**special safeguards**" in agriculture, and "**transitional safeguards**" in textiles and clothing.

schedule: In general, a WTO member's list of commitments on market access (bound tariff rates, access to services markets). Goods schedules can include commitments on agricultural subsidies and domestic support. Services commitments include bindings on national treatment. *Also:* "schedule of concessions", "specific commitments".

schedule of concessions: List of bound tariff rates.

Second-best argument (for protection): Any argument for protection that can be countered by pointing to a less costly policy that would achieve the same desired result. *Also* refers to rationales for protection to partially correct a distortion in the economy when the first-best policy for that purpose is not available. For example, if domestic production generates a positive externality and a production subsidy to internalize it is not available, then a tariff may be second-best optimal.

Singapore issues: Four issues introduced to the WTO agenda at the December 1996 Ministerial Conference in Singapore: **trade and investment, trade and competition policy, transparency in government procurement, and trade facilitation.**

Specificity: A policy measure that applies to one or a subset of enterprises or industries as opposed to all industries.

special safeguard: Temporary increase in import duty to deal with import surges or price falls, under provisions that are special to the Agriculture Agreement.

specific commitments: *See* "schedule".

specific tariff: A tariff rate charged as fixed amount per quantity such as \$100 per ton. *See* "ad valorem tariff".

SPS: Sanitary and Phytosanitary measures or regulations — implemented by governments to protect human, animal and plant life and health, and to help ensure that food is safe for consumption.

Standard: Rule, regulation or procedure specifying characteristics that must be met by a product (such as dimensions, quality, performance, or safety). When these put foreign producers at a disadvantage, they may constitute a nontariff barrier. *See also* Technical Barrier to Trade.

State Trading: Trade by a government agency or enterprise or by an enterprise to which the government has granted exclusive or special privileges in respect of

international trade. State trading does not necessarily involve a monopoly or quantitative restriction of trade and does not require state ownership (GATT Art. XVII).

Strategic trade policy: The use of trade policies to alter the outcome of international competition in a country's favor, usually by allowing its firms to capture a larger share of industry profits.

Structural Adjustment: Process of reallocating resources and changing the structure of production and employment of a national economy to reflect changing economic policies or trading conditions.

subsidy: There are two general types of subsidies: export and domestic. An export subsidy is a benefit conferred on a firm by the government that is contingent on exports. A domestic subsidy is a benefit not directly linked to exports.

swing: In textiles and clothing, when an exporting country transfers part of a quota from one product to another restrained product.

T

tariff binding: Commitment not to increase a rate of duty beyond an agreed level. Once a rate of duty is bound, it may not be raised without compensating the affected parties.

tariff escalation: Higher import duties on semi-processed products than on raw materials, and higher still on finished products. This practice protects domestic processing industries and discourages the development of processing activity in the countries where raw materials originate.

Tariff Equivalent: Measure of the protective effect of an NTB—the tariff that would have the exact same effect on imports as the NTB.

Tariff line (TL in the tables): A product, as defined by a system of code numbers for tariffs.

tariff peaks: Relatively high tariffs, usually on "sensitive" products, amidst generally low tariff levels. For industrialized countries, tariffs of 15% and above are generally recognized as "tariff peaks".

tariff quota: When quantities inside a quota are charged lower import duty rates, than those outside (which can be high).

tariffication: Procedures relating to the agricultural market-access provision in which all non-tariff measures are converted into tariffs.

tariffs: Customs duties on merchandise imports. Levied either on an **ad valorem** basis (percentage of value) or on a **specific basis** (e.g. \$7 per 100 kgs.). Tariffs give price advantage to similar locally-produced goods and raise revenues for the government.

TBT: The WTO Agreement on Technical Barriers to Trade.

Technical Regulation: A mandatory requirement or standard specifying the characteristics that an imported product must meet. Usually aimed to protect public health or safety. *See* Technical Barrier to Trade.

Temporary Admission: Customs regime under which firms may import intermediates duty free if use in export production, and are required to document export that imports have been used for this purpose. *See also* Duty Drawback Scheme.

Terms of Trade: The price of a country's exports relative to the price of its imports.

TMB: The Textiles Monitoring Body, consisting of a chairman plus 10 members acting in a personal capacity. Until expiry of the ATC on 1 January 2005 it saw to the implementation of commitments under this agreement.

TPRB, TPRM: The **Trade Policy Review Body** is General Council operating under special procedures for meetings to review trade policies and practices of individual WTO members under the **Trade Policy Review Mechanism**.

Trade capacity: The supply-side ability (capacity) of a country to benefit from the opportunities offered by the world market and MFN or preferential access to markets.

Trade creation: Occurs when liberalization results in imports displacing less efficient local production and/or expanding consumption that was previously thwarted by artificially high prices due to protection.

Trade diversion: Occurs when a trade reform discriminates between different trading partners and a less efficient (higher cost) source displaces a more efficient (lower cost) one. Can arise whenever some preferred suppliers are freed from barriers but others are not.

trade facilitation: Removing obstacles to the movement of goods across borders (e.g. simplification of customs procedures).

Trade integration: Process of reducing barriers to trade and increasing participation in the international economy through trade. *Also* used to describe efforts to integrate trade policy and strengthening of trade-related institutions into a country's overall development strategy.

trade-balancing measure: Requirement that the investor use earnings from exports to pay for imports.

Trade-related Investment Measure: Policy used by governments to influence the operations of foreign investors by establishing specific performance standards relating to trade. Examples are export performance requirements and local content rules (mandating that investors use a certain proportion of domestic inputs in their production).

Trade-related Technical Assistance: Services financed and/or provided by donors

and development agencies to strengthen trade-related institutions and build trade capacity in developing countries. *See also* Integrated Framework.

Transaction Value: Used for customs valuation purposes—the price of a good actually paid or payable.

transitional safeguard mechanism: In textiles and clothing, allows members to impose restrictions against individual exporting countries if the importing country can show that both overall imports of a product and imports from the individual countries are entering the country in such increased quantities as to cause — or threaten — serious damage to the relevant domestic industry.

Transparency: Degree to which trade policies and practices, and the process by which they are established, are open and predictable.

TRIMs: Trade-related investment measures (note small "s").

TRIPS: Trade-Related Aspects of Intellectual Property Rights (note capital "S").

TRTA: *See* Trade-related Technical Assistance.

U

UNCITRAL: United Nations Centre for International Trade Law, drafts model laws such as the one on government procurement.

UNCTAD: The UN Conference on Trade and Development.

UPOV: International Union for the Protection of New Varieties of Plants (Union internationale pour la protection des obtentions végétales)

Uruguay Round: Multilateral trade negotiations launched at Punta del Este, Uruguay in September 1986 and concluded in Geneva in December 1993. Signed by Ministers in Marrakesh, Morocco, in April 1994.

V

Value added: The value of output minus the value of all inputs used in production. Equals, by definition, the contribution of, and payments to, primary factors of production (labor, capital and land).

variable levy: Customs duty rate which varies in response to domestic price criterion.

VRA, VER, OMA: Voluntary restraint arrangement, voluntary export restraint, orderly marketing arrangement. Bilateral arrangements whereby an exporting country (government or industry) agrees to reduce or restrict exports without the importing country having to make use of quotas, tariffs or other import controls.

W

waiver: Permission granted by WTO members allowing a WTO member not to comply with normal commitments. Waivers have time limits and extensions have to be justified.

Washington Treaty: Treaty for the protection of intellectual property in respect of lay-out designs of integrated circuits.

WCO: World Customs Organization, a multilateral body located in Brussels through which participating countries seek to simplify and rationalize customs procedures.

Welfare: Welfare is the "enjoyment" that consumers are inferred to gain from their consumption. While welfare cannot be measured directly, economists often use a measure of real income or purchasing power as a way of measuring welfare in money terms.

WIPO: World Intellectual Property Organization.

WITS: World Integrated Trade Solution—database and software package developed by UNCTAD and World Bank to allow analysis of market access conditions and the impact of own and partner country liberalization.

working party (accession): Group of WTO members negotiating multilaterally with a country applying to join with the WTO.

working party report (accession): Final document passed on to the General Council for approval, covering the applicant country's commitments on opening its markets and on applying WTO rules.