

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



**WTO AS A FRAMEWORK AGREEMENT AND CODE OF CONDUCT FOR
THE WORLD TRADE**

Prepared by:

**The AALCO Secretariat
29-C, Rizal Marg,
Chanakyapuri Diplomatic Enclave
New Delhi– 110021
(INDIA)**

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WTO AS A FRAMEWORK AGREEMENT AND CODE OF CONDUCT FOR THE WORLD TRADE

I. Introduction

A. Background

1. At the Thirty-Fourth Session of the AALCO (1995) held at Doha, Qatar, the item “WTO as a Framework Agreement and Code of Conduct for the World Trade” was for the first time introduced in the Agenda of AALCO. Thereafter, this item continued to remain on the agenda of the Organization and was deliberated upon during the subsequent sessions. At these sessions, the Secretariat was directed to monitor the development related to the WTO, particularly the relevant legal aspects of dispute settlement mechanism.¹

2. In fulfillment of this mandate, the Secretariat had been preparing reports and presenting it to the Member States for their consideration and deliberation. In furtherance of its work programme, the AALCO in cooperation with the Government of India also convened a two-day seminar on ‘Certain Aspects of the functioning of the WTO Dispute Settlement Mechanism and other Allied Matters’ at New Delhi (1998). Further, at the Forty-Second Session held in Seoul (2003), the Secretariat presented a Special Study on ‘Special and Differential Treatment under WTO Agreements’.

3. At the Forty-Eighth Session held in Putrajaya, Malaysia from 17-20 August 2009, the Secretariat provided an update on the Doha Development Round of Negotiations with focus on the negotiation on Agriculture, Non-Agriculture Market Access (NAMA) and the various proposals submitted for the Review of the Dispute Settlement Understanding. In that Session, the Organization directed the Secretariat to continue to monitor and report on the Doha Round of Negotiations, particularly the outcome of the review process concerning the WTO Dispute Settlement Understanding.²

4. This study provides an updates on the Doha Development Round of Negotiations with focus on the negotiation on Agriculture, Non-Agriculture Market Access (NAMA) and the Review of the Dispute Settlement Understanding. A brief report on the deliberations on this item at the Forty-Eighth Annual Session of AALCO and the “Basic Course on the World Trade Organization” organized by the Centre for Research and Training of AALCO from 1-5 February 2010 are also included.

¹ Thirty-eight AALCO Member States are Members of WTO. They are: Arab Republic of Egypt, Bahrain, Bangladesh, Brunei Darussalam, Botswana, Cameroon, Cyprus, Gambia, Ghana, India, Indonesia, Japan, Jordan, Kenya, Kuwait, Malaysia, Mauritius, Mongolia, Myanmar, Nepal, Nigeria, Oman, Pakistan, People’s Republic of China, Philippines, Qatar, Republic of Korea, Saudi Arabia, Senegal, Sierra Leone, Singapore, South Africa, Sri Lanka, Tanzania, Thailand, Turkey, Uganda, and United Arab Emirates.

² AALCO/RES/48/S 13, dated 20 AUGUST 2009

B. Deliberations at the Forty-Eighth Session of AALCO, Putrajaya, Malaysia (2009)

5. **Dr. Xu Jie, Deputy Secretary-General, AALCO** in his introductory statement highlighted that since the Hong Kong Ministerial Declaration 2005, the Members have been trying to achieve the degree of convergence required to reach a final deal, particularly on the negotiations on Agriculture and Non Agricultural Market Access. He invited the attention of the delegates to the World Trade Report of 2009, in which the WTO examined the use of certain contingency measures, available to WTO Members in the import and export of goods. The fundamental reason for incorporating such provisions into trade agreements was for Governments to manage circumstances that could not be anticipated prior to their occurrence. The Report suggested that evidence could not preclude the possibility that such measures were sometimes used as a protectionist device. He proposed that taking into consideration the importance of the topic and the impact of the WTO Regime and the ongoing trade negotiations, on the Member States of AALCO, the AALCO Secretariat would be very much willing to undertake research studies, workshops/seminars and capacity building exercises for the officials and trade negotiators of the Member States, subject to the financial and material support from the Member States and international and regional organizations. The Secretariat believed that these initiatives would help the officials and trade negotiators of the Member States to gain more legal expertise to understand the various aspects of the WTO Regime. This would also help the developing and Least Developed Countries to get a rightful place in the world trading system.

6. The **Delegations of Japan, Sultanate of Oman, State of Kuwait, Nepal, Malaysia and Thailand** made their statements on the topic. One delegation explained the national legislative measures adopted by this country to implement the WTO regime. Another delegation was of the view that there was a need to clarify and improve certain elements of the Dispute Settlement Understanding (DSU). The delegation also supported the proposed enhancements to be made with respect to Special and Differential Treatment in WTO. One delegation pointed out that the participation of developing countries in WTO negotiations is vital as it would allow reflecting their concerns and positions in the international forum. Another delegation stated that as the Doha Round of Negotiations are entering the final stage, such questions as easing or lessening obligations or extending the time limit of implementation to developing countries would be important. The delegation stated that his country had been playing an important role by actively participating in the ongoing negotiations, by submitted concrete proposals on the DSU.

C. Basic Course on the World Trade Organization, 1-5 February 2010 (AALCO Headquarters, New Delhi)

7. The Centre for Research and Training (CRT) of AALCO successfully organized a five-day training programme “Basic Course on the World Trade Organization” from 1-5 February 2010. The inaugural session was held on 1st February 2010 at 4.30 PM. H.E. Prof. Rahmat bin Mohamad, Secretary-General, AALCO, welcomed all the participants

and highlighted the role and activities of AALCO and its training and research wing – CRT. Inaugural lecture was delivered by Professor B.S. Chimni, Jawaharlal Nehru University, New Delhi. Mr. Peter Pedersen, Counsellor, Council and TNC Division, World Trade Organization, also delivered a lecture on “Functioning of the WTO: An Insider’s Perspective” at the inaugural session.

8. Sixty seven participants representing twenty four countries, namely, India, People’s Republic of China, Afghanistan, Pakistan, Hashemite Kingdom of Jordan, Nigeria, Bangladesh, State of Qatar, Lesotho, Libya, Ghana, Sultanate of Oman, Zimbabwe, Mongolia, Burundi, Venezuela, Kenya, Nepal, Malaysia, State of Kuwait, Syria, Uganda, Mauritius and Brunei Darussalam attended the programme. Participants include, Diplomats, Officials, Law Teachers, Research Scholars and students.

9. Lectures on the following topics were delivered: An Introduction to the World Trade Organization; Functioning of the WTO: An Insider’s Perspective; An Introduction to the Trade Related Aspects of Intellectual Property Rights (TRIPS); TRIPS and Developing Countries: Some Implementation Issues; Trade and Environment Interface; An Introduction to Sanitary and Phytosanitary Measures (SPS) & Technical Barriers to Trade (TBT) Agreements; State-of-Play in the Doha Round: Main Issues and Challenges; WTO Dispute Settlement System; Special and Differential Treatment; and General Agreement on Trade in Services. Lectures were delivered by experts in the field of WTO from diverse backgrounds. Experts include, Professor B.S. Chimni, Professor of International Law, Jawaharlal Nehru University, New Delhi; Mr. Peter Pedersen, Counsellor, Council and TNC Division, World Trade Organization; Dr. V.G.Hegde, Associate Professor, Centre for International Legal Studies, Jawaharlal Nehru University, New Delhi; Dr. Archana Negi, Assistant Professor, Centre for International Politics, Organization and Disarmament, Jawaharlal Nehru University, New Delhi; Dr. Ravindra Pratap, Assistant Professor, Guru Gobind Singh Indraprastha University, New Delhi; and Dr. Arpita Mukherjee, Professor, Indian Council for Research on International Economic Relations (ICRIER), New Delhi.

10. The training programme concluded on 5th February 2010. H.E. Prof. Rahmat bin Mohamad, Secretary-General, AALCO distributed Certificate of completion to all the successful participants.

II. DEVELOPMENTS IN THE DOHA ROUND OF NEGOTIATIONS

A. General Overview

11. At the Fourth Ministerial Conference in Doha, Qatar, in November 2001, WTO member governments agreed to launch new trade negotiations. They also agreed to work on other issues, in particular the implementation of the current WTO agreements. The entire package is called the Doha Development Agenda (DDA). The negotiations take place in the Trade Negotiations Committee (TNC) and its subsidiaries, which are usually regular councils and committees meeting in ‘special session’ or specially created negotiating groups. The Chairs of the nine negotiating bodies report to the TNC, chaired

by the WTO Director-General, which coordinates their work. The following are the some of the subjects treated under the Doha Development Agenda:

- Agriculture
- Cotton
- Services
- Market Access for non-agricultural products (NAMA)
- Trade Related Intellectual Property Rights (TRIPS)
 - TRIPS and Public Health
 - TRIPS Non-violation and situation complaints
 - TRIPS, Biological Diversity and Traditional Knowledge
- WTO Rules: Subsidies
- WTO Rules: Regional Trade Agreements
- Dispute Settlement Understanding
- Trade and Environment
- Electronic Commerce
- Small economies
- Trade, debt and finance
- Trade and transfer of technology
- Technical cooperation and capacity building
- Least-developed countries
- Special and differential treatment
- Implementation-related issues and concerns
- Integrated Framework
- Commodity issues
- Coherence
- Aid for trade
- Implementation
 - GATT 1994
 - Sanitary and phytosanitary measures
 - Technical barriers to trade
 - Customs valuation (GATT Article VII)
 - Rules of origin
 - Cross-cutting issues
 - Outstanding implementation issues

12. The Fifth Ministerial Conference of the WTO held in Cancun in 2003, after intensive negotiations on Agriculture, NAMA, Development issues, and other issues, failed to adopt the Cancun Ministerial Declaration due to differences in interests dividing the developed and developing Members. The major stumbling block was the deadlock in negotiation of Agriculture and NAMA. The major breakthrough after Cancun failure came in the form of 'July 2004 Decision', which among others adopted a framework for the negotiation of agriculture. The 'July 2004 Decision' also adopted 'not so specific' modalities for the negotiation of NAMA. However, the July 2004 Decision only laid down the basic pillars and a 'framework' for conducting future talks, and negotiations on

modalities of substance, was left to be determined during the Sixth Ministerial Conference 2005 held in Hong Kong.

13. During the 2005 WTO Ministerial Conference, the most contentious issues before Ministerial Conference were the negotiations on Agriculture and Non-Agriculture Market Access (NAMA). The major outcome of the Ministerial Declaration *inter alia* were: elimination of agriculture export subsidies by 2013 and elimination of cotton export subsidies by 2006; reduce industrial tariff on the basis of a 'Swiss formula,' with an unspecified number of coefficients; duty and quota-free access for at least 97 percent of products originating from the least developed countries by 2008; and Trade Related Intellectual Property Rights (TRIPS) and Public health.

14. Subsequently, the Ministers had to suspend the negotiations at the end of July after an attempt to break the deadlock failed. The Director General reported to the General Council of the WTO that gaps remained too wide and the situation had become very serious. He noted that without the modalities in Agriculture and NAMA, it is not possible to finish the Round at the end of 2006. On 7 February 2007, after much effort, the negotiations were resumed fully across the board.³

15. In 6 December 2008, the Chairmen of both the Agriculture and NAMA negotiations circulated revised draft texts of Modalities. The current discussion is based on these negotiating texts.

16. In January 2009 the Director-General issued the first of a series of quarterly reports monitoring trade-related developments arising out of the global economic crisis, which saw the biggest drop in world trade in 60 years. WTO members broadly welcomed these reports as an opportunity for the organization to demonstrate its worth, not only as a negotiating forum, but as a bulwark against protectionism.

17. The TNC held four informal meetings in 2009 to hear reports from the various negotiating groups. Some progress was made on the Doha Round 'modalities' for opening markets for agricultural and industrial goods, intended to set the broad outlines – such as formulas or approaches for tariff reductions – for final commitments when the Round is concluded. Other negotiating groups also advanced. But the pace of the negotiations remained frustratingly slow.

18. In September 2009, the G-20 called for a WTO meeting to take stock of progress in the negotiations by the end of March 2010. However, these declarations of support for bringing the Doha Round to a speedy conclusion failed to translate into a breakthrough in the talks in Geneva.

19. The Seventh Ministerial Conference in Geneva at the end of 2009 provided an opportunity for ministers to exchange views on the WTO agenda, including the Doha

³ Report by the Chairman of the Trade Negotiations Committee, 7 February 2007, WTO General Council.

Round. There was strong convergence on the importance of trade and the Round in assisting economic recovery and the alleviation of poverty in developing countries.

20. Ministers stressed the centrality of the development dimension, including issues of specific concern to least-developed countries. They further reaffirmed the need to conclude the Doha Round in 2010 and for a stocktaking exercise in the first quarter. There was also broad support for building on progress made to date and not attempting to reopen issues that had been tentatively settled. Ministers pointed out that, while priority was being given to agriculture and NAMA, it remained important to advance in other areas on the agenda, including services, rules and trade facilitation.

21. Consistent high-level expressions of support for an early conclusion of the Doha Round failed to translate into the necessary breakthroughs in the detailed talks in Geneva. Nevertheless, useful technical work continued in the negotiating groups on agriculture and non-agricultural market access. Other negotiations also advanced. Against the backdrop of the global economic crisis, the WTO Director-General, who chairs the Trade Negotiations Committee, highlighted the significant contribution that a successful conclusion to the Round could make in combating recession and social instability.

22. Following the appointment in April 2009 of the new Chair, David Walker of New Zealand, the Agriculture Negotiating Group adopted a two-track work programme. The first track deals with highly technical issues concerning the base data needed to calculate tariff and subsidy reduction commitments and how to prepare and set out the schedules in which these commitments will be inscribed. The second track involves informal consultations on outstanding issues of substance in the draft modalities issued by the previous Chair of the agriculture negotiations in December 2008.

23. In the Negotiating Group on Non-Agricultural Market Access (NAMA), much of 2009 was devoted to discussion of non-tariff barriers to trade in industrial goods, such as incompatible technical standards that hinder imports. Negotiators also spent considerable time on the technical exercise of scheduling commitments. In addition, there were small group meetings to consider elimination of tariffs in a number of specific industrial sectors, led by the sponsors of these initiatives.

24. In other areas of the Doha Development Agenda, the Chairs continued their consultations with WTO members in various formats with a view to advancing the substantive work. A series of international gatherings in 2009 provided strong political support for the negotiations. Meetings of the G-20 underscored the need to reject protectionism and isolationism in times of financial uncertainty, and committed its members to strive for agreement on agriculture and NAMA modalities so as to conclude the Doha Round in 2010.

25. After a 'mini-ministerial' meeting in New Delhi urged an intensification of work in Geneva, the TNC in September decided to bring top officials from capitals for a week each month to give added impetus to the talks. This arrangement continued in 2010 in the run-up to a high-level 'stocktaking' meeting at the end of March.

B. Agriculture Negotiations

26. The Agreement on Agriculture aims to reform trade and to make WTO members' policies more market-oriented. The rules and commitments apply to the areas of market access, domestic support, export competition, as well as export restrictions and prohibitions.

27. At the end of 2008, the Chair of the Negotiating Group issued a further revision of the draft agriculture 'modalities' setting out the broad outlines for final commitments on cutting tariffs and subsidies for farm goods and indicating a number of flexibilities for developing countries and specific situations. The revision captured progress made during that year and highlighted the remaining gaps in positions of WTO members.

28. In 2009, agriculture negotiators made steady progress on technical tasks that would enable them to close gaps and put their Doha Round commitments into legally binding schedules. The work programme for the year followed two tracks. On one track, negotiators discussed the organization and presentation of data necessary to calculate commitments. On the other, the new Chair of the Negotiating Group, David Walker, held consultations with smaller groups of WTO members on issues that are bracketed (i.e. not yet agreed) or otherwise annotated in the agricultural draft modalities and associated documentation.

29. In the technical discussions, members focused on the development of electronic tables for data presentation that would make the future calculation of Doha Round commitments transparent and verifiable. Members also submitted national data essential for the calculation of base commitments, including data on the total value of agricultural production and domestic consumption. These submissions were then examined in data verification meetings.

30. The Chair's consultations covered the issues that remained unresolved in the December 2008 agriculture modalities texts, notably the so-called Special Safeguard Mechanism (SSM), which has been one of the most contentious subjects in the agriculture negotiations. The SSM would allow developing countries to raise tariffs temporarily in order to deal with import surges and falling prices, and there were constructive discussions on how to frame this mechanism to address the concerns of both importing and exporting members. Negotiators also had a useful dialogue on the issue of tropical products (i.e. a proposal to accelerate tariff reductions by developed countries on tropical products) and preference erosion (i.e. erosion of the value of trade preferences such as duty-free access to these products, enjoyed by some developing countries).

31. At each of the four meetings held in 2009, the Committee on Agriculture reviewed progress in the implementation of WTO members' commitments, on the basis

of their notifications and matters specifically raised under Article 18.6 of the Agreement on Agriculture. Among the issues raised in the committee were:

- ‘Underfill’ of certain tariff quotas (set import quantities allowed in at lower duty rates). If part of a tariff quota is unused, this may be due to supply and demand conditions or to alleged problems in administering the tariff quota;
- Recourse to special safeguard provisions (permitting a temporary increase in tariffs to deal with import surges or price falls) on certain products;
- Details of domestic support measures notified by various members;
- Details of certain programmes under the US Food, Conservation and Energy Act of 2008;
- Export subsidies and import measures on dairy products by Canada, the European Union and the United States;
- Clarifications concerning food aid operations by various members; and
- Revised EU commitments due to enlargement with new EU member states.

32. The committee’s eighth ‘transitional review’ of China’s accession commitments in September 2009 focused on value-added tax exemptions, transparency in the administration of tariff quotas, domestic policies supporting the pork industry and increasing government involvement in wholesale agricultural markets. In addition, the committee undertook a multilateral review of the implementation of the Republic of Korea’s commitments on minimum market access for rice, based on information covering the period 2005 to 2008.

33. In November 2009, the committee held its annual consultations on members’ participation in the normal growth of world trade in agricultural products, which took place within the framework of the disciplines on export subsidies. It was noted that agricultural exports of some WTO members and observers had grown fast enough to warrant their inclusion in the list of top exporters of certain products in 2007 (for example, coarse grains, sugar, bovine meat, skimmed and whole milk powder, and fruit and vegetables). The committee decided to review and update the list of ‘significant exporters’ that had been established in 1995.

34. Throughout 2009 the committee maintained a focus on three implementation-related issues for which it has responsibility under the Doha Development Agenda. These are: developing disciplines on export credits and other export financing measures; improving the effectiveness of the decision taken at the 1994 Marrakesh Ministerial Conference; and ensuring transparency in the administration of tariff quotas. A *Compendium of Documents on Implementation-Related Issues*, consolidating relevant

information pertaining to these three areas, was first circulated in March 2009 and updated in advance of each meeting of the committee.

35. In his report to the Trade Negotiations Committee (TNC), on 22 March 2010, Chairman of the Negotiation Group on Agriculture, H.E. Mr. David Walker, outlined the following important points.⁴ The objective of this work was to help Members build consensus towards concluding Modalities in Agriculture.

1. Cotton

36. Consultations confirm that not all Members are in a position to agree to the text as drafted but no new contributions, technical or substantive, have been forthcoming in consultations to date. All Members involved, however, have emphasised that they remain committed to finding a solution that addresses the issue of cotton "ambitiously, expeditiously and specifically" consistent with the commitments made at the Hong Kong Ministerial Conference in December 2005.

2. Sensitive Products-Designation

37. The annotation to paragraph 71 reads "Japan and Canada have declared themselves not to be in a position to agree to this [the right of developed country Members to designate up to 4 percent of tariff lines as "Sensitive Products"] limitation". Consultations confirm that Japan and Canada are still seeking flexibility to designate additional tariff lines under the "Sensitive Products" category. It remains to be seen whether Members are prepared to agree any further flexibility in designation of "Sensitive Products" beyond that already provided in paragraph 71 and, if so, what payment would be required for such designation.

3. Special Products

38. The annotation to paragraph 129 reads "A number of developing country Members have expressed reservations concerning the numbers specified in this paragraph, noting also that this may be affected by what is decided in other areas of the text". Consultations indicate that this annotation remains factually correct. Some Members expressed concerns about the potential export impacts of the treatment provided in paragraph 129. Other Members considered that the paragraph should be regarded as "stabilised".

C. Non-Agriculture Market Access (NAMA) Negotiations

39. The Negotiating Group on Non-Agricultural Market Access (NAMA) had a quieter year than usual in 2009 but some very useful work was undertaken in the area of

⁴ TN/DS/24, Report by the Chairman, H.E. Mr. David Walker, to the Trade Negotiations Committee for the Purpose of the TNC stocktaking exercise, 22 March 2010.

non-tariff barriers (NTBs) to imports of industrial goods. Negotiators also discussed preparation and presentation of the schedules that will contain each WTO member's legally binding NAMA commitments. The groups considering elimination of tariffs in specific industrial sectors continued technical work but there was no advance on the revised draft 'modalities' presented by the Chair, Luzius Wasescha (Switzerland), in December 2008. NTBs are any measures other than tariffs that protect domestic industry, and can range from stifling customs formalities to incompatible technical standards that keep imports out. As tariff protection has come down over the years, barriers to imports posed by non-tariff measures have become relatively more important. Initially, negotiators had expected to address NTBs in detail once the overall NAMA modalities were adopted. However, at the start of 2009, as the situation in relation to the modalities remained unclear, NTBs were identified as an area where useful work could be done in the interim.

40. Several dedicated sessions provided an opportunity for an exchange of questions and answers on various NTB proposals. Towards the end of 2009, these question-and-answer sessions were replaced by negotiations in smaller groups that focused on five proposals identified in the 2008 draft modalities text as meriting particular attention.

41. These relate to autos, electronics, remanufacturing, labelling of textiles, clothing, footwear and travel goods, and a mechanism for preventing and resolving NTB disputes. Two additional proposals submitted in 2009 were also included because they related to several of the earlier proposals. The Chair intends to hold consultations in 2010 on how to handle all other NTB proposals. The negotiating group also considered the preparation and presentation of the schedules where NAMA commitments will be inscribed. A workshop on electronic negotiating files (electronic schedules) was organized in July. This workshop was useful not only because it familiarized WTO members with the content of schedules but also because it demonstrated the complexity of the scheduling exercise.

42. Discussions on eliminating tariffs in 12 specific industrial sectors, including autos, chemicals, pharmaceuticals and electronics, continued to be led by the sponsors of these sectoral initiatives. During the first half of 2009, the sponsors undertook detailed technical work that would enable talks to proceed on the basis of factual numbers, sector-by-sector simulations, and country-by-country analysis. The second half of the year was dedicated to outreach activities by them. Other issues such as 'case-specific flexibilities' – requests by Argentina, the Bolivarian Republic of Venezuela and South Africa for additional flexibilities – remain pending. No substantive discussions were held on these requests during the year.

43. Since 1995, the committee has reviewed 2,615 notifications submitted by members. Of these, over 200 were submitted in 2009 but many notifications remain outstanding. The question of overdue notifications has received increased attention in the past few years. There has been an overall deterioration of the situation over time, with adverse consequences on both transparency and the committee's core monitoring function. Individual members have started regularly to express concerns, raising a record

number of specific concerns relating to outstanding notifications in 2009. There was a significant increase in the number of *new* notifications issued in 2009, which rose to 165 from 111 in 2007. The number of obligations covered by these notifications more than doubled, from 197 to 450. Members have undoubtedly made an effort to ‘catch up’ with their outstanding notification obligations, in particular by forwarding submissions that often covered multiple implementation years.

44. The committee launched a number of initiatives in 2009 aimed at improving information flow and capacity building in preparing and reviewing notifications. These included:

- Improving user access, through non-restricted documents, to members’ compliance status with their notification obligations, creating an electronic list of circulated notifications; and posting datasets on notified information (imports under tariff quotas, recourse to the special safeguard provisions, domestic support and export subsidies).
- Creating a Members’ Transparency Toolkit on the WTO website to facilitate the preparation and review of notifications, as well as an electronic subscription facility for unrestricted documents and a specific e-mail contact at the WTO for notification related queries.
- Organizing a workshop on agriculture notifications in Geneva in September 2009, back-to-back with the September regular session of the committee. The workshop focused on agriculture notification requirements and formats as well as related information needs. In view of the importance of technical and institutional capacity building, the organization of similar events has been included in the *Biennial Technical Assistance and Training Plan 2010–2011*. The committee will give priority in 2010 to: making public the compilations of written questions and written answers by members during the reviews of notifications; elaborating an *Agriculture Notifications Handbook*; and developing an e-learning module on agriculture notifications. It will also continue its discussion, begun in 2009, of ‘best practices’ with respect to the preparation and review of notifications and will undertake a review with a view to updating the list of ‘significant exporters’.

III. REVIEW OF THE DISPUTE SETTLEMENT UNDERSTANDING (DSU)

45. The General Council convenes as the Dispute Settlement Body (DSB) to deal with disputes arising from any WTO agreement that is covered by the *Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)*. The DSB has sole authority to establish dispute settlement panels, adopt panel and Appellate Body reports, maintain surveillance of the implementation of recommendations and rulings, and authorize suspension of concessions (trade sanctions) in the event of non-compliance.

46. In 2009, the total number of disputes brought to the Dispute Settlement Body (DSB) since the WTO's creation in 1995 topped 400. During the year, the DSB received 14 notifications from WTO members formally requesting consultations under the Dispute Settlement Understanding (DSU). It met 16 times in 2009, establishing 10 panels to adjudicate 13 new cases. (Where more than one complaint deals with the same matter, they are adjudicated by a single panel.) During 2009 the DSB also adopted four panel and/or Appellate Body reports in six cases, concerning four distinct matters, and two panel and/or Appellate Body reports relating to compliance, concerning a single matter. (Where more than one complaint is adjudicated by a single panel, it issues a separate report for each complaint.) Mutually agreed solutions, settlements or withdrawals were notified in three cases.

47. Since 1995, WTO members have initiated, on average, about 27 disputes each year under the provisions of the DSU. Of the 402 cases filed up to the end of 2009, roughly half were eventually settled directly between the parties following the consultations mandated by the DSU, without going into litigation. The vast majority of the remaining cases were settled satisfactorily through litigation. Director-General Pascal Lamy noted that "this is surely a vote of confidence in a system which many consider to be a role model for the peaceful resolution of disputes in other areas of international political or economic relations".

48. On 15 December 2009 the European Union concluded agreements with the United States and Latin American banana-producing nations intended to bring to an end the longest-running dispute in the WTO. The dispute concerned the preferential treatment that the European Union gave to the import of bananas from African, Caribbean and Pacific countries.

49. As of 31 December 2009, 402 disputes had been brought to the WTO, of which:

- 84 appear to have been resolved bilaterally (no outcome notified to the WTO)
- 95 were resolved bilaterally (outcome notified to the WTO)
- 23 were resolved bilaterally after a panel was established but before the panel was composed
- 14 are currently the subject of active consultations between the parties
- 186 went into litigation.

50. It may be recalled that a review of the DSU was initiated in the Dispute Settlement Body (DSB) of the WTO in 1997,⁵ which later become incorporated into the Doha Round of Negotiation during the Fourth Ministerial Conference of the WTO, held

⁵ It may be recalled that while adopting the 'Understanding on Rules and Procedures Governing the Settlement of Disputes' (hereafter "DSU"), the Ministerial Conference in 1994 had agreed through a Ministerial Decision, for a "complete review of the dispute settlement rules and procedures under the World Trade Organization within four years after the entry into force of the Agreement Establishing the World Trade Organization and to take a decision on the occasion, modify or terminate such dispute settlement rules and procedure."

in Doha, Qatar from 9 to 14 November 2001. The Ministers agreed that the negotiation process on improvements and clarifications of the DSU shall take place in the Special Session of the DSB and shall complete the review not later than May 2003. The Special Session of the DSB was established and number of formal and informal meetings were held. At these meetings, the work progressed from a general exchange of views to a discussion of conceptual proposals put forward by Members to an issue-by-issue thematic discussion.

51. The General Council at its meeting on 24 July 2003, agreed to extend the negotiations from 31 May 2003 to 31 May 2004. The work was not completed because of the failure of the Cancun Ministerial Conference. However, there was an agreement among Members that the Special Session needs more time to complete its work, on the understanding that all the existing proposals would remain under consideration and bearing in mind that these negotiations are outside the single undertaking. Accordingly, it was suggested that action be taken by the Trade Negotiation Committee and/or the General Council as appropriate, for the continuation of work in the Special Session. On 1 August 2004, as part of the “July 2004 Decision”, the General Council adopted this recommendation.

52. At the Hong Kong Ministerial Declaration, the Ministers took note of the progress made in the Dispute Settlement Understanding negotiations as reflected in the report by the Chairman of the Special Session of the Dispute Settlement Body to the Trade Negotiations Committee (TNC) and direct the Special Session to continue to work towards a rapid conclusion of the negotiations not later than December 2006. Since the Conference, the work in the Special Session of the DSB has continued to be primarily based on the efforts by Members to work among themselves, with a view to presenting improved draft legal text to the Special Session.

53. Negotiations towards improvement and clarification of the WTO’s Dispute Settlement Understanding (DSU) – the rules and procedures governing the settlement of disputes – continued in 2009. The Chair of the Dispute Settlement Body (DSB) Special Session conducted a series of consultations on the various issues contained in the draft text issued by him in July 2008, which WTO members had endorsed as a basis for further work in November 2008. Each week of consultations ended with a brief informal meeting of the DSB Special Session, where the Chair reported on progress and discussed future steps with the membership. The discussions in 2009 were useful in consolidating the basis of the work and in clarifying the issues under discussion. However, much work remains to be done to achieve convergence on improvements and clarifications to the DSU. In early 2010 the Chair would consult with members on how best to carry forward the negotiating process towards a rapid conclusion of the negotiations. These negotiations are part of the Doha Development Agenda but they are not part of the ‘Single Undertaking’ (a single package of about 20 subjects, to be signed eventually by each country with a single signature).

IV. COMMENTS AND OBSERVATIONS OF THE AALCO SECRETARIAT

54. “In terms of next steps in our process, there is wide recognition that where the gaps are clear, political decisions will be needed as part of the final package. Similarly, my contacts have shown that members agree that where the size of the gaps are less clear, further technical work will be required before moving towards political consideration. In other words, I believe we need a mix of technical and political preparations to start devising the contours of a package”, Mr. Pascal Lamy, Director-General of the World Trade Organization has clearly summarized the future course of action for the successful conclusion of the Doha Round. However, it may be noted that the interests of the Developing and Least Developed Countries shall be protected in the Doha Round of Negotiations. The Negotiations on Agriculture and NAMA remains central to the success of the negotiations.

55. The AALCO Secretariat urges AALCO Member States to actively participate in the Doha Round of Negotiations and make meaningful contributions for its successful conclusion. The Secretariat believes that consensus could be realized in all negotiating issues and the Members would be able to adopt the Doha Round results at the earliest if momentum is kept.

56. In order to enable the developing and Least Developed Countries to get a rightful place in the world trading system and taking into consideration the importance of the topic and the impact of the WTO Regime and the ongoing trade negotiations, on the Member States of AALCO, the AALCO Secretariat would be very much willing to undertake research studies, workshops/seminars and capacity building exercises for the officials and trade negotiators of the Member States, subject to the financial and material support from the Member States and international and regional organizations. The Secretariat believes that these initiatives would help the officials and trade negotiators of the Member States to gain more legal expertise to understand the various aspects of the WTO Regime. The Basic Course on the World Trade Organization was a first step in this direction and many such initiatives would follow in the near future.

Annex -1

DRAFT RESOLUTION OF THE FORTY-NINTH SESSION

DRAFT
AALCO/RES/49/S 13
05 AUGUST 2010

**WTO AS A FRAMEWORK AGREEMENT AND CODE OF CONDUCT FOR
WORLD TRADE (*Deliberated*)**

The Asian-African Legal Consultative Organization at its Forty-Ninth Session,

Having considered the Secretariat Document No. AALCO/49/DAR ES SALAAM/2010/S 13;

Having heard with appreciation the introductory statement of the Deputy Secretary-General;

Recognizing the importance and complexities of issues involved in the WTO Doha Development Agenda;

Hoping that the Doha Round of Negotiations would conclude successfully in the near future;

1. **Encourages** Member States to successfully complete negotiations mandated under the Doha Development Agenda, taking fully into consideration the special concerns of developing and least-developed country Members of WTO;
2. **Directs** the Secretariat to continue to monitor and report on the Doha Round of Negotiations, particularly the outcome of the review process concerning the WTO Dispute Settlement Understanding;
3. **Appreciates** the effort of the Centre for Research and Training (CRT) of AALCO in successfully organizing a Basic Course on the World Trade Organization from 1-5 February 2010, at AALCO Headquarters, New Delhi
4. **Requests** the Secretary-General in consultation with Member States, subject to the availability of necessary resources, to organize seminars or workshops to facilitate the exchange of views by Member States on issues currently under negotiation within the WTO and capacity building programs; and

5. **Decides** to place this item on the provisional agenda of its Fiftieth Annual Session.