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

### **I. BACKGROUND AND ISSUES FOR FOCUSED CONSIDERATION DURING THE FORTY-SIXTH SESSION OF AALCO**

#### **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 - Thirty-Fifth session (1996) to Forty-Fifth session (2006). At these sessions, the Secretariat was directed to monitor the development related to the WTO, particularly the relevant legal aspects of dispute settlement mechanism.<sup>1</sup>

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-Fifth Session held in New Delhi, India (2006), the Secretariat provided an overview of the Sixth WTO Ministerial Conference 2005, held in Hong Kong, with special emphasis on negotiation on Agriculture, Non-Agriculture Market Access (NAMA), Trade Related Intellectual Property Rights (TRIPS) and Public Health, Trade Facilitation, Development issues, General Agreement on Trade in Services (GATS) and progress in the review process of the Understanding on Rules and Procedures Governing the Settlement of Disputes. In this Session, the Organization had directed the Secretariat to “continue to monitor and report on the negotiations under the Doha Development Round, as well as, the outcome of the review process concerning the WTO Dispute Settlement Understanding”.<sup>2</sup>

4. Pursuant to this mandate, this brief report intends to provide an overview of the post Hong Kong Ministerial Conference developments, with special emphasis on the impending issues in the negotiation on Agriculture and Non-Agriculture Market Access (NAMA) and Special and Differential Treatment. The Report also covers the

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<sup>1</sup> 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.

<sup>2</sup> AALCO/45/NEWDELHI/SD/RES.14

Recommendations of the Task Force on Aid for Trade and progress in the review process of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

## **B. General Observations**

5. It is indeed a remarkable achievement of the Hong Kong Ministerial Conference that the Doha Development Round had been put on track. The Declaration by the Ministers at the Conference had created new hopes in the minds of the Members as regards the successful completion of the Doha Development Round. However, the Declaration did not contain specific numbers and formula structures for cutting subsidies and tariffs. Instead, Ministers had agreed on some general parameters to guide the development of these 'full modalities' on agriculture and Non-Agricultural Market Access (NAMA), and set themselves April 2006 deadline for finalizing them. Further, they must also submit comprehensive draft schedules of commitments based on them by 31 July 2006, that is, within three months.

6. Since then the Members have been trying to achieve the degree of convergence required to cement a final deal. However, there remained a number of issues where there is a need for consensus. Finally, in July 2006, the Members on the recommendation of the Director General suspended Doha round of trade negotiations. Agriculture and NAMA again was central to the collapse of the talks.

7. The success of the agriculture negotiation depends on the extent the developed countries, particularly the US and the EU are ready to give away their protectionist measures. Also, the concerns of the developing world regarding the Special Products and Special Safeguard Mechanism should be taken care, taking into the account the food and livelihood security and rural development.

8. Regarding NAMA, Members adopted the 'Swiss formula' according to which there would be higher cuts if higher tariff were maintained. However, in order to implement the 'Swiss formula' there is a need to agree on the modalities for tariff reduction, which the Declaration failed to achieve, by April 30, 2006. The Negotiating Group was not able to reach consensus on this crucial issue and the divergences are too great to bridge. Other issues involved include: tariff reduction formula, the issue concerning the treatment of unbound tariffs, the flexibilities for developing-country participants, the issue of participation in the sectorial tariff component and the preferences.

9. The only mandate given by the Hong Kong Declaration that has met the deadline was the establishment of the Task Force on Aid for Trade and the timely circulation of its Recommendation. As noted by some, the Recommendation is indeed a good blue print and its early implementation would considerably help the developing countries in integrating it to the international trading system. However, there is also some apprehension on some quarters that some donor countries might try to make Aid for Trade conditional on other concessions and use the mechanism to replace other forms of assistance.

10. Because of these impending issues highlighted above, all other negotiating issues at the Doha round, including the review of the DSU, are put on hold and is ultimately suspended. It is not clear when the Doha Round would resume. A successful outcome has become increasingly unlikely because of the expiry in July 2006 of the broad trade authority granted under the Trade Promotion Act (TPA) of 2002 to the US President. This is because, after this date, the US Congress will resume its power to make amendments to any trade deal presented to it, thereby making it less attractive for other WTO Members to participate in negotiations, as they are unsure of obtaining any real commitments from the US. A failure in the negotiation would also mean States turning towards bilateral and regional arrangements, which would ultimately undermine multilateralism and the WTO.

11. The AALCO urges its Member States not to spare any efforts in resuming the negotiation at the earliest and requests all Member States to appreciate the genuine problems faced by the Developing and least developed country Members in all the negotiation issues.

**C. Issues for Focused Consideration during the Forty-Sixth Session of AALCO**

12. The discussions during the Forty-Sixth Session of AALCO could be focused inter alia, on:

- a. The possible options available for the Member States to break the deadlock in the Doha Round negotiating issues, especially on Agriculture and Non-Agriculture Market Access and bring the Round back to track.*
- b. Special and Differential Treatment for the Developing (S&D) countries under the WTO Agreements is very important for the Developing and Least Developing Countries. Discussion could focus on how to integrate and make the S&D provisions meaningful within the framework of the WTO.*

## II. POST HONG KONG MINISTERIAL CONFERENCE DEVELOPMENTS

13. It may be recalled that at the Doha Ministerial Conference (2001), the Ministers had agreed to launch a new round of negotiations, including a review of the existing agreements. In the Doha Ministerial Declaration, the Ministers agreed to undertake broad and balanced Work Programme incorporating an expanded negotiating agenda. The Work Programme for negotiation as set out by the Declaration involved a wide range of issues such as agriculture, services, implementation-related issues and concerns, intellectual property rights, environment, market access, clarification of trade rules etc. Added to these are the four 'Singapore Issues'- investment, competition policy, government procurement and trade facilitation, which were finally dropped, except for trade facilitation, from the Doha Agenda at the Cancun Ministerial Conference 2003.

14. 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 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.

16. During the Sixth WTO Ministerial Conference held in Hong Kong from 13-18 December 2005, the main issues before the negotiators at the Conference were to set modalities and bring the Doha Development Round back to track. The most contentious issues before Ministerial Conference were the negotiations on Agriculture and Non-Agriculture Market Access (NAMA). Before the Ministerial Conference, in November 2005 the WTO presented the first Draft Ministerial Text on the Doha Work Program provided for a general outline for negotiations at the Conference. The draft Text was revised many times before consensus was reached, which of course was rather modest. At the Ministerial Conference, the Members reaffirmed the Declarations and Decisions they adopted at Doha, as well as the Decision adopted by the General Council on 1 August 2004, and urged full commitment to give effect to them. They also renewed their resolve to complete the Doha Work Programme fully and to conclude the negotiations launched at Doha successfully in 2006.

17. The major outcome of the Declaration could *inter alia* be summarized as follows:

- 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;

- TRIPS and Public health.

18. As mandated in the Hong Kong Declaration, Ministers and heads of delegations met in Geneva from 28 June to 1 July 2006 for intensive negotiations to agree on the “modalities”, for trade in agriculture and NAMA.<sup>3</sup> However, Ministers had to suspend the negotiations at the end of July after an attempt to break the deadlock failed in July 2006. 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. There was also no time to prepare and finalize the schedules of concessions and too many outstanding issues remained to be addressed.

19. The WTO Members agreed with the assessment of the Director-General and expressed disappointment and frustration for the lack of progress in the negotiations. They agreed that a time of reflection was needed but they also expressed the hope that this “time-out” would be temporary and short since there was a need to put the negotiations back on track as soon as possible. They also said that “we should preserve the achievements of the negotiation so far and build upon them rather than unravel them.” There was a general agreement on the need not to modify the mandate or split it allowing for selective progress.

20. Some of the impending issues that are blocking the entire Doha Round of Negotiation and led to its suspension are highlighted below.

#### **A. AGREEMENT ON AGRICULTURE**

21. The suspension of the Doha round of trade negotiations, in July 2006, was the most striking event since the round was launched five years ago. Agriculture was central to the collapse of the talks, with major trading powers in disagreement over the size and extent of tariff and subsidy cuts. On July 2006, the WTO Director-General, Pascal Lamy recommended that Members “suspend” the Doha round of trade negotiations after Ministers from the G-6 group of countries – the EU, US, Japan, Australia, Brazil and India – failed to reach agreement on the depth and extent of tariff and subsidy cuts in agriculture. This announcement represented perhaps the most significant setback in five years of intensive negotiations on the “Doha Development Agenda”, which had first begun in November 2001.

22. While the 2005 Ministerial Conference in Hong Kong did lead to concrete progress in some key areas, it may be noted that the Conference held in Cancún in 2003 ended with no substantive agreement between Members. Since last December, Members have not managed to achieve the degree of convergence required to cement a final deal.

23. The G-6 meeting broke down after the US Trade Representative, Susan Schwab, rejected the market access offers put forward by other Members as inadequate, and

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<sup>3</sup> The TNC has held one formal meeting on 1 July, and four informal meetings on 30 May, 28 and 30 June and 24 July 2006.

refused to provide indications of any flexibility which the US may have on their farm subsidies.

### **i. Export Subsidies**

24. The Hong Kong Ministerial Declaration set a 2013 end date for the elimination of export subsidies. It also included a provision stating that “all forms of export subsidies for cotton will be eliminated by developed countries by 2006” –although this requirement is not more rigorous than the outcome of the dispute resolution process on the US-Brazil cotton case. Export subsidies are widely recognized as having a particularly malign effect, directly undercutting poor farmers in developing countries by dumping low-cost foodstuffs on local markets. Unlike in the Uruguay Round, developing countries have not on the whole emphasized the role of subsidized food imports as a tool for maintaining food security, but instead have focused on reform of significant trade distortions in the developed world.

### **ii. Market access**

25. On market access, countries differ dramatically on the tariff cuts which developed and developing countries should make. The US has proposed slashing average farm tariffs by 66 percent, and the G-20 group of developing countries has called for a 54 percent cut. The EU is believed to have proposed a 51.5 percent cut in the 23 July 2006 negotiations, but previously put forward a proposal for a 46 percent cut – which others said would only amount to 39 percent. When the agriculture chair, Ambassador Crawford Falconer (New Zealand), suggested in June that consensus may be likely to emerge somewhere in the region of the G-20 proposal, some Members rejected his assessment: the G-10 and EU bluntly declared that they did not accept the G-20 position as representing the ‘middle ground’.

### **iii. Domestic support**

26. The current structure and volume of farm subsidy payments has consistently been identified by developing countries as responsible for some of the most damaging effects on global agricultural trade, as well as have held responsible for environmental degradation resulting from over-production in developed countries. In this area, Members have already agreed to classify themselves into three tiers: first the EU, with the highest subsidies and thus slated for the deepest cuts; second, the US; and third, all other countries. Simulations ran by Canada in May 2006 showed that existing proposals would have little impact on subsidies in the US and EU, except for the proposal from the G-20 group of developing countries, which would produce cuts across the board.

### **iv. Overall Trade-Distorting Support**

27. Members agreed in Hong Kong that overall trade-distorting domestic support would be cut, so subsidies are not simply shifted between permitted categories. However, they disagreed on the depth of reductions to be made. The G-20 wants the EU to slash subsidies by 80 percent, and the US to do so by 75 percent. The EU has proposed to cut

its own subsidies by 70 percent, and that the US make a 60 percent reduction. Both the US and G-10 have asked the EU to make a 75 percent cut; but the US has suggested a 53 percent cut for themselves. The US is under heavy pressure to improve its subsidy offer.

#### **v. Cotton**

28. The collapse of the Doha round means that progress on addressing cotton subsidies will also be put on hold. US subsidies have a massive impact on West African farmers in particular, and with support from development agencies in the developed world, four West African countries (Benin, Burkina Faso, Chad and Mali) have fought hard to address the serious imbalances in this sector through the medium of the Doha negotiations. After raising the issue at Cancun, a mandate was agreed to address cotton “ambitiously, expeditiously and specifically” within the framework of the agriculture negotiations.

#### **vi. Members’ Failure to supply up-to-date Information**

29. As the WTO Agriculture negotiations got suspended, they do not take place in the regular Agriculture Committee, but they still featured in the committee’s meeting on 31 October 2006, in particular members’ failure to supply up-to-date information.

30. Data compiled up to 30 October 2006 and circulated in the meeting show that 70 Members - almost half of the membership - still have not supplied some or all of the required information for 1995-2000 on their export subsidies, domestic support and market access measures (including tariff quotas and special safeguards). Transparency, through “notification and review”, is a core function of the Committee, which is responsible for implementing the WTO’s Agriculture Agreement. Chairperson Häberli said the lack of up-to-date information causes two problems:

- difficulty in meeting the Committee’s transparency objectives, which may lead to an imbalance in rights and obligations between those who notify and those who do not; and
- imbalance between Members in the negotiations and a need for negotiators to base their calculations on information outside the WTO, which could be less reliable and is not available equally to all Members. He urged Members to consider this a priority task, that is, their own responsibility, and suggested they use staff who have been “freed up” by the negotiations’ suspension.

#### **vii. G-33, Africa, ACP, LDC Groups declare joint defense of Special Products (SPs), and Special Safeguard Mechanism (SSM)**

31. Four major groupings of developing countries on 11 May 2006 have issued a joint statement warning that the WTO's Doha negotiations are being threatened by attempts by some Members to restrict the use of the instruments of special products and special safeguard mechanism that have been proposed during the agriculture talks for the use of



developing countries.<sup>4</sup> The Group of 33; the African Group; the African, Caribbean, and Pacific (ACP Group); and the Least Developed Countries (LDC) Group have also warned that they cannot agree to any WTO deal in agriculture which does not accommodate their needs of food and livelihood security and rural development, and especially in the areas of tariff reduction, SPs and SSM. This is the first time the four groupings, which represent a sizable majority of developing country members in the WTO, have come together to issue a collective defence of their interests in the agriculture negotiations.

32. According to the joint statement: "The G-33, African Group, ACP, and LDCs could not be expected to join consensus on any package on agriculture unless their food security, livelihood security and rural development needs are accommodated effectively and comprehensively through the commitments called for from them in the market access pillar, in particular the tariff reductions, SPs and SSM."

33. The G-33, backed by other groups, has been championing the concept of SP (in which developing countries can self-designate at least 20% of their agriculture tariff lines as SPs, and they do not need to reduce the tariff for 50% of the SPs while the remainder of SPs will have 5 or 10 per cent tariff reduction). They have also advocated for a SSM in which developing countries can raise tariffs beyond the bound rate to protect agricultural products from an import surge, should prices fall below or the import volume rise above certain "trigger" levels.

34. The G-33 Ministers met on 29 June 2006 in Geneva to discuss current development in the negotiations and to see how the Group can further contribute to a successful outcome. Ministers reiterated their political commitment and readiness to work with other Members of the WTO to achieve a fair and balanced outcome in agriculture. They emphasized the development imperatives of the Doha Round and the crucial role that agriculture plays in the economic and social fabric of the developing countries. In this context, they drew attention to the need to ensure that modalities for Special Products (SPs) and the Special Safeguard Mechanism (SSM) which are vital components of the special and differential treatment provisions must be designed in order to effectively address their food security, livelihood security and rural development needs.

35. Ministers insisted that all aspects of SPs and SSM must be incorporated integrally in any modalities to be agreed by July 2006. They further stressed that no modalities in agriculture can be acceptable which do not fully reflect the expectations of the vast bulk of developing countries in the WTO on SPs and SSM. The Group has already made comprehensive and constructive contributions on modalities, with full legal drafts, on SPs and SSM, ensuring that they are fully consistent with, and respect the integrity of, the

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<sup>4</sup> The G33 is a group of 42 developing countries that include Indonesia (the coordinator), India, China, the Philippines, Sri Lanka, Peru and Venezuela as well as many African and Caribbean countries. The other three groupings (which are often referred to as the G90 with 62 WTO members) comprise countries in Africa, the Caribbean and the Pacific as well as LDCs outside these three regions, such as Bangladesh, Nepal and Cambodia.

Hong Kong Ministerial Declaration and the General Council Decision of 1st August 2004.

36. Ministers expressed their concern regarding the insufficient progress made in the negotiations with a view to crafting modalities. Ministers recognized the need to make concrete progress in the agriculture negotiations by July 2006, in order to adhere to the commitment made in Hong Kong of concluding the Doha Round by December 2006. They call on Members, in particular developed Members, to show the necessary flexibility to ensure a successful and timely conclusion of the DDA negotiations. G-33 Ministers on their part expressed their readiness to further take the necessary decisions to contribute to a successful conclusion of the Round. Ministers underlined the importance to continue building consensus through a bottom-up process, guaranteeing transparency, inclusiveness, and the effective participation of all Members.

37. The developing country groups met again in Geneva on 1 July 2006 to assess the latest developments and to coordinate their efforts with a view to ensuring that the negotiations lead to an outcome consistent with the development mandate of the Doha Round. The G-20, the G-33, the ACP Group, the LDCs, the African Group, the Small, Vulnerable Economies, the NAMA-11, the Cotton-4 and CARICOM agreed that the DDA must address on a priority basis, in a meaningful and comprehensive manner, the development needs and concerns of the developing countries.

## **B. NON-AGRICULTURE MARKET ACCESS (NAMA)**

38. Non-Agriculture Market Access (NAMA) deals with reducing tariffs and non-tariff barriers (NTBs) on industrial and primary products under the General Agreement on Tariffs and Trade (GATT). It covers basically trade in goods which are not food stuffs. NAMA is central to the negotiations agreed in Doha under the WTO.

39. The current negotiation was started at the Fourth Ministerial Conference of WTO in 2001 wherein, the Ministers had agreed to start negotiations to further liberalize trade in non-agricultural goods. The Ministers agreed to launch tariff-cutting negotiations on all non-agricultural products. To this end, a Negotiating Group on Market Access was created in 2002. The Negotiating Group was to establish full modalities for the Non-Agricultural Market Access (NAMA) negotiations, which covers tariff reductions, non-tariff barriers, special and differential treatment for developing countries and the possible effects of the reduction in tariffs on the development policies of some countries and on their fiscal revenues, etc.

40. So far, substantial work has been undertaken by the Negotiating Group on Market Access and is progressing towards achieving an agreement on negotiating modalities. During the Hong Kong Conference, Members had decided that modalities for tariff reduction be established by April 30, 2006. However, the Negotiating Group has not been able to reach consensus on many issues and there still exist divergences which are too great to bridge. Additional negotiations are required to reach agreement on the specifics of some of these elements. These additional issues relate to the formula, the issues concerning the treatment of unbound tariffs in indent two of paragraph 5, the flexibilities

for developing-country participants, the issue of participation in the sectorial tariff component and the preferences. Some of the important pending issues are highlighted below.

#### **i. Tariff Reduction Formula**

41. It was recognized that a formula approach is the key to reducing tariffs and reducing or eliminating tariff peaks, high tariffs, and tariff escalation and the Negotiating Group should continue its 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.

42. Accordingly, during the Hong Kong Ministerial Conference it was agreed to 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; and take fully into account the special needs and interests of developing countries, including through less than full reciprocity in reduction commitments.

43. However, there is neither consensus on the structure of the formula, nor consensus on the coefficients for the tariff reduction formula. There are two Swiss formula options on the table - one is the simple Swiss formula with two coefficients (one for developed and one for developing country Members) and the other is the ABI formula. In the Negotiating Group, there is a broader and stronger support for the simple Swiss formula with two coefficients. However, the support for this formula depends on the level of the coefficients.<sup>5</sup> In other words, the key questions are: (1) the interpretation of “less than full reciprocity in reduction commitments”; (2) the extent to which “real market access” must also be achieved; and (3) the comparability of any outcome in NAMA to the ambition achieved in Agriculture.

44. As regards the Product coverage for the purpose of the formula, there is no consensus yet. There is a wide view that the ideal outcome would be an agreed list with no deviations. Product coverage is essential for the tabling of schedules and also enhances transparency for traders. It may also avoid disputes in the area of classification and resolve the ambiguities from the Uruguay Round. Most Members are in favour of an agreed list.

45. As regards *ad valorem* equivalents (AVE) conversion, Members have broadly agreed to follow the model used in the agriculture talks for the conversion of specific tariffs into price-based AVEs.

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<sup>5</sup> Pakistan has proposed “These coefficients should be based on an objective criterion; taking the overall average of the bound tariff lines for developed and developing countries as their respective coefficients. These averages have been worked out to be 5.48% for developed countries, and 29.12% for developing countries. For the sake of simplicity these could be taken as 6 and 30. (TN/MA/W/60).

## **ii Unbound Tariffs**

46. Regarding unbound tariff there was an agreement to adopt a constant non-linear mark-up approach to establish base rates for commencing tariff reductions. However, regarding the treatment of unbound tariff, mark-up and base year, there is consensus. Regarding mark-up, it is clear that the range is between 5 and 30 percentage points. While Members have their preferences, and there continue to be sensitivities over low and high, unbound rates, a great deal of flexibility has been signalled. This flexibility was even more apparent after the simulations of the effects of various formula approaches were issued, as these demonstrated that the effect of the mark- up is relatively small once the formula is applied.

## **iii. Flexibilities for Least-Developed Countries (LDCs)**

47. It was agreed that the least-developed country participants should not be required to apply the formula nor participate in the sectorial approach. However, as part of their contribution to this round of negotiations, they are expected to substantially increase their level of binding commitments. There is a general consensus on this.

48. In the case of Market Access for LDCs, in recognition of the need to enhance the integration of least-developed countries into the multilateral trading system and support the diversification of their production and export base, the developed-country participants and other participants who so decide, are called upon to grant on an autonomous basis duty-free and quota-free market access for nonagricultural products originating from least-developed countries. Here also there is consensus on this language, subject to confirmation from capitals by some Members.

## **iv. Non-tariff barriers (NTBs)**

49. The objective of the negotiation is to eliminate NTB's by converting into Tariff Barriers. It was recognized that NTBs are an integral and equally important part of these negotiations and instruct participants to intensify their work on NTBs. In particular, the Members were encouraged to notify on NTBs by 31 October 2004 and to proceed with identification, examination, categorization, and ultimately negotiations on NTBs. The modalities for addressing NTBs in these negotiations could include request/offer, horizontal, or vertical approaches; and should fully take into account the principle of special and differential treatment for developing and least-developed country participants.

50. The Hong Kong Declaration noted that the Negotiating Group has made progress in the identification, categorization and examination of notified NTBs. The Members are also 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.

51. There is wide agreement on the core issues. There are two major proposals on the table - one from the US/EC and the other from the NAMA-11 group of developing

Members, which based itself on the US/EC text. Important details remain to be sorted out in respect of all the proposals, but in respect of some proposals the unresolved issues are more fundamental than for others. In particular, many Members oppose the proposals to negotiate disciplines in respect of export taxes or export restrictions, arguing that these issues fall outside the explicit mandate and the balance of issues struck in Doha. Others note that there is no agreed definition of a non-tariff barrier to guide the discussions.

**v. Non-agricultural environmental goods**

52. In the case of environmental goods and services (EGS), the Hong Kong Declaration encouraged the Negotiating Group to work closely with the Committee on Trade and Environment in Special Session with a view to addressing the issue of non-agricultural environmental goods covered in paragraph 31 (iii) of the Doha Ministerial Declaration.

53. Here also there is no consensus on this subject, beyond the existing mandate. A proposal was put forward by a group of Members concerning the treatment of environmental goods in the context of the NAMA negotiations. These Members proposed tariff elimination on those products. However, this proposal was met with opposition. An alternative textual proposal was submitted by another group of countries proposing that the work of the CTE Special Session must be completed before any discussion of the treatment of such goods can be taken up in the NAMA negotiations. Many Members also believe that participation in any initiative in respect of environmental goods should be non-mandatory, while others feel that there is a mandate in paragraph 31 (iii) to do something more on these products than on those treated under the formula or the sectoral negotiations.

**C. SPECIAL AND DIFFERENTIAL TREATMENT (S&D) FOR DEVELOPING AND LEAST DEVELOPED COUNTRY MEMBERS**

54. It may be recalled that at the Hong Kong Ministerial Conference, the Ministers reaffirmed that provisions for special and differential treatment (S&D) are an integral part of the WTO Agreements and had reiterated that all S&D provisions be reviewed with a view to strengthening them and making them more precise, effective and operational. This included:

- expeditiously completing the review of all the outstanding Agreement-specific proposals by December 2006; and
- resume work on all other outstanding issues, including on the cross-cutting issues, the Monitoring Mechanism and the incorporation of S&D into the architecture of WTO rules.<sup>6</sup>

55. Since the Hong Kong Ministerial Conference, the Special Session has held four formal meetings and a number of informal plurilateral consultations. During these meetings, the Special Session continued to focus the process on a text-based discussion of

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<sup>6</sup> Annex F, Hong Kong Ministerial Declaration, 2005.

the 16 remaining Agreement-specific proposals, eight from Category I and eight from Category III. Overall, Members have made some progress on six of the 16 remaining Agreement-specific proposals. As for the other ten proposals, the divergences are considerable and Members have not yet been able to prepare any revised or alternative texts. The Chairman noted that if there was to be convergence on these proposals, Members need to be flexible and the proponents have to reach out to other stakeholders to convince them of the merit of their proposals.<sup>7</sup>

56. In the discussions on the Agreement-specific proposals, the LDCs have continued to stress the importance they attach to a quick and effective implementation of the duty-free quota-free (DFQF) market access decision adopted in Annex F at Hong Kong. The LDCs have formally tabled two submissions in the Committee, one on rules of origin and the other on market access.<sup>8</sup> The paper on the rules of origin points to the need for the DFQF decision to be accompanied by a single set of simple rules of origin and makes reference to the LDCs' preferred criteria for conferring origin. The paper on market access points to how the LDCs would like to see the DFQF market access decision implemented. It urges Members, including developing country Members declaring themselves to be in a position to do so, to make their positions known as early as possible, on how they intend to implement the decision.

57. The cross-cutting issues were considered in the formal meeting held on 7 July 2006. In the discussions that have been held, Members have generally emphasised the importance of a Monitoring Mechanism. While a number of elements have been mentioned in the context of the cross-cutting issues, it is clear that the Monitoring Mechanism is viewed as an important step in the continuing review of the effectiveness and operationalization of the S&D provisions. Members have stressed the need to reach an understanding on the scope of the Mechanism and have agreed that further discussions on the Monitoring Mechanism take place in informal meetings.<sup>9</sup> Progress on this issue could be made only if Members themselves clarify their thoughts and ideas as to what they expect from a Monitoring Mechanism.

#### **D. TRIPS AND PUBLIC HEALTH**

58. It may be recalled that the Hong Kong Ministerial Conference reaffirmed the importance attached to the General Council Decision of 30 August 2003 on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, and to an amendment to the TRIPS Agreement replacing its provisions. In this regard, the Conference welcomed the work that has taken place in the Council for TRIPS and the Decision of the General Council of 6 December 2005 on an Amendment of the TRIPS Agreement. WTO Members on 6 December 2005 approved changes to the intellectual property agreement making permanent a decision on patents and public health originally adopted in 2003. This General Council decision means that for the first time a core WTO agreement will be amended. The decision directly transforms the 30 August

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<sup>7</sup> Report of the Chairperson, TN/CTD/18.

<sup>8</sup> TN/CTD/W/30 and W/31 respectively.

<sup>9</sup> Documents on Monitoring Mechanism, JOB(06)/229 dated 25 July 2006.

2003 “waiver” into a permanent amendment of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The waiver made it easier for poorer countries to obtain cheaper generic versions of patented medicines by setting aside a provision of the TRIPS Agreement that could hinder exports of pharmaceuticals manufactured under compulsory licences to countries that are unable to produce them. This will now be formally built into the TRIPS Agreement when two thirds of the WTO’s Members have ratified the change. They have set themselves until 1 December 2007 to do this. The waiver remains in force until then. This decision came a week after WTO members agreed to extend the transition period for least-developed countries, allowing them until 1 July 2013 to provide protection for trademarks, copyright, patents and other intellectual property rights under the WTO Agreement. Least-developed countries had already been given until 2016 to protect pharmaceutical patents.

## **E. AID FOR TRADE**

59. It may be recalled that the Doha Ministerial Declaration had made technical assistance and capacity building a key component of the development dimension of the Doha Development Round because many poor countries lack the basic infrastructure to take advantage of the market access opportunities resulting from a successful outcome to the trade negotiations.

60. Accordingly, the Ministers at the Hong Kong Conference had mandated the Director General to establish a Task Force on Aid for Trade with a mandate to recommend how Aid for Trade “might contribute most effectively to the development dimension of the Doha Development Agenda.” It states that “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. Aid for Trade cannot be a substitute for the development benefits that will result from a successful conclusion to the DDA, particularly on market access.”<sup>10</sup> The Task Force was expected to provide recommendations to the General Council by July 2006.<sup>11</sup>

61. Keeping with the deadline, the Task Force tabled its final recommendations at a meeting of the General Council on 27-28 July 2006. The Report states that Aid for Trade is about “assisting developing countries to increase exports of goods and services, to integrate into the multilateral trading system, and to benefit from liberalised trade and increased market access.” It stressed the need for additional, predictable, and effective financing. The Recommendation defines Aid for Trade in a way “that is both broad enough to reflect the diverse trade needs identified by countries, and clear enough to

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<sup>10</sup> Paragraph 57 of the *Hong Kong Ministerial Declaration*, WT/MIN(05)/DEC.

<sup>11</sup> The Task Force will be composed of these 13 members in alphabetical order: 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 Rantzen, will chair this Task Force *ad personam*.

establish a border between Aid for Trade and other development assistance of which it is a part."<sup>12</sup>

62. The Task Force identified that the objectives of Aid for Trade is to:

- To enable developing countries, particularly LDCs, to use trade more effectively to promote growth, development and poverty reduction and to achieve their development objectives, including the Millennium Development Goals (MDGs).
- To help developing countries, particularly LDCs, to build supply-side capacity and trade-related infrastructure in order to facilitate their access to markets and to export more.
- To help facilitate, implement, and adjust to trade reform and liberalization.
- To assist regional integration.
- To assist smooth integration into the world trading system, and
- To assist in implementation of trade agreements.

63. The report emphasized the need to mainstream trade-related issues into national development strategies. It identifies a number of challenges involved with doing so, such as the lack of private-sector involvement in identifying trade needs, the limited absorptive capacity of recipient countries, ineffective monitoring, and the slow, duplicative and bureaucratic processes in the assessment and delivery of trade-related assistance. The Task Force suggested "country ownership and country-driven approaches, as well as a commitment of governments to fully mainstream trade into their development strategies, is key." It emphasized mutual accountability, aligning aid to national development strategies, effective donor coordination, harmonization of donor procedures, and transparency.

64. The Task Force identified that building productive capacity and trade-related infrastructure in developing countries should be a major part of Aid for Trade efforts, in addition to assistance aimed at helping countries negotiate and comply with trade agreements. It also recommended that donors integrate trade and growth issues more effectively, use needs assessment processes, and make targeted funds available for building infrastructure and removing supply-side constraints.

65. The Task Force emphasized the need for national coordination, suggesting that a 'national aid for trade committee' could be created to coordinate development assistance, data collection and analysis, and cooperation between agencies, donors, regional banks, and governments. At the regional level, it recommends strengthening processes to identify cross-border and regional needs, as well as the ability of donors and agencies to respond to them. The panel also recommended establishing a monitoring body in the WTO to conduct a global review of Aid for Trade.

66. In the General Council, Members acknowledged the importance of Aid For Trade as a tool to help developing countries integrate fully into the multilateral trading system

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<sup>12</sup> Recommendations of the Task Force on Aid for Trade, WT/AFT/1.



and to provide them with increased trade opportunities as a way to enhance growth prospects and reduce poverty. They said Aid For Trade is an important element in the Doha Development Agenda, and hoped for an early implementation of the recommendations of the Task Force. Some also noted that the report provided a good blue print on how to operationalize its recommendations.<sup>13</sup>

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<sup>13</sup> Report by the Chairman of the Trade Negotiations Committee,  
[http://www.wto.org/english/news\\_e/news06\\_e/tnc\\_chair\\_report\\_27july06\\_e.htm](http://www.wto.org/english/news_e/news06_e/tnc_chair_report_27july06_e.htm)

### III. PROGRESS IN THE REVIEW OF THE DISPUTE SETTLEMENT UNDERSTANDING (DSU)

67. It may be recalled that a review of the DSU was initiated in the Dispute Settlement Body (DSB) of the WTO in 1997,<sup>14</sup> which later become incorporated into the Doha Round of Negotiation during the Fourth Ministerial Conference of the WTO, held 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 by the second half of 2002 to an issue-by-issue thematic discussion. Since January 2003, the work has focused on discussion of specific draft legal texts proposed by Members.

68. The Chairman of the Special Session, on 28 May 2003, circulated a draft legal text under his own responsibility, which contained Member's proposals on a number of issues, including: enhancing third-party rights; introducing an interim review and remanding at the appeals stage; clarifying and improving the sequence of procedures at the implementation stage; enhancing compensation; strengthening notification requirements for mutually-agreed solutions; and strengthening special and differential treatment for developing countries at various stages of the proceedings. However, the Chairman's Text failed to reflect a number of other proposals by Members due to the absence of a sufficiently high level of support. These proposals covered issues such as accelerated procedures for certain disputes; improved panel selection procedures; increased control by Members on the panel and Appellate Body reports; clarification on the treatment of *amicus curiae* briefs; and modified procedures for retaliation, including collective retaliation or enhanced surveillance of retaliation.

69. The General Council at its meeting on 24 July 2003, agreed to extend the negotiations from 31 May 2003 to 31 May 2004. The Cancun Ministerial Conference, which was supposed to review the progress in the negotiations in the Special Sessions of the DSB, failed to do so, as there was no consensus among the Members. Additional progress has been made in the Special Session since the General Council meeting of 24 July 2003, building on the work done thus far. Some delegations have made additional written contributions to the negotiations during this period, which were welcomed by participants. There was also 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 is suggested that action be taken by the Trade

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<sup>14</sup> 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."

Negotiation Committee and/or the General Council as appropriate, for the continuation of work in the Special Session.

70. On 1 August 2004, as part of the “July 2004 Decision”, the General Council adopted this recommendation. The Special Session was based primarily on initiatives by Members to work among themselves in an effort to develop areas of convergence to submit to the Special Session as a whole. In this context, various Members and groups of Members have put a number of contributions forward. Specifically, contributions relating to remand, sequencing, post-retaliation, third-party rights, flexibility and Member control, panel composition, time-savings and transparency have been put forward and discussed in this period. The discussion at the Special Session allowed a very constructive exchange of views and led to a clarification of many aspects of the proposed text.<sup>15</sup>

71. 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.

72. 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. In this context, proponents of Category II proposals had indicated that they were working towards the presentation of revised text to the Special Session. These efforts have now resulted in specific proposals. In this regard, at the last meeting of the Special Session, Cuba, India and Malaysia presented a joint informal contribution on general, as well as, special and differential treatment provisions, revising elements of an earlier proposal.<sup>16</sup> The African group has also indicated that it is working towards the presentation of revised text, including aspects relating to Category II proposals.<sup>17</sup>

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<sup>15</sup> *Report by the Chairman to the Trade Negotiations Committee*, TN/DS/10 and TN/DS/11

<sup>16</sup> Egypt and Pakistan subsequently also indicated that they co-sponsored this text.

<sup>17</sup> Report to the Trade Negotiation Committee, TN/DS/18.

#### **IV. DELIBERATIONS AT THE FORTY-FIFTH SESSION OF AALCO, [NEW DELHI (HEADQUARTERS), 3-8 APRIL 2006, INDIA]**

73. Dr. Li Zhenhua, Deputy Secretary-General of AALCO while introducing the topic observed that the Hong Kong Ministerial Conference adopted a Ministerial Declaration, which as expected, did not contain specific numbers and formula structures for cutting subsidies and tariffs. Instead, Ministers agreed only on some general parameters to guide the development of these 'full modalities' on Agriculture and Non-Agricultural Market Access (NAMA). While highlighting the achievement of the Conference, he noted that in the negotiations on Agriculture, the WTO Members decided to eliminate all forms of export subsidies by the end of 2013. However, this was subject to an agreement on the modalities which should be completed by April 2006. In domestic support, it was agreed that greater cuts would be made in higher levels of subsidies. In NAMA, the Members adopted the 'Swiss Formula' with unspecified number of coefficients. Regarding TRIPS and public health, the Conference approved changes to the TRIPS agreement making it easier for poorer countries to obtain cheaper generic versions of patented medicines. And finally, regarding the special and differential treatment for LDCs, Members agreed to provide duty and quota-free access for at least 97 percent of products originating from the least developed countries by 2008. He noted that the Hong Kong Declaration had brought fresh impetus to the Doha Development Round of Negotiations.

74. Many delegates made their statements. Most of the delegates, while noting the importance of the WTO Agreements as a framework for international trade, said that Member States had undertaken huge commitment without understanding its implications. Some delegates noted that the Hong Kong Ministerial Declaration had reflected some of their concerns, but much need to be done in the case of agriculture and services negotiations. Most Delegates noted that the most important issues for them were the developmental issues and special and differential treatment, which were crucial for developing countries. They said that the outcome of the Doha Development process should fully support the developmental goals of their respective countries. Most of the delegates gave their views on Special & Differential Treatment for developing countries; agricultural negotiations; market access for non-agricultural products; trade facilitation, trade related intellectual property rights; and WTO dispute settlement mechanism etc. Some countries also highlighted the unbalanced nature of the negotiations, especially for the least developed countries. All agreed that the Asian and African countries should have a common stand on issues of mutual interest. One delegate suggested the Secretariat to organize a seminar which could facilitate the exchange of views by Member States on issues currently under negotiations within the WTO, especially on dispute settlement understanding and services.

**I. UPDATES ON THE WTO DOHA DEVELOPMENT ROUND OF NEGOTIATIONS**

**A. Resumption of the Doha Development Round of Negotiations**

1. It may be recalled that in July 2006, the Doha Development Round of negotiations were suspended and the primary reason for this was the stalemate in the negotiations in Agriculture and Non-Agriculture Market Access (NAMA).

2. On 7 February 2007, after much effort from the Member countries and the Director General of WTO, the negotiations were resumed fully across the board. Director General Pascal Lamy, in his report to the WTO General Council, said that “political conditions are now more favourable for the conclusion of the Round than they have been for a long time”. He added that “political leaders around the world clearly want us to get fully back to business, although we in turn need their continuing commitment”.<sup>18</sup> He said that several participants have been stepping up their discussions at various levels to work on possible areas of convergence. The process will continue to be bottom up, inclusive and transparent, and it will be lead by the Chairs.

3. With regard to the timing, he noted that “we should not attempt to set any false deadlines”. While very much aware of the urgency of the task ahead, he said that it is also important to reach a substantive outcome which was acceptable to everyone. He also noted that as requested by the proponents of the Cotton Initiative a High Level Session of the Consultative Framework on Cotton would take place in Geneva on 15-16 March 2007.

**B. Director General’s Consultative Framework Mechanism on Cotton, High-Level Session, Geneva, 15-16 March 2007**

4. Pursuant to the mandate on the development assistance aspects of cotton and taking account of the decision by WTO Members for an ambitious, expeditious and specific treatment of the cotton issue, the WTO Secretariat convened a High-Level Session (HLS) on cotton from 15 to 16 March 2007. This was part of the on-going work on the Doha Development Agenda (DDA) and was in accordance with paragraph 5 of Annex A of the 1 August 2004 Decision to seek coherence on the development assistance and trade policy aspects of cotton. The HLS was convened based on consultations with African Union (AU) Members, Least-Developed Countries and the proponents of the Sectoral Initiative on Cotton (Benin, Burkina Faso, Chad and Mali).

5. Following are the highlights of the communication circulated at the request of the Delegation of Brazil on behalf of G-20. The G-20 reaffirmed its full commitment to address cotton ambitiously, expeditiously, and specifically, in the context of the Doha

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<sup>18</sup> Report by the Chairman of the Trade Negotiations Committee, 7 February 2007, WTO General Council.

Round. G-20 was of the view that cotton comprises high percentages of total exports and GDP of the Cotton-4 nations and accounts for a significant part of rural incomes of poor farmers in the Western and Central Africa region, as well as in other parts of the developing world, the G-20 is concerned about the influence of subsidies on world prices and subsequent influence on the potential of agriculture trade to reduce poverty. The G-20 fully supported paragraphs 11 and 12 of the Hong Kong Declaration.

**C. G-33 Ministers Summit in Jakarta Streamlines Special Product Indicators**

6. Members of the G-33 group of developing countries during a Summit in Jakarta on 20-21 March 2007 called on industrialised States to take the lead in breaking the deadlock in the Doha Round trade negotiations by offering greater cuts to their farm subsidies. Trade Ministers of G-33 approved a streamlined list of 12 indicators for the selection of Special Products, down from 17 proposed earlier. The Ministers stated that any product designated as Special Products in its natural or processed forms “shall be presumed to meet at least one of the indicators..., either at the national or regional level, in the developing country Member concerned”. Ministers did not define the maximum percentage of tariff lines that a country could designate as ‘special’, but stated that “ the right of all developing country Members to self-designate any product as a Special Product shall be respected at any stage of the negotiating process.”

**D. Non-Agriculture Market Access (NAMA) Negotiations**

7. In NAMA, work is progressing on non-tariff barriers (NTBs) and Sectorals, in addition to the coefficients for tariff cuts. These issues need to be tackled in the near future, as well as the relationship between the big numbers and the flexibilities. The NAMA Chair Ambassador Don Stephenson (Canada) told Members on 30 March 2007 that because talks on cutting agricultural tariffs and subsidies remain stalemated, making new negotiating stances on industrial goods unlikely. He recommended that delegates try to resolve unanswered technical questions about NTBs and sectoral liberalization initiatives. In the next NAMA meeting on 7 May 2007, the focus would be on NTBs and sectoral liberalization.