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**Bangladesh's Strategies for  
Post Cancun Negotiations**

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The present paper, *Bangladesh's Strategies for Post Cancun Negotiations* has been prepared under the CPD programme on **Trade Policy Analysis and Multilateral Trading System**. This programme aims at strengthening institutional capacity in Bangladesh in the area of trade policy analysis, negotiations and implementation. The programme, inter alia, seeks to project the civil society's perspectives on the emerging issues emanating from the process of globalisation and liberalisation. The outputs of the programme will be available to all stakeholder groups including the government and policymakers, entrepreneurs and business leaders, and trade and development partners.

This paper has been prepared by a team which include *Dr Debapriya Bhattacharya*, Executive Director, *Professor Mustafizur Rahman*, Research Director and *Dr Ananya Raihan*, Research Fellow, CPD.

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## **Bangladesh's Strategies for Post Cancun Negotiations**

### **Strategy for Strategy Building**

In the context of collapse of the WTO Ministerial Meeting held in Cancun during September 10-14, 2003 Bangladesh's possible strategies for negotiations may be divided into two parts:

- a. immediate strategy, related to completion of Cancun process
- b. medium term strategy, related to negotiations for the completion of Doha Development Round.

While developing strategy Bangladesh will also need to consider a number of tactical issues. As an LDC Bangladesh enjoys certain exemptions and derogations in terms of undertaking commitments, whilst the non-LDC developing countries, and developed countries are required to undertake varying degrees of discipline in terms of market opening commitments. These market-opening commitments in some cases erode preferential margins for Bangladesh, in others, providing the country benefits in the form of improved market access. In the past, strategically negotiations were not given due prominence where LDCs as a group were not required to make any commitment at the individual country level. However, this stance needs to be changed and due attention need to be given to negotiations which do not have direct implications for Bangladesh, and indepth exercise must be carried out to estimate the cost-benefits of such negotiations. Bangladesh will need to build alliance and develop proposals which may be used as bargaining chips for negotiations.

The other tactic would be to prepare for negotiations in areas which are still open and see what trade-offs can be made in future negotiations. In addition, perspectives on issues where Bangladesh does not stand to gain directly, i.e., cotton issues, need to be firmed up and make use of the purpose of advancing country position on particular issues of interest. For example, for gaining support of all the LDCs for duty-free access of apparels in USA, Bangladesh should lend support to the 'cotton' issues.

### **Current Approach to the Negotiations**

In developing the short run strategy for negotiations, it is important to take stock as regards the post-Cancun developments in Geneva [see Table 1]. On the one hand, there

are many issues to be discussed to progress the Doha Development Agenda (DDA) which are relevant to the interest of various groups of countries; on the other hand, Cancun has also shown that it is not feasible to start negotiations on all outstanding issues at the same time in Geneva.

**Table 1: Major Developments since Cancun**

Date	Developments
October 14, 2003	Coverage: Exactly a month after the Cancun Ministerial collapsed without any negotiated declaration, the WTO convened its first post-Cancun heads of delegation meeting in Geneva. The General Council chairman and the Director General presented their proposals on how to conduct discussions and revive negotiations, to meet the deadline set by Ministers in Cancun of a December 15, 2003 General Council meeting of senior officials for agreeing on modalities for continuing the negotiations under the DDR work programme. They proposed to focus first on (a) agriculture, and then subsequently take up (b) cotton issue, (c) non-agriculture market access, and (d) Singapore Issues. India, China, Costa Rica, and others emphasized the importance of resuming negotiations and called for demonstration of 'good will' on the part of developed country members of the WTO. The developed countries were conspicuously silent.
October 24, 2003	Agriculture: Chair Perez del Castillo and Director-General Supachai Panitchpakdi held an informal "Ambassador plus one" 'green-room' consultation with a smaller group of 30 (thirty including Bangladesh) key Members to discuss issues related to revival of the multilateral farm trade negotiations. No decision was made on the basis on which to start the negotiations.
October 28, 2003	NAMA: Approximately 30 WTO Members gathered for the first 'green room'-style informal meeting. It was agreed that the point of departure will be the draft (revision-2, Annex B) circulated in Cancun (on September 13, 2003) for future negotiations.
October 28, 2003	Environment: WTO Members convened for the first post-Cancun session (as per earlier schedule) of the Committee on Trade and Environment (CTE). The meeting lasted only two hours, as most delegates felt that discussion in the CTE regular sessions is linked to the CTE special sessions (CTESS) and this has now been postponed until further notice. Besides, it was felt that there was no use in discussions unless other negotiating groups also started to work.
October 29, 2003	EU Position: Mr Lamy made it clear that he was withdrawing his promise to drop demands for talks on global investment and competition rules. 'I made this compromise when I thought it would move negotiations forward,' he told MPs on the international development committee. 'I have withdrawn the offer.' Instead, he said he would be consulting with member states as to whether Europe should push for an agreement on investment and competition among a small group of WTO states or return to its original position that they had to be part of the overall deal." EU also initiated a review of its approach to WTO negotiations which would focus on (a) WTO rules, (b) Decision making process, (c) Agriculture, and (d) Singapore Issues.
November 7, 2003	Meeting of the senior officials of the "133 Committee <sup>1</sup> " of the EU will take place on November 7, 2003 to decide on the coherence between the CAP reforms and further commitments of the EU in the upcoming negotiations.
Late November Proposed Meeting	Meeting of the EU Trade Ministers to decide the approach to the current negotiations

Source: <www.investmentwatch.org>, <www.twinside.org>, FINANCIAL TIMES (various issues).

<sup>1</sup> 133 Committee: an EU decision-making body for trade, in which members states are represented and provide guidance to the European Commission's DG-Trade, the entity that negotiates trade issues on behalf of the EU

The Chair of the General Council Ambassador Pérez del Castillo has come up with an offer, which is to limit talks in Geneva at the moment to four key trade areas: (a) agriculture, (b) industrial tariffs, (c) cotton and (d) what are known as the "Singapore issues". Taking cue from this Bangladesh should initiate strategy building exercise by focusing on these four issues.

The issue is still not clear as regards the reference point for the negotiations to be initiated in Geneva. US acknowledged that some countries expressed reservations about the Cancún text but were persuaded that it was the 'best and most appropriate starting point for the resumption of talks'. In the APEC Summit in Bangkok the WTO DG Mr Supachai said he had seen "the beginning of some flexibility" on the controversial "Singapore issues" – trade facilitation, competition and government procurement - over which the Cancún negotiations deadlocked; he urged for more movement on 'agriculture' and 'manufacture' areas to give fresh impetus to the Geneva process.

The strategy is developed on the basis of following assumptions:

- A. The negotiations in Geneva will not deal with the WTO reform issues
- B. The starting point of the negotiations in Geneva will be the second revision of the draft Cancun Ministerial declaration
- C. The negotiations in Cancun should reach certain level of agreement on progressing the Doha Development Agenda.

Bangladesh will need to revisit its strategies by taking into cognisance the changed post-Cancun context and the present developments in Geneva. Strategies will need to be designed, proposals need to be prepared, and alliances to be built with LDCs, with developing country groups; Bangladesh will also need to carefully study the benefits and implications of possible trade-offs.

Following sections focus on Bangladesh's possible stance on some of the core issues of interest and also issues where homework is likely to give rich dividends in terms of possible trade-offs. The framework for discussion is the draft Ministerial text (Rev. 2) of September 13, 2003. Suggestions as regards various articles in respective areas have been made by (a) taking note of what is there in the revision 2 text, (b) by articulating Bangladesh's position in the context of what is there in the revision 2.

### **Negotiations on Agriculture**

The framework text on agriculture contained in Annex A of the revised (second revision) 13 September Draft Ministerial Text (JOB(03)/150/Rev.2) tabled by the Chair of the Cancun Conference, Mexican Foreign Minister Luis Ernesto Derbez, was not discussed at Cancun. On the final day in Cancun the ministerial talks collapsed over the Singapore issues before Members had any opportunity to turn to the agenda on 'agriculture'. As a result, there is no official working document currently available based on which the Members could move on to take the negotiations forward. However, it would be wise for Bangladesh to work on the second revision of the Chairman's draft circulated in Cancun.

### ***General Observations***

Draft Ministerial Text and the relevant Annex (Annex A) on agriculture fell short of the objectives envisaged in the Doha Declaration for further reform of agricultural markets. The Framework does not provide for meaningful tariff reduction by developed countries and hence does not address the issue of high tariffs, tariff peaks and tariff escalation. Furthermore, the proposed "blended formula approach" will allow developed countries to place the products with high tariffs under the "import sensitive category" and hence subject them to lower reduction commitments.

Bangladesh may consider taking more pro-active position in agriculture negotiations. Bangladesh generally tended to support the position of developing countries in this regard. However, it will probably be in Bangladesh's best interest to give more emphasis in such areas as domestic support, market access and export competition.

### ***Domestic support***

The revised text and Article 1.7 addressed some of the concerns of the developing countries. The bone of contention was the de minimis rule. The demand on discipline for amber box was largely fulfilled by the revised text. Reductions of Amber Box support would be made in an aggregate [not product-specific] manner, and would not be harmonised, as demanded by the developing countries. Most of the countries demanded that there would be no distinction between products exported and those supplied to the domestic market. However, major concerns still remained unaddressed. The specific negotiating positions of Bangladesh are given below:

1. According to Article 1.3 i and ii, the "blue box" (direct subsidy) payments would be retained, but at a lower level. It proposes a limit on blue box payments of 5%

of the value of agriculture production in the 2000 to 2002 period. Subsequently the reduction will be following a linear approach without specifying the time frame to achieve this. Bangladesh should demand elimination of blue box subsidies with a specific time frame.

2. The revision 2 of Cancun draft had some improvement regarding the green box measures. While Article 1.5 of annex A of revision 1 kept the green box under negotiations, the revision 2 aims for “no, or at most minimal, trade distorting effects or effects on production due to green box subsidies”. Bangladesh supports the G 20+<sup>2</sup> position on capping and tightening the green box.
3. It is clear that the negotiations will not be able to reduce trade-distorting domestic support within a short period of time. Thus, Bangladesh may call for incorporation in the agreement of an article on compensation to those LDCs, who are adversely affected due to the subsidies, unless these are phased out.

### ***Market Access***

The developing countries will be more affected than the developed countries under the current approach as regards the market access. The issues of tariff escalation have been elaborated in the second revision, however, there is no clear-cut guideline on the matter. The special safeguard issue continued to be ignored in the text, keeping it under “negotiation”. The position of Bangladesh on the agricultural market issues may be as follows:

1. The revision 2 of Cancun draft incorporated improved text for the LDCs. The revision 1 incorporated S & D provision for LDCs in Article 4: “Least developed countries shall be exempt from reduction commitments. The objective of duty free and quota free market access for products originating from the least-developed countries shall be expeditiously pursued”. The second draft was further improved and the revised text said: “Least-developed countries shall be exempt from reduction commitments. Developed countries [should][shall] provide duty-free and quota-free market access for products originating from least-developed countries”. This improvement also does not reflect the

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<sup>2</sup> G-20 +: Argentina, Bolivia, Brazil, Chile, China, Colombia, Costa Rica, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Thailand and Venezuela.

expectation of the LDCs. Bangladesh should demand the articulation “shall” in the text with the addition: “ ...originating from least-developed countries immediately after completion of negotiations”.

2. The blended formula for developed countries, originally sought by the EU-US, continues to remain in the draft [Article 2.1 of Annex A, revision 2] which enables them to place their high-tariff items in a category for lower tariff cuts and thus avert removing tariff peaks which thwart developing country export products. Due to the blended formula the developing countries now have to reduce some of the tariffs by an average formula (which is not so steep) while some other tariffs (probably this list would be much larger) would be subjected to a Swiss formula, under which the higher the tariff the steeper would be the cut. Thus, for a majority of tariff lines, developing countries would have to reduce their tariffs in a very pronounced manner. In the absence of capacity to provide higher subsidies, serious erosion of their ability to use tariffs to safeguard their farmers against imports would have major fallout on rural livelihoods and poverty reduction objectives. In this context, Bangladesh may consider supporting the position of the majority of the developing countries [including G 20 and Swiss Group of Six] which says that for the developing countries tariffs would be either a three-band Uruguay Round approach, or a blend of the Uruguay Round and Swiss formulas, without a zero duty category.
3. The demand for special safeguard mechanism has not been addressed in the Article 2.9 and 2.11 properly, where the mechanism is "subject to conditions and for products to be determined". Bangladesh should demand incorporation of detailed conditions so that it would be possible to make the agreed mechanism operational after conclusion of the negotiations.
4. Majority of the LDCs are dependent on agriculture both for export and subsistence. Many countries will not be able to take advantage of potential preferential market access to the developed countries. Bangladesh should call for initiation of a programme to support the enhancement of supply capacities in the agricultural sector so as to take full advantage of market access opportunities.
5. Despite the insistence of the developing countries and LDCs the demand for addressing issues of non-tariff barriers, such as SPS and TBTs, as well as other

market entry barriers have not been incorporated in the Ministerial text and subsequently in the AoA. Bangladesh should demand incorporation of specific provision for elimination and abuse of non-tariff barriers including SPS and TBTs for agricultural products.

6. The issue of tariff escalation was elaborated in the revised text [Article 2.3 of Annex A] without specifying the factor of tariff reduction. Bangladesh should demand that the factor for tariff reduction in case of incidence of tariff escalation should be 0.1.
7. Bangladesh may also consider supporting the demand of the developing countries as regards absence of any ceiling on the level of maximum tariffs for developing countries.
8. The Draft Ministerial Text and its Annex have not fully taken into account [Article 2.7 of Annex A] a variety of developing and least-developed-country-specific concepts, such as the Special Products (SP) and Special Safeguard Measures (SSM), that are important of high importance to these countries. The proposed Framework on Agriculture should fully incorporate the proposals contained in the Harbinson's Revised First Draft Modalities. Special safeguard measures should include self selection of special products without limiting the product coverage. Bangladesh should demand that the developing countries shall have the right to determine their own special products, and shall be exempt from tariff reduction for those products that under the Uruguay Round were bound at lower levels.
9. Recognising the vital importance of long standing trade preferences for AU/ACP/LDC states and the longstanding call on WTO members to provide for the maintenance and security of such preferences through flexible rules and modalities based on development needs, a framework on Agriculture should be incorporated with relevant proposals from the Harbinson Text. Bangladesh should also call for putting in place a compensatory mechanism to address erosion of preferences for these countries.
10. The revised draft did not include the demand of the LDCs to exercise the right to use additional duties based on a simple countervailing measure on subsidized

imports, until trade distorting support is effectively eliminated. Bangladesh should demand for inclusion of such provision in the outcome of the negotiations.

### **Export Competition**

1. The draft incorporated a text [Article 3.1 of Annex A] on elimination of export subsidies on some products "of particular interest for developing countries" "with a view to phasing out". Bangladesh should demand that the export subsidies should be eliminated on the products of interest to developing countries and the LDCs immediately and the rest would be phased out within a realistic time frame [Article 3.6 of Annex A].
2. According to the draft text [Article 3.2] subsidised export credit and food aid would be treated in parallel with export subsidies, which is not acceptable to the developing countries. The article 3.10 guarantees that as part of , developing countries would maintain flexibility to exempt certain transport and marketing subsidies from export subsidy reduction (Article 9.4 of the Agriculture Agreement) until all export subsidies have been fully phased out by all Members. While it is difficult for the developing countries to increase subsidies at production level, they can afford to provide some support to the exporters of agricultural products in the form of subsidized export products. For some countries these supports are essential and related with poverty situation. Bangladesh may consider supporting the stance of developing countries in this regard and demand exclusion of export credit from the categories of export subsidies.
3. Bangladesh should demand extension of coverage of the EC proposal to eliminate subsidies on products of interest to African countries also to non-African LDCs.
4. The existing text does reflect the concerns of Net Food Importing Developing Countries (NFIDCs) [Article 3.10]. Bangladesh should demand that Members shall immediately implement the Marrakesh decision on measures concerning possible negative effect of the reform programme on LDCs and NFIDCs, including through the establishment of a revolving fund to ease short-term financing problems linked to import of basic foodstuffs.

5. Contrary to the expectations of the LDCs the text does not mention about the predictability of food aid in case of necessity. Bangladesh should demand that food aid provided by members to meet emergency situations, humanitarian and development objectives and to address chronic food deficit situation in LDCs shall be allowed.
6. Another important point is that the draft proposed extension of “peace clause” [Article 6 of Annex A]. Peace clauses in the AoA provide a reverse by allowing developed countries safeguards against Counter Veiling Duty (CVD) with respect to amber measures. LDCs propose that the peace clause be abolished. As the draft was not adopted the issue of extension of peace clause remains open. As per the earlier decision, the peace clause is going to expire by December 31, 2003. Article 13 of the Agriculture Agreement (AoA) sets out the so called 'peace clause,' under which WTO Members agree not to challenge certain agricultural subsidies. Members of the G-22 considered the expiration of the 'peace clause' a non-issue, decoupled from the ongoing agriculture negotiations. Others, such as the EC (which has benefited from the 'peace clause') consider its renewal a *precondition* for continuing negotiations. It appears that most of the developing countries are ready, in principle, to consider an extension of the peace clause; however, they would like to know what they would get in exchange. Some G-22 delegations are of the opinion that the alliance would be more willing to address the issue of the 'peace clause' only if a wider agricultural package that met key G-22 demands was agreed. Bangladesh may consider with this position.

### **Non - Agricultural Market Access (NAMA)**

The October 28, 2003 green-room type meeting participated by 30 WTO member countries decided to move forward with negotiations based on the Cancun draft text and Annex B of the draft. This decision provides for a specific context for negotiations on NAMA.

The NAMA framework floated in Cancun provided for a higher “level of ambition,” requiring developing countries to drastically cut their industrial tariffs. This was in effect, contrary to the Doha principle of “less than full reciprocity” and special and differential treatment for developing countries. The “non-linear” formula suggested is not in line with “less than full reciprocity”, as it results in tariff cuts by developing

countries much higher compared to those of the developed countries. Many countries had problems with the proposed non-linear formula and a mandatory approach to sectoral negotiations.

Developing countries were ready to go in for a formula that would provide adequate protection to their domestic products by allowing binding of tariffs at appropriate levels. The formula would include adequate flexibilities and address the concerns of the developing world. In this regard, the flexibility to retain as unbound a few domestically sensitive tariff lines as well as the flexibility not to apply any reduction on some presently bound tariffs lines would be ensured.

Specific positions which Bangladesh may like to articulate in the context of the second revision of Cancun draft text and its Annex B are given below:

1. The demand of LDCs for bound duty free and quota free regime was addressed inadequately [Article 26 of main text and Article 9, Annex B], by “calling upon” the developed countries to consider it on an autonomous basis, which virtually means to push the countries to negotiate the duty and quota free market access bilaterally, or plurilaterally. Bangladesh should demand binding commitment on duty-free and quota free regime on a multilateral basis by the end of 2004. The impending changes of Post-MFA regime in textile and apparels, with its unforeseen consequences for exports of apparels from a number of LDCs including Bangladesh, should be put forward as an argument in this regard.
2. One of the priority demands of LDCs was putting moratorium on anti-dumping and countervailing duty on the products originating from the LDCs, which was not addressed in the draft text. Bangladesh should demand inclusion of binding text in the modalities of negotiations.
3. Another demand for granting non-reciprocal credit for autonomous liberalisation was not addressed appropriately in the revision 2 [Article 4, indent 4]. Bangladesh should raise the issue in the Geneva negotiations as regards granting of non-reciprocal credit for autonomous liberalisation undertaken prior to 1995 by LDCs such as Bangladesh.
4. The text includes issue of flexible rules of origin in Article 26 of the draft, in a manner which does not ensure commercially meaningful market access for the

LDCs. Bangladesh should propose a revised text: “Members shall adopt and implement rules of origin which would held LDCs to realize the potential benefits accruing from preferential tariff treatment of their products in the market of developed countries.

### **Singapore Issues (SIs)**

Singapore issues have emerged as a key item of contention in the current round negotiations under the DDR agenda. Along and in conjunction with agriculture the SIs are seen as the deal maker or deal breaker of the Doha Development Round (DDR) negotiations. Development during the Cancun Ministerial and the early post-Cancun developments indicate that it would be difficult to move forward without resolving the issues of inclusion of one, two or all of the Singapore issues in the current round of negotiations.

It appears that following the Cancun Ministerial Meeting the developed countries have taken a “wait and see” posture and are waiting for the developing countries to make the first move. Developed countries were silent during the October 14 General Council meeting, while only a few developing countries participated in the discussion. Meanwhile, Mr. Pascal Lamy has stepped back from his earlier proposal of dropping two of the Singapore issues (Competition Policy and Investment) from the negotiations. He said, ‘I made this compromise when I thought it would move the negotiations forward, I have withdrawn the offer’, when he spoke to the EU MPs on the international development committee. He further said that he would consult EU member states as to whether Europe should push for an agreement on investment and competition among a small group of WTO members or revert back to its original position that the SIs were to be part of the overall deal. This is an important signal for the negotiating countries. On the other hand, the declaration of the APEC heads of states meeting mentioned that the revision 2 of the Cancun Ministerial draft would be a good point to re-start the post-Cancun negotiations in Geneva. The EU has initiated an internal review as regards (a) WTO rules, (b) Agriculture, (c) Singapore Issues, and (d) WTO decision making process. It is clear that big players have already started their work on strategic repositioning in the context of the Cancun Ministerial.

Technically, the mandate of the WTO Working Groups on the three Singapore issues (investment, competition and government procurement) and the mandate of the

Committee on Trade in Goods (CTG) as regards trade facilitation have expired in Cancun according to the Doha Work Programme (DWP). The mandate was to report on the discussion on the Singapore issues to the fifth Ministerial Meeting. The Cancun decision merely confirmed the DWP without extending or where a decision would be taken on their inclusion in the negotiating agenda giving new mandate to these bodies. The meetings of the Working Groups and CTG cannot be automatically convened (by the chairs or the WTO secretariat) as their mandate is now over. These Working Groups can get a further mandate to continue their work only through a decision of the Ministerial Conference. The Marrakesh Agreement (WTO Agreement), in Article IV.2 says, "in the intervals between the Ministerial Conferences, its functions shall be conducted by the General Council". Accordingly, the General Council (meeting at any level) does have the authority to take decisions in between two Ministerial Conferences. While conducting the function of the Ministerial Conference, it certainly cannot act contrary to the decisions taken previously by the Ministerial Conferences. This sets obvious limits to the authority of the General Council with respect to the Singapore issues at the present stage. If the General Council meets at the level of Ministers, it can perhaps be argued that it will then be acting almost like the Ministerial Conference and can give mandate to the Working Groups on these issues to move the discussion forward beyond Cancun. It is doubtful whether the General Council meeting held at the level of government officials (held once in three months) can do this as part of their routine work. This issue needs to be clarified on an urgent basis.

Since agreement on modalities is a necessary condition for initiating the negotiations on the SIs, it remains uncertain where the Geneva process as regards the SIs should go from where Cancun has left. In this regard, some argue that it is only logical that the SIs should be dropped altogether, and negotiations should continue in other areas of the work programme.

When the Singapore issues were raised during the Ministerial Meeting in Singapore in 1996, a large number of countries opposed these uncalled for addition beyond the WTO framework. The EU tried to down play the opposition by saying that it came from only a small number of countries. What won over the day for EU was that it was decided to start only *discussion on discussion*. However, Cancun exposed the range and depth of opposition when around 90 countries expressed clearly and decisively against launching negotiations in these areas through a joint stand.

However, there is every possibility that the SIs are to appear in any future work programme to be negotiated in Geneva. Accordingly, it is useful to undertake the homework to understand the possible implications of inclusion of the Singapore issues, in any combination, in the work programme of the WTO. Bangladesh should begin to strategise her country position if and when this happens.

Some fresh thoughts came into discussion as regards the compromise on Singapore Issues. One specific thoughts is to include the transparency in government procurement and trade facilitation as plurilateral agreements under the WTO like the Information Technology Agreement (ITA). This particular option may satisfy all the parties.

### **Transparency in Government Procurement (TGP)**

General Arguments favouring TGP are the following:

- Proponents of TGP argue that corruption is particularly rampant in government procurement across the globe and transparency essential to expose such corruption
- Transparent procurement procedures can contribute to a more efficient allocation of resources through increased competition, higher quality procurement and budgetary savings for governments, and thus for taxpayers
- TGP can also help attract more investment by lowering risk
- TGP can enhance the efficiency of local suppliers as they compete for public contracts, thereby improving trade prospects by making these suppliers more competitive exporters
- Positive externalities can result as a consequence of adoption of a common approach agreed multilaterally as regards Government procurement, including further enhanced competition through reduced suppliers' cost for access to the relevant information
- TGP can enhance the cause of good governance

Arguments against inclusion of TGP into the WTO mandate:

- There are no obvious arguments against transparency in the government procurement *per se*. However, there are strong arguments for not including the TGP within the WTO framework.

- Proponents of TGP argue that, because TGP focuses only on transparency and not on market access, and that governments will still be able to preferentially procure goods and services from local suppliers. However, ‘transparency’ may only be the beginning. The next step would inevitably be full market access i.e. governments would have to open tenders to multinational competition, and treat bids from multinationals in the same way as the local bids. GP has traditionally been treated in developing countries an important tool to stimulate domestic sectors and entrepreneurs and it can also be used to help disadvantaged groups in the society or particular geographical areas. If there is discipline in the area of GP it is unlikely such controls could be exercised over GP budgets. (It is also to be noted that discretion as regards GP is also exercised at local government levels, in many developed economies.)
- In many cases it is difficult to develop system of transparent selection mechanism of suppliers due to lack of technical difficulties and absence of know-how at the local level in terms of preparing bid documents at international level. Thus, poor documentation may trigger international disputes, which might not be easy to handle on the part of poor countries
- Recognizing the importance of the GP, countries support the cause of transparency in GP, but beyond the WTO mandate
- The LDCs are not capable to take on further obligations as they are overloaded by the outstanding agenda and they lack the financial and personnel resources and technical expertise in this area in a manner which would help them conduct meaningful negotiations.
- Opposition to the inclusion of the TGP in WTO has also been grounded on the reason that there this will result in WTO reviews and examination of domestic laws and regulations in the area of government procurement which would undermine national sovereignty.

### **Bangladesh Situation**

There is hardly any controversy about corruption and malgovernance as major problems facing Bangladesh and these severely constrain economic progress of the country. The economic losses due to corruption are estimated to cost the country about 2.5% GDP growth per annum [WB, 2002]. Thus, any initiative to bring transparency in government

procurement should be encouraged. The moot issue is whether to undertake binding obligations within the ambit of WTO disciplines.

At present public sector procurement system in Bangladesh suffers from a number of shortcomings. These include:

- absence of a sound legal framework governing public sector procurement which result in proliferation of rules and procedures in the various government agencies;
- protracted bureaucratic procedures which leave room for multi-point rent seeking;
- lack of critical mass of professionals to manage public procurement which is often reflected in prolonged bidding process and poor quality of bidding documents and bid evaluation;
- inordinate delays in finalizing the procurement process and ineffective contract administration; and
- weak monitoring capacity for ensuring transparency and accountability in public procurement.

To address the above underlying causes of poor public procurement performance, the World Bank, with support of the government, conducted a country procurement assessment study in 2000. Major recommendations of the study were as follows:

- Create a Central Procurement Policy Unit in an appropriate ministry having mandate to manage the public sector procurement reform program;
- Prepare and issue Public Procurement Rules and Procedures;
- Introduce a set of Standard Bidding Documents for goods, works, and professional services, applicable to all public procurement;
- Revise delegation of powers and expedite the procurement approval process;
- Publish contract awards, introduce appeal procedures, and establish a code of ethics for procurement staff; and
- Establish regular training programs to develop the required human resources.

It is worth mentioning that on the basis of that study, Bangladesh government has already started to implement a project titled *Public Procurement Reform Programme* (USD 4.91 million) with financial support from the IDA.

The objective of the project is to increase efficiency, transparency, and accountability in the procurement of goods, works and services by government ministries, departments, statutory corporations and other public bodies. The project has three components:

- (i) Establishment of a Central Procurement Technical Unit (CPTU)- a Central Procurement Technical Unit will be established under Implementation Monitoring and Evaluation Division (IMED) of the Ministry of Planning with adequate staff and logistics. The unit will have no procurement/contracting functions at any level except for its own needs and shall be established as a permanent institution of the Government which will continue to exist once the project period is over;
- (ii) Development of Procurement Rules and Procedures- public procurement rules/procedures and standard bidding documents will be developed and used by various government agencies; and
- (iii) Strengthening Procurement Management Capacity- procurement management capacity will be developed through a two-pronged effort:
  - a. institutionalization of comprehensive and regular training programs through selected public and private training institutions, and
  - b. establishment of a monitoring and evaluation capacity to track procurement performance of public sector entities.

The project is still at the implementation stage. It is expected that the implementation of the project will improve TGP system in the country.

### **Bangladesh's Possible Stance**

Given the context set above, there are few considerations why Bangladesh may consider agreeing to the proposal to include the Government Procurement in the negotiating process of the WTO.

Most LDCs and developing countries are against inclusion of any of the SIs in the WTO negotiations. However, it appears that in order to carry the Geneva process forward, and strengthen the bargaining positions as regards agriculture, developing countries may as well agree to the inclusion of one or more SIs. It is thus only logical that Bangladesh is

required to get on with the homework in this regard. The current reforms in the area of GP should also help Bangladesh to favourably position herself in this regard.

There is also a compelling domestic pressure for reforms in such areas as GP as part of the drive for good governance. Flexibility in this area is likely to create conducive environment for acceptance of LDC demand in such areas as duty free market access, temporary movement of natural persons, flexibility in RoO and moratorium on anti-dumping and countervailing duties on the products originating from the LDCs. Bangladesh will need to discuss the relevant issues with other LDCs. Once Bangladesh decides to agree to negotiate on the TGP, the followings need to be paid attention to:

- The framework should be strictly confined to transparency issues and should not in any way cover market access. There must be satisfactory guarantees that a transparency framework will not lead to market access issues in future.
- Transparency should be confined to the provision of information and notification in relation to tenders and the conditions for tenders. It should not include administrative or judicial processes, or decision-making processes.
- “Government” should be taken to be only the central government, and other agencies (e.g. Government agencies, entities and enterprises, state and local governments) should not be asked to undertake obligations.
- “Procurement” should be confined to government supplies, and only purchases above a certain level [for example, procurement value of USD 10 million and above] should come under discipline.
- For LDCs The framework should be in the nature of voluntary cooperation, non binding in nature, and not a legally binding framework
- Appropriate and adequate capacity building and technical assistance support should be ensured to address the concerns of the LDCs in this context.

### **Trade Facilitation (TF)**

Trade facilitation attracted a lot of attention in the discussion on SIs during the Cancun Ministerial. Many developed countries are of the opinion that of all SIs TF should be the one that should get the nod of developing countries and LDCs. On the other hand, many developed and LDCs feel that an efficient TF mechanism is an essential ingredient of

competitive external sector. However, what deters them is that compliance with any undertaking under multilateral discipline would require considerable financial resources. Thus an analysis of merits and demerits of inclusion of TF in the negotiation process from Bangladesh perspective is important for the country.

TF is about ensuring that customs procedures are trade friendly and facilitate cross border movement of goods and services. Trade facilitation issues are covered in article V, VIII and X of GATT 1994.

### ***Arguments for TF***

- Proponents argue that TF is a “win-win” case because costs for companies are reduced and countries become more attractive for investment.
- Bangladesh and other LDCs would benefit since export and import administration would be more efficient.
- Article 2, Annex E of the Cancun rev.2 text provides for special and differential treatment for developing and least developed countries in this respect. This would indicate that specific concerns of LDCs will be addressed if negotiations are initiated on TF.
- Article 3, Annex E provides for commitment of the developed countries to ensure adequate technical assistance and capacity building support both during the negotiations and after its conclusion. Thus, the concerns of the LDCs as regards financial resources required for TF has been noted. Developed countries shall support in needs assessment of technical assistance [Article 4, Annex E], which would mean that technical assistance will be available to LDCs.

### ***Arguments against TF***

- It seems quite likely that letting one SI through might make it politically possible for the other SI to creep through in subsequent negotiations.
- Negotiations could lead to an agreement that would impose new obligations on LDCs which will be both costly and difficult to implement. It may require our countries to purchase and maintain expensive equipment for customs clearance and safety testing.
- Although the negotiations are to be confined within Articles V, VII and X of GATT 1994 for further clarification and improvement, the new framework is likely to capture other aspects. As happened in case of TRIPs which had an

initially innocuous negotiating mandate, there is a tendency to broaden the mandate once an issue has been included for negotiations.

- “One size fits all” approach is not appropriate in case of customs harmonisation rules and it would be unfair on LDCs, as they would need to maintain high standards of trade facilitation which will involve costly adjustments. Moreover, the structure and functions of present customs are not uniform across the countries.
- Studies referred in [Article 5 of Annex E] undertaken only by the international organisations relate mainly to the OECD and the World Bank. Interest of LDCs appear to have been sidelined.
- Making TF regulations “least trade restrictive” could lead to negative/downward harmonization of border controls, in some instances making it difficult for a country to implement more stringent controls, in the name of safety for example.
- Improvement in trade facilitation should be made through technical assistance, rather than through imposing additional obligations.
- It is doubtful that the developed countries will be able to provide adequate financing to cover the trade facilitation related expenses in LDCs, given the current state of aid flow, technical assistance and the experience with building WTO Trust Fund.

### **Negotiating Stance of Bangladesh**

Considering the post-Cancun reality and prospect of getting advantage in other areas of negotiations, Bangladesh may consider supporting inclusion of TF in future negotiations. Bangladesh may keep the followings in perspective:

- Bangladesh should demand that the TF should be adopted only as guiding principles or as flexible best endeavour provision, not enforceable through dispute settlement process.
- Negotiations must be confined within the premise of Article 1 of Annex E and should provide guarantee that the scope of negotiations will not be elaborated in future.
- Special and differential treatment to LDCs should include *inter alia*, at least a 10 year period for implementation of provisions for trade facilitation.
- Need assessment exercise will have to be carried out with participation of the concerned LDCs. Negotiations should ensure that failure of any discipline as

regards compliance in the area of TF should be tagged to flow of technical assistance support in the area of TF.

- Article 5 should be deleted from the draft text (of September 13).

## **GATS**

Although the GATS related issues were of heightened interest to the developing countries and LDCs, they did not get adequate attention in Cancun. As a matter of fact the GATS issues did not receive due priority in the DDR Agenda and has suffered as a result of wrong sequencing and missed deadlines. The offer-request negotiations had been launched before the completion of rule making negotiations, violating the guidelines for GATS negotiations. The deadlines for both offers and requests were missed by many countries. Only 30 countries could make offers within June 30, 2002 which was the deadline. The assessment of liberalisation in services had not been accomplished, which was also a prerequisite for starting the offer-request negotiations. Most importantly, the special modalities for the LDCs was not finalised until the last week before Cancun. On September 03, 2003 the special modalities for LDCs was adopted, which was a welcome development for the LDCs. However, the LDC modalities did not get proper reflection in the Cancun Draft Declaration (Revision 2). There was in effect no difference between the text of the Doha Ministerial and Cancun Ministerial (draft) Declarations except that there were some improvements in the text related to mode 4. The mode 4 related text in Doha Declaration was about “recognition of the work already undertaken in the negotiations ... on a wide range of sectors and several horizontal issues, as well as on movement of natural persons”. The Cancun text was improved: somewhat “noting the interest of developing countries, as well as other Members, in Mode 4”. Article 26 of Cancun Draft Declaration mentioned about the “priority to the sectors and modes of supply of export interest to LDCs, particularly in regard to movement of service providers under Mode 4”.

The special modalities provided some encouragement to the LDCs with respect to the services negotiations. It addressed one of the pre-conditions for initiating offer-request negotiations. The modalities are the outcome of persistent demand of the LDCs. It is interesting to note that the LDC modalities in many cases incorporated, verbatim, the text of the Dhaka Declaration of the LDC Ministers held in June, 2003. Out of 20 demands of the LDC Ministerial, 14 have been met through the special modalities, albeit with various degree of ambiguity. Active role of Bangladesh in finalisation of special

modalities were well appreciated. The language of the text uses “shall”, which ensures binding nature of obligations under the modalities. However, without commensurate DSU provisions, the “shall” provision may also prove to be useless. It is the first time that in the text on modalities “serious difficulties” faced by the LDCs were given due recognition. These difficulties were mainly related to implementation issues and their lack of institutional and human capacities to analyse and respond to offers and request. It was also recognized that trade in services plays important role in addressing poverty, upgrading welfare, improving universal availability and access to basic services.

It is important to analyse the special modalities to LDCs to develop negotiating positions. There was not enough time for the LDCs to analyse the special modalities presented in the Draft Text (revision 2) and their implications for their service sectors.

For analytical purpose the whole text of the modalities can be presented in two columns. The right column [conditional achievements of LDCs] also includes alternate text and some proposals for further negotiations.

#### Achievement in LDC Modalities for GATS Negotiations

Sl.	Unconditional	Conditional
1	Members... shall exercise restraint in seeking commitments from LDCs due to achieving the objectives of Art. IV	LDCs shall not be <i>expected</i> to offer full NT, nor are they expected to undertake <i>additional commitments</i> under Article XVIII of the GATS on regulatory issues which may go beyond their institutional, regulatory, and administrative capacities <b>Alternative text:</b> Members shall not demand full NT and additional commitments from LDCs
2	Flexibility to LDCs for opening few sectors, liberalising fewer types of transactions	In response to requests, LDCs <i>may</i> make commitments compatible with their development, trade and financial needs and which are limited in terms of sectors, modes of supply and scope. <b>Alternative text:</b> LDCs shall have flexibility to make...
3	In addition, Members shall refrain from requesting credits for autonomous liberalization from LDCs.	Members shall [Articles IV and XIX] give special priority to providing effective market access in sectors and modes of supply of export interest to LDCs, <i>through negotiated specific commitments</i> pursuant to Parts III and IV of the GATS. <b>Proposal:</b> Omit <i>italic</i> text [should be provided multilaterally]
4	Technical assistance shall also be provided to LDCs to carry out national assessments of trade in services in overall terms and on a sectoral basis	Members shall take measures, <i>in accordance with their individual capacities</i> , aimed at increasing the participation of LDCs in trade in services. <b>Proposal:</b> Capacity in terms of % of GDP

Sl.	Unconditional	Conditional
5		LDCs shall be granted <i>appropriate</i> credit for their autonomous trade liberalization.
6		It is recognized that the temporary movement of natural persons supplying services (Mode 4) provides potential benefits to the <i>sending and recipient Members</i> . LDCs have <i>indicated</i> that this is one of the most important means of supplying services internationally. Members shall <u>to the extent possible</u> , and consistently with Article XIX of the GATS, <u>consider</u> undertaking commitments to provide access in mode 4, taking into account all categories of natural persons identified by LDCs in their requests. <b>Proposal:</b> Omit <i>italic underlined</i> text. Adopt ISCO-88 Classification of Occupation as the basis of inclusion
7		Targeted and coordinated technical assistance and capacity building programmes shall continue ... <b>Proposal:</b> ...programmes shall be introduced...

### Bangladesh's Negotiating Stance

The right column of the above text includes some proposals with alternative texts, which will ensure S&D for the LDCs. Some other negotiating points are presented below:

The special modalities have left the following issues which will need to be addressed before full-fledged negotiations are initiated:

- ***Assessment of Services Liberalisation:*** Article 6 of the draft Cancun declaration included text on assessment of impact of services liberalization. Bangladesh should propose the following changes: “We call upon CTS to put in place mechanisms for assessment of impact of services liberalization before starting the negotiations within [...]. We call upon those participants who have not yet submitted their initial offers to do so as soon as possible. Improved offers should be submitted by *[the date mentioned in the bracket above]*”.
- ***Completion of Rules Making Negotiations***
  - Preference for Domestic Companies in Government Procurement
  - LDCs should be allowed to provide subsidies to nascent services industries
- ***Completion of ESM Negotiations***
  - Bangladesh should also propose the following change in the Article 6: “We recognise the development implications of the mode 4 market accesses

and shall provide priority to the negotiations on mode 4 and other sectors of interest for the developing countries”.

- The inclusion of text on interest of the developing countries in mode 4 has been nullified by the following text: “In accordance with GATS provisions, there shall be due respect for the right of Members to regulate and to introduce new regulations in pursuance of national policy objectives”. This should be deleted.
- In Article 26, the text on mode 4 should be revised as follows: “ In services, we shall give priority to the sectors and modes of supply of export interest to the LDCs, particularly in regard to movement of service providers under Mode 4”.
- For meaningful market access in mode 4 it is essential that less skilled categories are included in the services classification. Bangladesh should propose that ISCO-88 Classification of occupation should be adopted as a basis for negotiations on the mode 4 liberalization.
- The negotiations on mode 4 should also include the discussion on elimination of economic needs test and quantitative restrictions, de-linking of temporary movement of natural persons from commitments on commercial presence and introducing simplified visa schemes.

### **Special and Differential Treatment**

The and Implementation issues were the heart of the Doha Ministerial Meeting and gave the round its adjective: *Development*. However, issues related to development of the developing countries were sidelined. Real commitment of developed countries to the DDA has come under increasing questions and scrutiny. Bangladesh should try to bring back the focus on “” and “implementation Issues” from the agriculture and SIs, which seem to have stolen the attention of the WTO members.

The Doha Ministerial Declaration mandated that the S&Ds must become “more precise, effective and operational”. Twenty-four 'decisions' included in the Cancun draft (comprising 26 proposals submitted out of total 84 proposals discussed during the DDR) were at the centre of the substantive debate. The annexed items on S&D had little value to the LDCs as they did not constitute the substantive part of their demand. 'Decisions' on the Enabling Clause (which enables developed country Members to offer more favourable treatment to developing countries) exemplifies the lack of real progress after

more than 18 months of negotiations. This has left developing countries extremely frustrated.

The post-Cancun work programme and its timeline is full of procedural uncertainties. Generally speaking, it is uncertain whether key developing countries will be willing (or forced) to pay -- for economically meaningful provisions on , combined with a clear mandate to continue the review on a development-friendly timeframe.

The demand of Bangladesh in this regard may be as follows:

- S&Ds must be mandatory and legally binding, and subject to the dispute settlement system of the WTO (including notification requirements and inclusion of these commitments in the country schedules).
- A Framework Agreement on S&D should be accepted.
- The burden of the single undertaking on LDCs can only be reduced by S&D. Thus, their commitment to any future single undertaking should be conditional upon the full incorporation of S&D into the WTO.
- The S&D framework agreement should establish that the implementation of obligations, would be modulated according to the level of development of each country and reviewed periodically, taking into account not only per capita GNP, and exports, but also human development indices and goals.
- LDCs should thus not be required to accept additional commitments nor enter into negotiations aimed at establishing obligations in new issues.
- Bangladesh should also propose the addition of the following text before the text “We instruct the committee on Trade and Development in Special Session to pursue expeditiously, within the parameters of the Doha Mandate, the work on remaining agreement-specific proposals and other outstanding issues referred to in TN/CTD/7 and report with recommendations, as appropriate, to the General Council by [...]” :

“Considering that the S& D issues ought to be at the heart of the DDA, we commit ourselves to reach conclusions on the remaining 57 “decision” referred to in TN/CTD/7 by December 2003”.

### **Implementation Issues**

The implementation issues remained ignored in the DDR. According to the Doha mandate, decisions were to be taken by the end of 2002 on 100 implementation related

issues raised by the developing countries. The decision was not pursued. In effect, the draft Ministerial text (revision 2) reneged on the promise to negotiate the implementation issues, by merely referring to "appropriate action" to an uncertain later date. Some Members were trying to give a different interpretation of the word 'negotiations' in para 12 of the draft, which was different from that in the rest of Doha agenda. The implementation para was relegated to a lower spot in the draft text, and called for the order of the Work Programme in the Doha Declaration to be followed in the Cancun text as well.

There is a need for highlighting the implementation issues in the Bangladesh agenda for negotiations. If LDCs do not give due priority to these issues, these will be further marginalised in the WTO and the objective of the DDR will be defeated. LDCs and developing countries fought for meaningful progress on implementation issues during DDR. It is the time that post Cancun negotiations give due emphasis on the implementation issues. LDCs should call for due priority to implementation related issues. The Doha decision should be revisited and the identified issues will need to be addressed on an urgent basis. A binding commitment with concrete time schedule will need to be articulated.