

**CPD Occasional Paper Series**

**Promoting Bangladesh's Interest  
in the Fourth WTO Ministerial**

**Paper 14**

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The present paper, **Promoting Bangladesh's Interest in the Fourth WTO Ministerial**, 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.

The programme has received support from the **Canadian International Development Agency (CIDA)** and is being implemented in collaboration with the **Centre for Trade Policy and Law (CTPL)**, Ottawa, Canada.

The present paper, *Promoting Bangladesh's Interest in the Fourth WTO Ministerial*, was presented at the dialogue on the theme of **WTO Doha Ministerial : Advancing Bangladesh's Interest** held at CIRDAP Auditorium, Dhaka on October 29, 2001. The authors of the paper are **Dr. Debapriya Bhattacharya**, Executive Director, CPD, **Prof. Mustafizur Rahman**, Research Director, CPD and **Dr. Ananya Raihan**, Research Fellow, CPD

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## **Promoting Bangladesh's Interest in the Fourth WTO Ministerial**

### **1. INTRODUCTION**

The global community of nations is hesitantly poised in this period of heightened interest and tension on the eve of the Fourth Ministerial Conference to be held in Doha during 9-13 November, 2001. With the experience of the Seattle Ministerial in the hindsight, the prospect of launching a new Round a distinct possibility, and the terrorist attacks on the U.S. adding an element of uncertainty, such a volatile state of the affairs is perhaps understandable.

The perspectives of major stakeholder groups of countries as regards the forthcoming meeting, quite obviously, tend to differ, sometimes quite substantively. The varying perspectives relate to approach to the Doha Ministerial, the agenda for discussion to be put on the table, negotiating strategies to be pursued and the outcomes to be expected from the Ministerial Meeting.

As far as Bangladesh is concerned, the stakes at Doha are quite high. Since a number of critical areas and issues will need to be covered, and decisions taken accordingly as regards (a) "built-in agenda" on GATS and AoA; (b) addressing imbalances and inequities of past agreements through changes, improvements and clarifications of the already negotiated provisions; (c) broadening of the negotiating agendas to include the "new" issues; (d) specific demands of the LDCs, specially in light of the Zanzibar Declaration; (e) the possibility of launching of a new Round, the first under the aegis of the WTO. Concretely speaking, Bangladesh will need to react in an informed and systematic fashion to the various proposals put up in the draft declaration of the WTO.

On many of the above issues, as of now, there exist serious disagreements between the position of the developed and developing countries and amongst the developed countries themselves. The concept of an evolving WTO, member-driven in its mandate and consensus-based in its approach, will come under close scrutiny and formidable test during the Doha Ministerial.

Although, it is widely perceived that USA and EU are pushing for a new Round and it appears that the WTO Secretariat is also prone to go along, many of the developing countries and the LDCs are at best, non-committed and undecided, or at worst, against the launching of any new Round. The perspectives of the developing countries and the LDCs on a possible new Round, in essence encapsulate the dominant mindset of the developing world as regards the perceived impact of the Uruguay Round of negotiations, and also in a way reflect their concerns as regards the evolving trading regime under the WTO.

Thus, it is important from the Bangladesh perspective to look at several issues: (a) review the developments during the post-Seattle period, (b) scrutinise the major strands of the discourse during the run up to the Doha Ministerial, and (c) articulate the country's position as regards various proposals which will come up for negotiations during the forthcoming Ministerial Meeting.

Bangladesh has traditionally been an active advocate of the LDC position in the WTO. In the past she has provided leadership in a number of initiatives which have championed the interests of the LDCs in the WTO. Unfortunately, Bangladesh did not participate in the important meeting of the LDCs which was held in Zanzibar in July, 2001. However, the Zanzibar Declaration did contain many proposals which were put forward by Bangladesh. Bangladesh also didn't participate in informal discussions in Mexico and Singapore; neither could it take part in the Delhi SAARC Meet of Commerce Ministers. Making best use of the opportunity provided by the Doha Ministerial, it is thus our expectation that by playing an active role during the negotiations, Bangladesh will reassert her position as a leader of the LDCs.

## **2. MAKING OF THE WTO AND THE LDCs**

For a long time, the GATT was considered to be an arrangement that was primarily of relevance to only the developed countries. In the backdrop of the change in the stance of the developing countries towards trade policy in the 1980s, one witnesses a major surge in active engagement of the developing countries during the Uruguay Round Multilateral Trade Negotiation (MTN) held between 1986 and 1993. In 1995 a total number 29 LDCs became the founding members of the World Trade Organisation.

WTO, which came into being following the conclusion of the Uruguay Round (UR) of the MTN in 1995, held a promise of generating significant welfare benefits for *all* countries through strengthening of an open rule based multilateral trading system (MTS). Creation of the WTO, however, posed both an opportunity and a challenge in terms of encouraging further participation on the part of the developing countries in the system.

### ***Marrakesh Declaration (1994)***

Recognising the special circumstances prevailing in the developing countries (limited financial and human resources as well as institutional weaknesses), a number of decisions were approved at the *Marrakesh Ministerial Conference* (1994) while adopting the Final Act of the UR. These included the following:

- *Decision on Measures in Favour of Least Developed Countries*
- *Decision on Measures Concerning the Possible Negative Effects of Reform Programme on Least Developed and Net Food Importing Developing Countries*
- *Declaration on the Contribution of the WTO to Achieving Greater Coherence in Global Economic Policy Making*

Appreciation about the difficulties which the developing and the least developed countries are likely to encounter in fulfilling their obligations under the UR got reflected through continuation of the special and differential (S&D) provisions of the GATT in various WTO agreements, such as:

- (i) a lower level of obligations
- (ii) more flexible implementation schedule
- (iii) “best endeavour” commitments by developed countries
- (iv) more favourable treatment for least-developed countries
- (v) technical assistance and training.

However, the S&D principles in the UR agreements did not guarantee operationalisation of these provisions.

#### ***First Ministerial Conference (Singapore, 1996)***

In the Declaration of the *First Ministerial Conference* of the WTO held in Singapore in December, 1996, the participating Ministers acknowledged that not only have the LDCs and many developing countries been further marginalised, they have also undertaken *significant new commitments*, both substantive and procedural. The Ministers recognised the range and *complexity of the effort* which were required from their respective countries in terms of ensuring compliance with such commitments.

In order to assist the developing countries in these efforts, it was decided that the WTO would improve the *availability of technical assistance* to the developing countries. The Ministers also agreed to recommendations related to the decisions they took at Marrakesh concerning the possible *negative effects of the agricultural reforms* programme on least-developed and net food-importing developing countries.

The Singapore Conference also agreed to a *Plan of Action*, including provision for taking *positive measures*, for example duty-free access, on an autonomous basis, aimed at improving their overall capacity to respond to the opportunities offered by the emerging global trading system, and sought to give operational content to the Plan of Action, for example, by enhancing conditions for investment and providing predictable and favourable market access conditions for the LDC products.

#### ***High Level Meeting (Geneva, 1997)***

Following up on the mandate contained in the Singapore Ministerial Declaration, a *High Level Meeting (HLM) on the Integrated Initiatives for Least-Developed Countries' Trade and Development* was held in the WTO on October 27-28, 1997. The HLM endorsed an *Integrated Framework (IF)* for Trade-Related Technical Assistance.

#### **Integrated Framework**

The key elements of IF included:

- ⇒ To ensure that trade-related technical assistance activities are demand-driven by the least- developed countries and meet their individual needs effectively.
- ⇒ Strengthening of export supply capabilities (e.g., strengthening the policy environment for trade liberalisation, improving competitiveness of enterprises, etc.).
- ⇒ Strengthening trade support services (e.g., trade efficiency involving trade facilitation, access to trade finance, etc.).
- ⇒ Strengthening trade facilitation capabilities.
- ⇒ Training and human resource development.
- ⇒ Assistance in the creation of a supportive trade-related regulatory and policy framework that will encourage trade and investment.

About forty LDCs submitted their *Needs Assessments* and five *Round Tables* were organised with disappointing results. Thus, the progress of the IF has been *slow* and *unimpressive*. Till date the Integrated Framework is yet to be operationalised even in a single LDC. One of the major reasons for such slow progress in operationalisation of the much hyped IF relates to *inadequate financial commitments* on behalf of the developed countries. [In February 2001, under the WTO Sub-Committee on LDCs, a new *IF Pilot Scheme* has been launched in a very limited scale.]

### ***Second Ministerial Conference (Geneva, 1998)***

The *Second Ministerial Conference* of the WTO which was held in Geneva on May 10, 1998, in its Declaration, recommended follow-up on the decisions of the HLM on LDCs. However, the work programme of the Second Ministerial was quite ceremonial in nature as it was scheduled to coincide with the fiftieth anniversary of the establishment of the GATT.

## **3. THE SEATTLE DEBACLE AND LDC INTERESTS**

### **3.1 LDC Concerns Prior to Seattle Conference**

#### ***Implementation Issue***

Prior to the Seattle Ministerial Conference (2000), it was observed that *implementation of the agreements and provisions of particular interest to developing countries has been slow or non-existent*.

In the course of the fifty years of GATT/WTO history, *implementation* has essentially meant compliance with negotiated obligations. However, in the Seattle preparatory process developing countries focused on addressing implementation of existing agreements to redress imbalances inherent in those agreements, as well as in their implementation, which would lead to renegotiations of existing commitments, something unthinkable in the multilateral trading system until now. It was maintained by the developing countries in general and least developed countries (LDCs) in particular, that it has become imperative to take stock of the state of implementation of

the UR agreements, to assess the prospect of reviewing the so-called "built-in agenda" of the agreements, and to prepare their respective economies for the future MTN.

### ***Issue of Market Access***

The issue of market access rightfully occupied a prominent place among the concerns of the LDCs in the wake of Seattle meeting. The WTO members at the High Level Meeting (1997) were invited to announce steps they should be taking on "an autonomous basis" to enhance market access to imports from the LDCs.

Since the HLM, the WTO Secretariat received only a few communications regarding award of further market access and trade opportunities to the LDCs. The most important notification came from the Commission of the European Communities stating that, as of January, 1998, non-ACP LDCs are benefiting from zero duties on a large number of industrial products which were previously excluded from GSP scheme as well as from tariff reductions on agricultural products in line with ACP preferences that were also previously excluded from GSP. As a result, 99 per cent of LDCs' exports could enter the EU market duty-free. However, given the ambiguity regarding the contractual status of these offers, the whole process was potentially untransparent and unstable. Furthermore, providing legal basis for preferences by developing countries in favour of LDCs also required waiver from GATT Article 1.

### ***Zero-Tariff Access***

When all the developed countries in principle committed to provide zero-tariff access to the LDCs through various high level declarations of the WTO, starting from its founding covenants, it was curious to find that they were making it an issue for the Seattle Conference. Why zero-tariff provision cannot be accorded to the exports from the 48 LDCs, which together account for *less than one per cent of the world trade* as a "down payment" for a new Round, has always remained an unanswered question.

### ***Special and Differentiated Treatments***

Much of the industrialised world were essentially ready to sign off the Ministerial Decision in Seattle that would commit developed WTO members to extend duty-free treatment to goods from LDCs. It was thought that all the S&D provisions would be converted into *concrete commitments*, especially to address the constraints on the supply side of the LDCs.

However, the USA has been advocating a different approach, consisting of enhanced technical cooperation and capacity building, as well as a revitalised programme for the integration of LDCs into the MTS. On market access, the USA would rather rely on unilateral GSP schemes than a blanket waiver of duties in favour of LDC products.

### ***Tariff Reduction***

In spite of the general reductions in tariff levels as a result of the Uruguay Round, import tariffs in developed countries on a number of commodities of export-interest to LDCs have tended to remain high. Prior to the Seattle Conference it was predicted that the upcoming MTN will have to deal with industrial tariff reductions, particularly because of the fact that incidence of tariff peaks and tariff escalation is still prevalent in sectors of export interest to the developing countries as well as the LDCs. Thus, it was thought that a stringent formula, binding tariff reduction, was needed to be introduced with a view to remove the remaining barriers to market access which are adversely affecting the export interests of the LDCs. Interestingly, many developing countries as well as LDCs, as a result of unilateral liberalisation under IMF/World Bank conditionalities, were already applying lower tariffs than their bindings in the UR.

### ***Non-tariff Aspects***

It needs to be, however, underscored that market access concern of the LDCs was not limited to tariff related issues. For strengthening the participating capacities of the LDCs in the WTO, the developed countries also need to do away with the technical barriers to trade (e.g. environment related measures, anti-dumping and counter-veiling duties, hygiene and phytosanitary measures) set up by certain importing countries. Such efforts, to be complemented by national supply capacity building measures in the export sectors of the developing countries, were not forthcoming.

### ***Anti-Dumping***

There has been a growing support for one of developing countries' key demand before the Seattle Conference: the inclusion of anti-dumping measures in the Seattle agenda. The main target of this drive was the United States, which continued to oppose the issue during the Seattle Round. However, Japan and Canada supported tightening of the anti-dumping rules. The EU, Korea, Switzerland, and Norway agreed to support the issue upon the request of the developing countries.

Regarding the anti-dumping measures in the textile sector, in order to avoid double jeopardy to the exporting countries concerned, restraining members would agree during the Seattle Round not to initiate anti-dumping actions against products under quota restrictions.

### ***Subsidies and TRIPs***

The developing countries have been demanding that they should be allowed to provide export performance-based subsidies, as well as subsidies contingent on the use of domestic goods over imported goods. On trade-related intellectual property rights (TRIPs), developing countries wanted to *extend their transition periods* for TRIPs compliance.

### ***TRIMs***

Regarding the trade-related investment measures (TRIMs), while most of the developing countries were against elaborating investment rules at the WTO, Costa Rica actively sought negotiations on the topic during the Seattle Round, while Venezuela, Chile, South Africa and Hong Kong and Brazil showed interest.

The transition period mentioned in Article 5 of the Agreement on TRIMs was thought to be extended by another five years.

### ***Textiles***

Regarding the textile issue, it was expected that during the Seattle Round:

- The importing countries would, on the first day of 85<sup>th</sup> month that the WTO Agreement is in effect, integrate products which accounted for not less than 50% of the total volume of the Member's 1990 imports.
- The importing countries were to apply growth-on-growth for Stage 3 with effect from January 1, 2000 instead of January 1, 2002.
- The growth rate in quotas for small suppliers shall be substantially increased.

### ***Agriculture***

Regarding the agriculture issue, it was held in the wake of the Seattle Ministerial that:

- Developing countries with predominately rural agrarian economies would make room for sufficient flexibility to adequately address their non-trade concerns, such as food security and rural employment.
- The domestic support prices are lower than the external reference price and thereby resulting in negative product specific support, then members would be allowed to increase their non-product specific support by an equivalent amount.
- Measures concerning the possible negative effects of the reform programme on Least Developed and Net Food-Importing Developing Countries (NFIDCs) would be revised.

### ***Four-Pronged Approach***

The analysis of the world trade environment prevailing prior to the Seattle Ministerial prompted developing countries to delineate a four-pronged approach towards managing the proceedings of the meeting. The four features of this approach were the following.

- *Maximum emphasis on full and faithful implementation of the UR commitments and subsequently undertaken obligations by the developed countries towards the LDCs.* LDCs should continue to hammer on the need to carry out an independent review of the impact of UR on the less developed countries before accepting fresh obligations under a new Round.
- *Energetic participation in mandated reviews under the built-in-agenda to address the provisions inhibiting trade expansion of the less developed countries.* Certain agreements (e.g. ATC) and specific provisions (e.g. CVD and subsidies) which are of special interest to LDCs have to be kept under close scrutiny.

- *Creative development of a strengthened positive agenda reflecting the trade-related capacity building needs of the LDCs.* LDCs have to make vigorous effort to highlight issues of particular interest to her (e.g. movement of natural persons and zero tariff access) while defining the scope for next MTN.
- *Positive engagement to attempts of the developed countries in the past to include non-trade issues within the scope of next MTN.* Bangladesh should try to invoke the participation of relevant intergovernmental agencies (e.g. UNCTAD) for dealing with specific new issues (e.g. competition policy). Settled issues (e.g. Singapore consensus on labor standards) should not be allowed to be reopened.

### **3.2 Seattle Declaration: A Lost Agenda**

#### ***Drafting of the Declaration***

*First Draft.* Before the *first draft* on the Ministerial Declaration was made public, a number of important developing countries tabled two major proposals on implementation. *First*, a proposal on a series of measures in favour of developing countries to be agreed at the conference itself. *Second*, a programme listing further measures to be negotiated during the first year of the new Round. Many of these demands were included in an informal draft circulated on October 6, 1999 (albeit in brackets, denoting lack of consensus), but were absent from the draft that was presented to all WTO members on October 7, 1999. Developing countries were incensed about the superficial treatment of the implementation concerns in the draft.

*Addendum.* On October 11, 1999, the Chairman of the General Council released an addendum to the October 7 draft that essentially consisted of a bracketed list of the topics maintained in the two papers by the developing countries on implementation. While a number of developed countries were satisfied with the resulting text, EU and Japan outright rejected it as a basis for further negotiation objecting particularly to treatment of agriculture, investment and competition policy in the composite draft.

*Second Draft.* A new text that reflected the wide differences in WTO Members approach to the upcoming Round was introduced on October 19, 1999. It attempted to present all major proposals on the Seattle Rounds: substance, structure and organisation – however contradictory these might be. Most of the draft was bracketed and several different versions were offered for a single paragraph.

*Friends of the Round Meeting.* Trade ministers from 25 countries tried to give a political push to consensus-building at a *Friends of the Round Meeting* held in Lausanne on October 25-26, 1999. However, the meeting failed to bridge the gap on any of the major outstanding issues, including the scope of the Round and the balance between addressing implementation concerns and negotiating new liberalisation commitments.

However, for good or for bad, due to the collapse of the Seattle Ministerial, many of the demands of the developing countries on which there was apparent consensus could not be formalised.

Notwithstanding the absence of a Seattle Declaration, WTO as a rule-based organisation continued to function: *Mandated Reviews* went on, *Built-in-Agenda item discussions* were resumed, *Dispute Settlement Bodies* deliberated, and *Accession Process* was pursued.

One of the major reasons for the Seattle debacle has been the dissatisfaction of a wide-cross section of people and countries about the WTO process.

- ⇒ Creation of unbalanced rights and obligations.
- ⇒ Lack of transparency in decision-making process
- ⇒ Marginalisation of small countries
- ⇒ Little accountability regarding implementation of decision

Thus, it was maintained that *the first thing which* is necessary for recovery of the credibility of the WTO process in the post-Seattle scenario is to initiate implementation of a *confidence building package* geared particularly to the LDCs.

### ***Confidence Building Package***

Three of the most important components of the package for restoring confidence of the DCs in the WTO process were identified to be the following:

- *Ensuring duty free and quota-free access for the developing, particularly the least developed countries.* Addressing the market access issues have become critical for carrying the WTO process forward. The recent EU move to offer zero tariff access to all LDCs have been welcomed in this respect. Alternatively, promulgation of the *US Trade and Development Act 2000* providing special trade concessions to Caribbean and Sub-Saharan countries have been considered divisive.
- *Significant move favouring the developing and LDCs in the area of Agriculture and Textiles.* Admittedly, these are one of the very few areas where this group of countries have some comparative advantage in the global market. These are also the sectors where the pace of liberalisation had been the slowest.
- *Technical capacity building* in the developing and least developed countries. Since the Singapore Ministerial, when the idea of an *integrated framework* for trade related technical assistance for the LDCs was first mooted, precisely little has been achieved. Arguably, capacity building is not only about WTO-compliant legal framework, but also concerns long term institutional and human resource capacity building.

### **3.3 Run-up to Doha**

Box-1 provides information on the major events during the run up to the Doha Ministerial on February 8, 2001 Qatar was selected as the host of the Fourth Ministerial Conference. For the first time a “bottom-up” approach was attempted in

fixing the agenda for the Ministerial with a view to ensuring transparency and inclusiveness.

**Box 1**

<b>MILESTONES IN THE RUN UP TO THE FOURTH WTO MINISTERIAL MEETING</b>	
• December 1993	Conclusion of the GATT Uruguay Round Negotiations
• April 1994	Signing of the Final Act at Marrakash by 111 of the 125 participating Countries
• January 1995	Entry into force of the WTO Agreement agreed to by 104 countries
• June 1998	Meeting of the Senior Advisors to LDC Ministers of Trade Held in Sun City, South Africa
• 29 Nov.- Dec. 1, 1999	Third Ministerial Meeting held in Seattle
• 13- 15 Nov 2000	African Trade Ministers Meeting held in Libreville, Gabon which reaffirmed their commitment to the multilateral trading system and considered ways to improve their participation in the WTO
• 14-20 May, 2001	Third UN Conference on LDCs, Brussels, Belgium
• 20-21 June 2001	UNCTAD High Level Meeting for Arab Countries: The WTO and the Arab world: preparations for Doha held in Geneva.
• 16 July 2001	ECOSOC, High-level Policy Dialogue: The Multilateral trading system in support of Africa-led and Africa-owned development held in Geneva.
• 22- 24 July 2001	Least-Developed Countries' Ministerial meeting in preparation for the WTO Ministerial Conference in Doha, Zanzibar, Tanzania
• September, 2001	Trade Ministers Meeting, Mexico City, Mexico
• 13-14 October, 2001	WTO Ministerial Meeting, Singapore for informal discussion to help launch new Round
• 2 October, 2001	ACP-EU Ministerial Trade Committee, Nairobi, Kenya.
• 2 October, 2001	Informal Meeting to Respond to the Draft Declaration, Zanzibar, Tanzania,
• 9 - 13 Nov 2001	Fourth Ministerial Meeting will be held in Doha and discuss in favour of launching a new Round.

The Chairman of the General Council circulated an initial checklist for the Ministerial on April 20, 2001. The checklist included the following issues for discussion: (a) implementation, (b) ongoing negotiations on agriculture, services and review of existing rules, (c) new issues, which was called “Singapore Issues”, (d) organisation

and management of the work programme, and (e) technical cooperation and capacity building. However, the checklist also included the statements on current issues. WTO members have organised informal discussions to promote their common interest, which has been called “proponent driven process”.

To get a sense of the situation, a “reality check” exercise took place in July, 2001 which showed that well entrenched positions are still dominating the discussions. Informal discussion of Ministers of selected countries took place on September, 2001 for evaluating and discussing the checklists, and to help launch a new Round.

In the mean time, LDC Trade Ministers met at Zanzibar, Tanzania in July, 2001 to give shape to their positions for the Doha Ministerial.

In the run-up to Doha *A Draft Ministerial Declaration and Draft Decision on Implementation Related Issues and Concerns* have been circulated on September 26, 2001. Both the documents have been analysed and criticised from varying perspectives by the Members. The Director General of the WTO has been urging for necessary flexibility in negotiating mandates for the successful holding of the Fourth Ministerial.

#### **4. DRAFT DECLARATION AND LDC POSITIONS: A COMPARISON**

In the backdrop of the failure of the Seattle Ministerial and growing scepticism of the LDCs and developing countries about the balanced functioning of the multilateral trading system, the fourth Ministerial of the WTO is scheduled to take place in Doha, Qatar on November 9-13, 2001. Despite the volatility prevailing in the global scene, particularly following the terrorists attacks in the USA on the September 11, 2001, efforts were already on to hold the ministerial as planned, and as is by now evident, the venue and the date have remained unchanged.

On September 26, 2001 as a part of the preparatory process of the Doha Ministerial, the Chairman of the General Council in cooperation with the Director General has issued a *Draft Ministerial Declaration* along with a *Draft Decision on Implementation Related Issues and Concern* separately for discussions and adoption at Doha Ministerial. To understand the extent to which the LDC concerns may be expected to be addressed at the upcoming ministerial, the Draft Declaration of the General Council of the WTO (popularly known as Harbinson’s Draft) has been compared with the Zanzibar Declaration of the LDCs and other documents from the LDCs.

##### ***Market Access for Non-Agricultural Products***

The Draft Declaration proposes negotiations to reduce or, where it is appropriate, eliminate tariffs, including reduction or elimination of tariff peaks and tariff escalation, as well as NTBs. The negotiation is to take special interests in the needs of

the developing and least developed countries (Para 13). Concerns of LDCs such as Bangladesh regarding market access are well known and have been extensively discussed in various fora. The most important market access related demand stipulates that the duty-free and quota free treatment for all export products of LDCs (including agricultural) should be immediately implemented.

Thus, whilst the draft text on market access apparently targets the LDC concerns, it will not be strategically correct for Bangladesh to evince interest among the LDCs not to be interested to make the issue of the duty-free and quota-free access an agenda for negotiation. Rather Bangladesh should press for acceptance of autonomous preferential tariff regimes with a view to introducing improvements in terms of duty rates, product coverage, country eligibility, and rules of origin.

Realistic and flexible Rules of Origin to match the industrial capacity of the LDCs, both in general and in relation to textiles, are a well argued point of negotiation from the vantage point of the LDCs and Bangladesh should pursue this line of reasoning.

The problem of deindustrialisation faced by many LDCs as a result of removal or reduction of tariffs in the industrial sector has been highlighted in the various LDC documents. Keeping this major problem in mind, Bangladesh will find it difficult to accept Para 13 of the Draft Declaration on negotiations on non-agricultural products. LDCs such as Bangladesh will require more time before agreeing to fresh negotiations in this area. The following sentence is particularly objected: "product coverage shall be comprehensive and without *a priori* exclusions". The "concession" to developing countries and LDCs to the effect that their commitments will involve "less than full reciprocity" is insufficient and ambiguous.

### ***Agriculture***

Agriculture is probably one of the most important themes which would dominate the forthcoming Ministerial. As negotiations on agriculture are part of *built-in agenda*, new rules theoretically could be passed, whatever would be the outcome of the Ministerial Meeting regarding the 'launching'.

The Harbinson's Draft briefly refers to a number of major issues relating to AoA and suggests that they will be elaborated later through further consultation. These issues are: (a) Reference to the ongoing negotiations, including a reference to the active participation of developing countries; (b) Reference to the long-term objective of reform in agriculture; (c) Reference to the direction or aims of reform in the areas of market access, domestic support and export competition; (d) Reference to special and differential treatment; (e) Reference to non-trade concerns; (f) Benchmarks and time-frames; and (g) Negotiating body.

The major concern for Bangladesh in this context is to ensure that LDCs are not required to undertake reduction commitments on domestic support, export competition policies, and market access throughout the agricultural reform process. The magnitude of agricultural subsidies provided by the developed countries in their domestic market is incomparable with the tiny amount of subsidies provided by the LDCs to their farmers; even if we compare the output subsidy ratio, this will show that LDC market is far less subsidised than the markets for agricultural commodities in the developed countries.

The issue of 'progressive reduction of trade and production distorting domestic support measures in developed countries' is essentially an issue for negotiation, rather than implementation. And the proposal does not refer to domestic support by developed countries for products of export interest to LDCs. Very few developed countries support schemes covering products exported by LDCs.

However, it would seem preferable to Bangladesh to support the efforts of the Cairns Group which can be expected to push for stronger language on agriculture in the Ministerial Declaration. The LDC perspective which should be highlighted in this context can be articulated as follows:

- Trade and production distorting domestic support measures in developed countries should substantially and progressively be reduced during the course of the reform programme.
- Export subsidies for agricultural products of particular interest to the LDCs should be abolished immediately (by March, 2002).
- Duty and quota free treatment for all export products of the LDCs including agricultural, should be immediately implemented.
- Additional financial and technical help should be provided to the LDCs to help improve agricultural productivity and infrastructure.
- Agricultural Committee should review and monitor implementation of technical and financial assistance provisions.

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

The Draft Declaration reaffirms that the negotiations will be continued with a view to achieving the objectives of the GATS, as stipulated in the Preamble, Article IV and Article XIX of that Agreement. While issues like realisation of the commitments under Mode 4 (movement of natural persons), modes of supply in some priority sectors, *viz.* tourism, transport and construction are of vital importance to the LDCs, the LDC Ministers in Zanzibar mentioned the following points to be included in the declaration:

- (i) LDCs should receive recognition and credit for their autonomous liberalisation in the service sector;

- (ii) There should be full and effective implementation of Article IV of GATS, to strengthen LDCs' domestic services capacity, e.g. through access to technology and distribution channels and information networks.
- (iii) Commitments should be made by developed countries in Mode 4 and limitations in Mode 4 should be eliminated. Members should take steps so that administrative practices do not impede the full and effective implementation of their commitments under GATS regarding Mode 4.

The above mentioned third point has been addressed in the Draft Decision on Implementation Issues circulated separately. The issue of 'obligations relating to safeguards' is already under negotiation, it is not covered by the Draft Declaration. It seems unlikely that developed countries will accept a detailed 'outcome' of this nature.

### ***Trade-Related Intellectual Property Rights (TRIPs)***

The issues mentioned in the Draft Declaration which has important implications for Bangladesh relate to the relationship between the TRIPs agreement and the Convention of Bio-diversity, the protection of traditional knowledge, non-violation complaints, and keeping the TRIPs agreement abreast of the new technological and other developments. However, LDCs in general are more concerned with the implications of TRIPs regarding the access to genetic resources and life saving drugs and have proposed to exclude the essential drugs on WHO list from patentability. The Draft Declaration provides for limited renegotiation of TRIPs but does not seem to cover this important proposal of Zanzibar Declaration.

The Draft Declaration addresses the issue of 'exclusion of essential drugs on WHO list' indirectly in a footnote that reads: "It is proposed that the issue of the relationship between intellectual property and (access to medicines) (public health) be addressed in a separate declaration." While the total patent exclusion of essential drugs is unlikely to prove acceptable at Doha, LDCs can certainly work to ensure that the "separate declaration" is in fact prepared and a work program initiated that would allow LDCs and other countries to pursue this idea.

The issue of transition period extension have been addressed in the Draft Decision. The proposal in the Harbinson's declaration is designed to provide a "blanket" extension of 10 year period mentioned in TRIPs Article 66 and thus avoid the need for LDCs to resort to "duly motivated requests" for extensions. The LDCs proposed an amendment to Article 66 in this context. The LDCs' proposal was to match the LDC capacity to implement and benefit from the TRIPs Agreement, based upon an assessment of technological capacity of LDCs by the year 2006. The Draft Decision also highlights the technology transfer and incentives issues.

From the Bangladesh perspective, the section on TRIPs (para 14-17) is, in general, disappointing. It is a vague section, which ignores the evidence of problems generated

in recent years and the need to resolve many of these problems. The LDCs may argue that the TRIPs paras be amended and the following be added:

- The review process (Article 27.3b) should clarify that all living organisms, including plants, animals and parts of plants and animals, including gene sequences, and biological and other natural processes for the production of plants, animals and their parts, shall not be granted patents.
- It should also be clarified that Members have the option to select their own *sui generis* system (appropriate national system of protection) for plant variety protection, including systems that accord due recognition to traditional knowledge and traditional practices, and the rights of farmers to use, save and exchange seeds and to sell their harvest. The *sui generis* system can also be in line with the DAU model law on community rights and biodiversity, the Convention on Biological Diversity and the FAD International Undertaking on Plant Genetic Resources.
- It should be clarified that nothing in the TRIPs Agreement prevents Members from taking measures to ensure food security and safeguard farmers' livelihoods in developing countries. It should affirm that the TRIPs Agreement shall not be interpreted in a manner that endangers food security.
- Exclusion from patentability shall be extended to medicines which Member countries deem necessary to treat life threatening and serious ailments such as HIV/AIDS, malaria and cholera, as well as poverty-related diseases in developing countries, in order to contribute to the access of the poor to affordable treatment.
- There should be a common understanding that nothing in the TRIPs Agreement prevents Members from taking measures to protect public health. In line with this common understanding, a clarification and interpretation of the TRIPs Agreement (as contained in the Ministerial Declaration on TRIPs and Public Health) will be highly appreciated that will allow and encourage Members, particularly developing countries and LDCs, to avail themselves of the widest range of policy options for the protection and promotion of public health.

The Draft Declaration calls for negotiating a multilateral frameworks of rules to secure transparent, stable and predictable conditions for long-term cross-border investment, particularly FDI. Harbinson's draft does include a line which says: "the special development, trade and financial needs of developing and least-developed country participants shall be taken into account as an integral part of the framework" in the process of negotiations of the TRIMs. The rest of the part of Para 18 and its implications of the rules in this area have not been fully discussed, nor understood.

### ***Trade and Investment***

The position of Bangladesh as regards investment is quite simple and straightforward – she should support any agreement that facilitates investment flows to the LDCs whilst retaining flexibility to pursue other national development objectives.

However, Bangladesh will perhaps be well advised to support the alternative formulation (Para 19) which emphasises the need for undertaking further focussed analytical work for understanding the relationship between trade and investment.

### ***Trade and Competition Policy***

The Draft Declaration agreed to negotiations aimed at enhancing the contribution of competition policy to international trade and development. To this end, the negotiations would establish a framework to address the following elements: core principles including transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels; modalities for voluntary cooperation; and, support for progressive reinforcement of competition institutions in developing countries through capacity building.

The Draft Declaration does mention in Para 20 that in the course of negotiations, full account will be taken of the situation of developing and least-developed country participants and appropriate flexibility will be provided to address them. It commits itself to ensure that appropriate arrangements are made for the provision of technical assistance and support for capacity building, both during the negotiations and as an element of the agreement to be negotiated.

Nonetheless, most of the LDCs such as Bangladesh will feel inclined to opt for the alternative articulation (Para 21) which suggests, once again, that further analytical work is necessary in this area.

### ***Transparency in Government Procurement***

The Draft Declaration has agreed to negotiations on a multilateral agreement on transparency in government procurements, building on the progress that has been made in the *Working Group on Transparency in Government Procurement* and taking into account the priorities of the developing countries. The LDCs consider the initiative as a potential new form of protection against the LDCs. However, in the event of a launch it will be difficult now to obtain an agreement on exclusion. This is one of the few new issues supported by both the USA and EU. If Bangladesh finds that the developing countries are prepared to accept the inclusion of the topic, she should endeavour to ensure that the language of the Declaration would be the one that best serves the LDC interest.

### ***Trade Facilitation***

The Draft Declaration of the General Council agreed to negotiations which will build upon Articles V, VIII and X of the GATT 1994, taking into account existing WTO provisions on matters related to customs and other procedures and formalities to

expedite movement, release and clearance of goods. Issues relating to compliance with any new obligations to be agreed will be addressed in the negotiations, taking into account the situation of developing and least-developed country participants. The Draft Declaration also commits to ensure that appropriate arrangements are made for the provision of technical assistance and support for capacity building, both during the negotiations and as an element of the agreement to be negotiated.

LDCs are not prepared to launch negotiations in this area. Bangladesh should take the position that trade facilitation measures whilst necessary and beneficial, do not require new rule making.

### ***WTO Rules***

The Draft Declaration proposes negotiations aimed at clarifying and improving disciplines under the existing Agreements on Implementation of Article VI of the GATT 1994 and on Subsidies and Countervailing Measures, taking into account the needs of developing and least-developed country participants (Para 24). The Draft Declaration also suggests (Para 25) negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements. It has been proposed that issues relating to the application of any new obligations to existing regional trade agreements will be addressed during the negotiations.

Regarding anti-dumping and countervailing actions, the LDCs have suggested the following during the Zanzibar meeting:

- As LDCs are neither able to defend their industries against dumped and subsidised imports, nor able to protect the legitimate interests of their exporters, simplified procedures for taking anti-dumping and anti-subsidy actions should be devised for the use of LDCs.
- The best endeavor provisions of Article 15 of the Agreement on Anti-Dumping (AAD) need to be operationalised so as to impart stability to the initiatives undertaken to improve market access for the LDCs.
- An agreed interpretation of Article 5:8 of the AAD to raise the threshold for the volume of imports from LDCs from 3 percent to 7 per cent, and exempting them from cumulation.
- An agreed interpretation of Art 27:10 of the ASCM to increase the threshold for imports from LDCs from 4 percent to 10 percent and exempting them from cumulation.

### ***Dispute Settlement Understanding***

The Draft Declaration envisages possible amendments to the Dispute Settlement Understanding (DSU) and evolving a balanced package of amendments not later than May 2003. As the LDCs lack expertise and know-how to face the dispute settlement process in the WTO, the Zanzibar Declaration proposed to introduce an expedited fast-

track dispute settlement mechanism for cases involving LDCs. The LDCs also demanded a quick compensation mechanism for the trade losses incurred by an LDC as a result of trade measures inconsistent with SPS and TBT Agreements.

The Zanzibar proposals are detailed on outcomes and are not likely to prove acceptable. It is incidentally unclear why LDCs would want to limit accelerated compensation to cases involving SPS and TBT only. Moreover the rules of the DSU concerning compensation are quite tight already.

### ***Trade and Environment***

The Draft Declaration proposes to instruct *The Committee on Trade and Environment* to pursue work on all items on its agenda within its current terms of reference and in particular:

- To address, in pursuance of the WTO's objective of sustainable development, those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, environment and development;
- To deepen the understanding of the relationship between the multilateral trading system and multilateral environment agreements (MEAs).

Bangladesh should take up the position that the current work program should be extended and under no circumstances should environmental considerations be used for protectionist purposes against LDCs products.

### ***Electronic Commerce***

Referring to the work which has been done in the General Council and other relevant bodies since the declaration of May 20, 1998, the Draft Declaration agrees to continue the *Work Programme on Electronic Commerce*. The Draft also agrees to maintain the current practice of not imposing customs duties on electronic transmissions until the Fifth Session.

While the e-commerce brings opportunities for the small enterprises in the poor countries, there are very specific bottlenecks which hinder the growth of e-commerce in LDCs such as Bangladesh. Among the major hindrances, absence of network of communications, lack of capacity in the central bank to develop robust infrastructure and regulate the transactions and lack of expertise in formulating the legal framework for the e-commerce transactions are the most prominent. Technical assistance and investment can facilitate the growth of e-commerce in the LDCs. The Draft Declaration should include a para on the issue of capacity building for e-commerce in the LDCs.

### ***Technological Cooperation and Capacity Building***

Capacity building is of key importance to help LDCs to participate effectively in the WTO and make use of the opportunities offered by trade liberalisation and rule making. The Draft Declaration stipulates that the Secretariat will respond to request

from Members for technical assistance in the context of their mainstreaming of trade into national plans for economic development and strategies for poverty reduction. The delivery of WTO technical assistance will be designed to assist beneficiary countries to understand WTO rules and disciplines, implement obligations and exercise the rights of membership, including drawing on the benefits of an open, rules-based multilateral trading system. Priority will also be accorded, in the delivery of trade-related technical assistance, to building capacity for multilateral trade negotiations in developing, least-developed, small and vulnerable, and transition economies, including those without representation in Geneva.

The Draft Declaration underscores the urgent necessity for the coordinated delivery of technical assistance with relevant international and regional intergovernmental institutions within a coherent policy framework and timetable. The Draft Declaration agrees that there is a need for this assistance to benefit from secure and predictable funding. It is expected that the Committee on Budget, Finance and Administration will develop a plan for adoption by the General Council in December 2001 that will ensure long-term funding for WTO technical assistance at a level no lower than that of the current year.

The Draft Declaration did not address certain Zanzibar proposals, notably the reinforcement of the Integrated Framework and the budgets of institutions such as UNCTAD. However, it seems unlikely that at Doha countries will agree to proposals dealing with the financial resource of institutions outside the WTO.

Trade-related technical assistance has to be an integral part of the multilateral trading system. In particular, assistance needs to be provided in relation to new negotiations, so that countries can participate effectively and pursue their interests, and in relation to implementation of agreements, both new and those already in force. The draft text does not deal with the inclusion of the technical assistance provisions in new agreements. This will be seen by developed countries as an "outcome" of negotiations and will be resisted in principle".

It is essential that countries can participate effectively in the negotiating process, so that they can influence the outcome in the direction of their essential interests and acquire a sense of "ownership" in the resulting agreements and rules. For many countries, in particular the poorest, this will require substantial technical assistance and capacity building.

### ***Least Developed Countries***

The Draft Declaration recognises that further integration of the least-developed countries (LDCs) into the trading system requires combined and inter-related action at three levels, viz *market access, trade-related technical assistance and capacity-building*, and *LDCs' domestic policy reforms*. The draft text agrees that the WTO should take into account, in designing its work programme for LDCs, the trade-related

elements of the Brussels Declaration and Programme of Action consistent with the WTO's mandate adopted at the Third United Nations Conference on the Least Developed Countries (LDC III) in May 2001. The Draft Declaration acknowledges that the value of and endorses the Integrated Framework for Trade-Related Technical Assistance to Least-Developed Countries (IF) as a viable model for LDCs' trade development. The Draft Declaration appeals to the development partners to increase contributions to the IF Trust Fund.

Although the section on LDCs (Para 34) contains some good points, it does not adequately reflect the need for concrete commitments. Full integration of the LDCs in the multilateral trading system requires fundamental and comprehensive contribution by the WTO members. Therefore LDCs may seek to incorporate the following points in the subsequent draft:

- Make a binding commitment on duty-free and quota-free market access for all products originating from LDCs with realistic and flexible Rules of Origin to match the level of industrial capacity of the LDCs.
- Apply a standstill to all contingency protection measures on market access for export products of LDCs.
- Bind and fully implement all existing the S& D provisions in favour of the Least Developed Countries, and adopt new provisions (which shall also be bound) that are needed for the development of the LDCs.
- Accord increased technical assistance, including through Integrated Framework in the development, strengthening and diversification of production and exports of goods and services of the LDCs under a regular budget.
- Provide technical and financial support to LDCs prior to the introduction of any new TBT or SPS which would adversely affect LDC's exports.
- Withdraw all quantitative restrictions on all textile and clothing products from the LDCs beginning from 1 January 2002.
- Not to expect reciprocity from the LDCs in making commitments and to provide sufficient flexibility to LDCs in the implementation of their obligations.
- Facilitate the accession of LDCs into the WTO with a more streamlined process of accession, under terms consistent with their development, financial and trade needs. The LDC countries seeking accession should not be asked to undertake commitments higher than those undertaken by LDC members of the WTO, and the transitional periods mandated by WTO agreements applied to them should start from the date of accession.

Bangladesh should support the broad LDC consensus to the effect that the LDCs are not in a position to undertake broad based negotiations involving many new issues due to lack of capacity to negotiate and implement new commitments. The Programme of Action adopted by the LDC III in Brussels in May, 2001 provides a comprehensive set of commitments, by LDCs and their partners, to support LDCs' growth and development and their integration into the world trading system. The LDC III

Programme of Action clearly recognises the contribution of trade to development, and, accordingly, the actions to help LDCs integrate in the world trading system. So, LDC III Programme of Action should be reflected in the outcome of the fourth WTO Ministerial, and a Ministerial Declaration should be adopted to confirm the commitments made in the LDC III. This should include a confirmation of the commitment to provide duty free and quota free access for all LDC products. It is also suggested by the LDCs and EU that the Sub-Committee on the Least Developed Countries monitor, as appropriate, the follow-up to the relevant elements of the Programme of Action adopted by the LDC III.

### ***Small Economies***

Denying creation of a subcategory within the WTO, the Draft Declaration takes into cognizance the trade-related issues identified for the fuller integration of small economies into the multilateral system. It has been proposed that the related work programme and action agenda will be presented in the fifth Ministerial.

It may be noted here that unlike Bangladesh a number of LDCs are land-locked economies. Structurally, it is not possible to accommodate the special features of the small economies in the multilateral trading system, but it can be hardly overemphasised that this category of countries will be highly susceptible to the external shocks and will have even less resources to confront such shocks. Bangladesh should show sensitivity to the concerns of this particular group of LDCs.

### ***Trade, Debt and Finance***

The mention in Draft Declaration about the need to examine the relationship between trade, debt and finance, and enhancing the mandate and competence of the WTO to contribute to a durable solution to the problem of indebtedness of developing and least-developed countries is noteworthy. The present articulation, however, does not generate enough confidence as it does not propose any measure to strengthen the current practices of developing internal and external policy coherence among various specialised multilateral development agencies.

Unfortunately, though Bangladesh has since long been emphasising the issue of policy coherence among various international development agencies, the Zanzibar Declaration is quite silent about it.

### ***Trade and Transfer of Technology***

The intent to examine the relationship between trade and transfer of technology aimed at increasing the flow of technology to the developing countries is a positive one. It has been proposed that the Ministerial should assign an appropriate institution to conduct the assignment and report to the fifth Ministerial.

Although the issues relating to technology transfer have been addressed under some other headings, inclusion of a separate section on the subject is well appreciated by the

LDCs. However, once again, the text falls short of suggesting actionable measures for technology transfer in favour of the LDCs.

### ***Special and Differential (S & D) Treatment***

The issues of S&D lies at the heart of the LDCs' concerns. The rationale and importance of the S&D was recognised in all the drafts, arguing that the measures would facilitate to create the "level playing field" in the global trade arena. Unfortunately, this issue has been awarded the least attention (as a matter of fact, it comes as the last para in the Work Programme). It is expected that the report of the Committee of Trade and Development is going to elaborate the concerned section (Para 35) further.

The LDCs expect fair and faithful treatment of the issues S&D relating to the next draft.

## **5. IMPLEMENTATION ISSUES AND THE LDC VIEWS**

The developed and developing countries have remained divided over the issues of implementation of various provisions in the WTO agreements. While the developed countries and the WTO Secretariat have described the progress made in the area of addressing these issues as "encouraging" as a result of "constructive engagement", the other side seems to be losing confidence in the promises made in the various declarations and decisions in favour of the LDCs.

The implementation-related concerns of the developing countries and the least developed countries are a legacy of the agreements of the Uruguay Round. The "implementation issues", as 97 specific proposals are called, have been on the table since mid-1999 and range over a number of WTO agreements which are of critical interest to Bangladesh. These include agreements on TRIPs, textiles, agriculture, subsidies and anti-dumping duties. When the implementation issues were first identified and proposed nearly three years ago, few governments and WTO trade officials saw much merit in them. However, skepticism related to the implementation issues now underpins reticence of the developing countries and LDCs to initiate a new Round. Responding to a question at a high-level segment of the Trade and Development Board of the UNCTAD in October 2000, Mike Moore noted "it was the implementation issue which brought the World Trade Organisation to its knees in Seattle".

### ***Implementation Issues in Seattle***

The draft Seattle Ministerial text of 19 October 1999 contained two specific paragraphs (21 and 22) relating to implementation. Paragraph 21 contained a total of 54 proposals, listed as issues which called for "Immediate Action", while Para 22 was related to improving the "Implementation Review Mechanism." Of the 54 proposals in Para 21, only 20 were singled out for action in 2000. Out of these 20 proposals, 12

have had referred to Subsidiary Bodies. For two, relating to TBT and SPS, the DG, WTO had been asked to explore with other international organisations avenues for improving the involvement of developing countries in standard setting exercises. On the remaining six issues, the General Council Chairman was to hold further consultations.

Thus, till date, less than half of the 54 proposals which were identified in the draft Seattle Declaration for “Immediate Action”, were actually taken up for consideration. More importantly, the 20 addressed proposals that have been resolved in some way, are either being "referred", "explored" or in need of "further consultation."

### ***Doha Ministerial and Implementation***

It appears that the upcoming Doha Ministerial does not hold much promise regarding the implementation issues. As mentioned earlier, on September 26, 2001, in conjunction with the Draft Declaration, a *Draft Decision on Implementation Related Issues and Concerns* has been circulated by the Chairman of the General Council and the Director General. This reflects their “best judgement of the possible basis at this time for reaching agreement”. While the Draft Decision is more important for the future course of implementation, the debate is currently focused on the Draft Declaration which does not have any binding implications.

In this context, in the following paragraphs we review various aspects of the Draft Decision from Bangladesh perspective, particularly as espoused in the Zanzibar Declaration.

#### **5.1 Issues Addressed in the Draft Decision**

Admittedly, WTO rules in areas such as agriculture, intellectual property, investment measures, subsidies and anti-dumping duties are undermining the ability of the LDCs to pursue balanced social and development policies. The LDCs have undertaken significant obligations during the Uruguay Round without commensurate benefits. It is, thus, very important to understand how issues such as market access in agriculture, accelerated removal of quotas in textiles and prolonging the transition periods in TRIPs, BOP and S&D have been addressed in the Draft Decision.

##### ***Market Access***

The Draft Decision has not addressed this set of issues at any length as it contains a brief article which describes that *Article XVIII (Governmental Assistance to Economic Development) of the GATT 1994 (S&D treatment provision for developing countries) should be less onerous than Article XII (Restrictions to Safeguard BoP) of the GATT 1994*. It neither suggests ways and means as to how S&D treatment provisions of various agreements could be made operational, nor mentions approach to expand market access in sectors of interest to LDCs.

### ***Agriculture***

While the LDCs had been demanding implementation of the Marrakesh decisions on *Measures Concerning the Possible Negative Effects of the Reform Programme on LDCs and Net Food-Importing Developing Countries* in a full and effective manner, the Draft Decision mentions that action will be taken in this regard in the light of the report of the Committee on Agriculture expected on 28 September, 2001. This is the most compliant of all the decisions in the list of decisions where LDCs had something to say.

### ***Agreement on Textiles and Clothing***

The LDC's stand in general maintains that meaningful market access improvements should be provided enabling them to prepare for meeting increased competition after the end of the integration period in December 2004. The Draft Decision recognizes the importance of the issues relating to access to textile and apparels markets and maintains that the provisions of the ATC relating to the early elimination of quota restrictions should be effectively utilised.

However, in reality preferential treatment promised to LDCs in terms of the technical assistance, safeguard clauses, S&D status, derogation commitments, "best endeavor" provisions, effort and flexibility clauses remained largely unrealised. Seven years after the entry into force of the ATC, barely 20% of the trade actually restrained by quotas has been notified for integration, leaving 80% of such trade pending until the last day of the process. The elimination rate designed in the first phase and second phase of the MFA was very slow. In this context, it is important to observe how rapidly the developed countries catch up with the schedule and phase out the restrictions for the LDCs at an early date.

### ***Agreement on Sanitary and Phytosanitary (SPS) Measures***

Major demand of the LDCs regarding Agreement on SPS related to the provision of technical assistance and extension of timeframe for compliance of SPS standards. The LDCs maintain that the technical and financial assistance should be provided to the LDCs for implementation of this agreement with a view to responding to the special problems faced by them. Such technical assistance could include, inter alia, capacity building in the fields of accreditations, standards, and certification. Another legitimate demand relates to their effective participation in the international and regional standards setting bodies and receipt of promised technical assistance and financial resources for compliance endeavour. *The Draft Decision mentions that the LDCs' demand is under active consideration.* Regarding the technical and financial assistance, it has been said that the Committee on TBT will continue the review process.

### ***Customs Valuation***

The Draft Decision has given effect to the demand of the LDCs regarding extension of the transitional period for the Article 20 of the Agreement on Customs Valuation. The decision will facilitate the process of acquiring necessary technical assistance and expertise to implement the agreement.

### ***Subsidies and Countervailing Measures***

In connection with the Agreement on Subsidies and Countervailing Measures, it is being argued that LDCs will be excluded from the Annex VII of the Agreement only if its GNP per capita remains above the level mentioned in the Annex for a continuous period of *four years*. Furthermore, whilst excluding a country from the Annex, it should be ensured that the increase in its GNP per capita is not due to a temporary economic development, which in the long run cannot be sustained. The Draft Decision addresses this concern of the LDCs. The Draft Decision suggests that if a Member is excluded from Annex VII to the Agreement on Subsidies and Countervailing Measures, it nevertheless shall be re-included in it if its GNP per capita falls back below US\$ 1,000. Annex VII(b) to the Agreement on Subsidies and Countervailing Measures enlists the Members until their GNP per capita reaches US\$ 1,000 in constant 1990 dollars for *three consecutive years*. *It may be noted that the time period agreed in the Draft Decision is three years instead of four years which was demanded by the LDCs.*

### ***General Agreement on Trade in Services***

The LDCs' position regarding the implementation of the provisions of GATS argues for removing the limitation relating to movement of natural persons. The LDCs demanded that the Members should take necessary steps so that administrative practices do not impede the full and effective implementation of their commitments as regards the supply of services under Mode 4 identified in GATS. *The Draft Decision assured that such impediments will not emanate from administrative practices of the member countries.*

### ***Trade Related Intellectual Property Rights***

The Draft Decision addressed Article 66.2 of TRIPs by providing illustrative list of incentives for the implementing countries. However, nothing has been said about the implementation of different provisions dealing with transfer of technology to the LDCs. For full implementation of Article 66.2 of TRIPs, the LDCs have lobbied for a commission on review and monitoring. *The Draft Decision has addressed this issue.*

### ***Anti-dumping and Countervailing Duties***

The demand of the LDCs regarding the AAD was very specific. The LDCs argued, under Article 5.8 of AAD, for raising the threshold volume of imports from LDCs from 3 percent to 7 percent, and exempting them from accumulation. *The Draft*

*Decision has instead proposed to fix a timeframe for determining the volume of dumped imports, which will remove uncertainty in implementation of the provision.*

As it transpires, only a few of the issues which have been regularly highlighted by the LDCs in various fora have been included in the draft decision. Only eight issues relating to different agreements of the WTO have been covered by the Draft Decision. Among these only the proposal on Customs Valuations has fully met the expectation of the LDCs. The issues of Subsidies and Countervailing Measures, and TRIPs have been addressed partially. The decisions regarding the ATC and GATS are in place, but there are uncertainties in their implementation given the current progress as regards this particular subject. The decisions regarding agriculture and SPS are vague as they are without any concrete commitment. As a whole, the Draft Decision generally falls short of the expectations of the LDCs.

## **5.2 The Concerns Ignored in the Draft Decision**

### ***Market Access***

Market access issues define the major concern of the LDCs regarding to functioning of the MTS. However, this concern has been addressed in the Draft Decision only in general terms. For the LDCs, existing S&D treatment provisions under the various WTO agreements should be improved in an effective manner with a view to ensuring that the declared duty-free access is not nullified by non-tariff measures. The most important demand of the LDCs is to provide a contractual status to duty-free and quota-free preferences through negotiation of a new legal instrument to make market access secure, stable and predictable. Any temporary withdrawal of duty free treatment needs to be disciplined in a contractual manner to ensure security of the preferential market access.

### ***Agreement on SPS Measures***

LDCs contend that the Agreement on SPS is gradually becoming the main weapon for the developed countries to exercise new forms of protectionism. No concrete commitment was observed in the Draft Decision with respect to the issue of adequately equipping the LDCs to enable them to face the special problems of implementation of SPS standards.

### ***Trade Related Investment Measures***

In the backdrop of their concerns for market access and sustainable economic growth, the LDCs have been arguing for exemption from the disciplines of TRIMs. The Draft Decision is completely silent about this issue.

### ***Customs Valuations***

For the sustainability of the export market as well as time and space for technical preparation, LDCs should also be allowed to continue their reservation concerning

minimum values for a longer period. The Draft Decision considered the issues of technical assistance; however, it did not propose any measure in this regard.

### ***Agreement on Subsidies and Countervailing Measures (ASCM)***

The subsidies and countervailing duties are also serious concerns of the LDCs which has been reflected through the following propositions:

- Modify Annex I of the ASCM to provide LDCs enough flexibility to finance their exporters, consistent with their developmental objectives;
- Strengthen effectiveness of non-actionable subsidies, including those for development, diversification and upgrading of infant industries as well as to allow for freight rebate schemes to take into account the important role which subsidies play in the development process of the LDCs;
- Exempt from competitiveness thresholds the subsidies which are applied by LDCs
- Provision of financial resources to enable LDCs to meet their special needs, in particular with respect to the subsidies covered by Article 8.2c (Green Subsidies).

### ***Issues that did not get any attention in the Draft Decision.***

#### ***General Agreement on Trade in Services***

LDCs demand full and effective implementation of Article IV of GATS to strengthen LDCs' domestic services capacity, e.g. through access to technology and distribution channels and information networks, to enable LDCs to participate in the trade in services in all modes of supply and sectors of special interest to them, such as tourism, construction, transport, etc. *The Draft Declaration did not taken note of these issues.*

#### ***Trade-Related Intellectual Property Rights***

The Draft Decision did not consider the extension of the transitional period for LDCs to match their capacity to implement and benefit from the TRIPs Agreement, based upon an assessment of technological capacity of the LDCs by the year 2006. While the LDCs reaffirm the flexibility contained in the TRIPs Agreement whereby nothing should preclude the right for members to take actions in a way that allows for easy access to medicines to combat communicable diseases in particular HIV/AIDS, tuberculosis and malaria, similar reaffirmation has been demanded by them in reciprocity.

LDCs strongly feel that there should be flexibility and clarity in the interpretation of the TRIPs Agreement to prevent piracy of traditional knowledge, and that higher levels of protection be given in the form of geographical indication for products of export interest to the region so as to address public health concerns of the countries. The implementation issues have not been addressed in the Draft Decision.

### ***Antidumping and Countervailing Duties***

The position of the LDCs in relation to the ADD and CVD is as follows: as LDCs are neither able to defend their industries against dumped and subsidised imports, nor able to protect the legitimate interests of their exporters, simplified procedures for taking anti-dumping and anti-subsidy actions should be devised for their use. The "best endeavour" provisions of Article 15 of the Agreement on AAD needs to be operationalised so as to impart stability to the initiatives undertaken to improve market access for the LDCs.

### ***Rules of Origin***

For the textile and clothing exports of the LDCs, Rules of Origin is a crucial impeding factor for the LDCs to retain their market share. Therefore, the LDCs should also be allowed to continue their reservation concerning minimum values for a longer period. Rules of origin requirements should be realistic and flexible to match the industrial capacity of the LDCs in order to ensure the effective and full utilisation of preferences. The rules of origin should also be harmonised among preference-giving countries and subject to simplified customs documentation and procedures. *This important and crucial concern of the LDCs has also not been addressed in the document on implementation issues.*

### ***Cross-cutting Issues***

LDCs demand exemption from all safeguard actions; they also demand that LDCs which are implementing safeguard actions should be exempted from undertaking compensatory measures. Nothing has been said in this regard in the Draft Decision.

The consolidated number of concerns of the LDCs which have not been addressed is 21.

Out of a total number of 29 decisions provided in the draft text on implementation issues, only eight specifically address the concerns of the LDCs. As mentioned earlier, only two of these eight adequately subsume the views of the LDCs.

The developing and least developed countries demanded "review" of some existing agreements, namely, textiles & clothing, SPS, TBT, TRIMs and TRIPs.

On the other hand, the LDCs proposed amendment in the following agreements: (a) TRIPs, (b) AAD, (c) Agreement on Subsidies and Countervailing, (d) TRIMs, (e) Safeguards, and (f) Dispute Settlement understanding.

Along with the review and clarification, some new rules are in the menu for Doha Ministerial for negotiations. They are: (a) Investment; (b) Competition; (c) Environment; (d) Transparency in Government Procurement; and (e) Trade Facilitation.

## **6. DOHA MINISTERIAL: POSSIBLE SCENARIOS AND IMPLICATIONS**

There are a number possible variants as regards the outcome of the Doha Ministerial. As of now it remains very difficult to make any concrete prediction in this context. A look at the possible outcomes of the Doha Ministerial may help us to contemplate on their differential implications for the LDCs.

### **Scenario 1: No launch of the Round**

Not necessarily this outcome means that no decisions will be arrived at in Doha. Ministers are most likely to work for promoting *an urgent work programme leading to a negotiating mandate*. The LDCs will stress upon the ongoing negotiations in agriculture and services with the broad mandates of the “built-in” agenda and undoubtedly they will take note of the significance of the already mandated reviews of the ATC and other Agreements. Moreover, if the ministers fail to launch the Round, the General Council is likely to work on the preparation for a new Round and report back to the next ministerial meeting.

The LDCs carry no domestic political risk in case of failure to launch a new Round.

### **Scenario 2: Launch without a mandate and substantive negotiating agenda, but with a work programme covering most or all proposals**

The consequences of this outcome for the LDCs are likely to be same as in case of failure to agree to a launch. Under such an outcome, negotiations would be limited to agriculture and services for the next eighteen months and there would be no details of the expected results of the negotiations in these sectors. The LDCs are likely to be at the sufferer’s end because, despite the likely fixing of target dates for the different stages of the negotiation and the setting up of negotiating institutions, the content of the eventual declarations are likely to remain vague. Although it would not be illogical for a Ministerial Declaration to give specific guidance to the ongoing negotiations on agriculture and services or even to set directions for upcoming mandated reviews of the ATC, TBT and TRIPs Agreements, this is unlikely in practice since developed countries are most likely to avoid prejudging the scope of eventual negotiations in these limited areas until the full dimensions of a new Round of negotiations are agreed upon.

Therefore, the LDCs must recognise the importance of pursuing common positions and in case of absence of any agreement at Doha on the scope for future negotiations, the LDCs have to become more united to collectively bargain with the developed countries for inclusion of ministerial commitments in the following areas :

- Improved autonomous preferential measures by the developed countries
- Enhanced implementation of existing S&D obligations by developed countries
- Enhanced financial and technical assistance to the LDCs
- New principles for negotiating terms of accession for the LDCs

**Scenario 3: Launch in absence of a detailed agenda.**

The scope for future negotiations will be greatly diminished under this scenario. The LDCs will be particularly affected because the prospects for obtaining developed country acceptance of Zanzibar Declaration proposals in the above categories (listed under scenario 2) would be significantly reduced. The developed countries would generally like to hold back on accepting proposals in these areas until it can use their acceptance as leverage in negotiating the terms of a detailed mandate.

**Scenario 4: “Mandated” launch with many possible variants**

In this case the opportunities to press the Zanzibar Declaration will be greatly enlarged. The Conference would agree to the content for mini or broad negotiations and would determine the level of specificity and outcomes of the negotiating mandates in areas identified for negotiation. From the perspective of the LDCs, ensuring the enhanced implementation of the Uruguay Round Agreement and advancing the negotiations focusing on the review issues and the built-in agenda through the mechanism of the WTO structures are the most important tasks at this point of time. In other words, most of the LDCs are not ready for a new Round.

Following are some major consequences of the launching of a new Round:

- Any New Round would create binding obligations and a mechanism of sanctions in case of violations. The magnitude of responsibilities emanating from the Multilateral Trading System (MTS) is immense which is why most of the LDCs attach high importance to the earlier agenda on three core issues: *market access, implementation* and the *built-in agenda*.
- If due attention is paid to the major grievances of the LDCs, it is expected that issues including outstanding commitments made by the developed countries in relation to agriculture, services, subsidies, SPS and TBT, Textiles, TRIMs, TRIPs, Customs Valuation, Anti-dumping and Countervailing Actions, Safeguards will be properly addressed.
- It is known that issues such as investment, competition policy and transparency in government and the like are currently under the study of the WTO in various working groups and these studies are yet to be completed. Consequently, from the standpoint of the LDCs there is no substantial basis for entering into negotiations on these issues.

**A Strategic Agenda for Bangladesh**

Given the evolving situation, the strategy of Bangladesh at Doha should closely follow the approach developed by the LDCs. However, as the LDCs also have varying priorities (e.g. textiles), Bangladesh should also look for issue based alliance in its favour. In this connection, Bangladesh may also take advantage of the divergent views currently prevailing among the OECD countries. Bangladesh should also keep in mind that as regards many issues (e.g. investment, competition policies) her interest in any future agreement will not be under substantive threat as will be the case with such

countries as Malaysia, Brazil or India. So, if there is a question of *quid pro quo*, Bangladesh will need to keep this mind.

It is envisaged that the changes in the global political landscape which have happened following the mass terrorist attacks in USA may help Bangladesh to negotiate a better deal at Doha. Bangladesh may hope that political reality would strengthen the economic rationale for providing effective preferential treatment to the LDCs. In this context Bangladesh will need to identify some “bargaining chips”, which largely convey more precise and legitimate proposals giving away some “peripheral issues”. The absolute bargaining chip for Bangladesh remains to be duty free and quota free market access followed by relaxation of the rules of origin.

Bangladesh will need to position her negotiating stand depending on what is on offer, and how the key participants play their cards at the negotiating table. Here are some strategic options she could pursue depending on particular situation as it evolves in the course of the negotiations during the Doha Ministerial:

- In the most committal language negotiable a clear undertaking from developed countries to introduce further autonomous liberalisation on a preferential basis through quota free and duty free market access for all LDCs and for all products including textiles and clothing. *Difficult but not impossible!*
- Obtaining an agreement from developed countries to enter negotiation of a legally binding instrument that would ensure predictable continuity of existing and future preferential arrangements for LDCs. *Impossible!*
- In a Declaration launching a Round endeavour to put language that would minimise the exposure of Bangladesh to pressures in tariff and services negotiations to liberalise its own regime. *Difficult to include in a broad mandate and only necessary if confronted with proposals implying extensive liberalisation by all participants.*
- In the Ministerial Declaration put in language providing for rule making negotiations, secure commitments of developed countries to introduce or work toward legally binding S&D provisions for LDCs in existing agreements and in new agreements. *Quite possible.*
- Obtaining commitments, in as legally binding a form as possible, to enhanced financial and technical assistance for LDCs. *Quite possible.*