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Ongoing WTO Negotiations and Bangladesh's Interests: Insights from CPD's October 2002 Tracking Mission to Geneva

Paper 34

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The Centre for Policy Dialogue (CPD), established in 1993, is a civil society initiative to promote an ongoing dialogue between the principal partners in the decision-making and implementing process. The dialogues are designed to address important policy issues and to seek constructive solutions to these problems. The Centre has already organised a series of such dialogues at local, regional and national levels. The CPD has also organised a number of South Asian bilateral and regional dialogues as well as some international dialogues. These dialogues have brought together ministers, opposition frontbenchers, MPs, business leaders, NGOs, donors, professionals and other functional groups in civil society within a non-confrontational environment to promote focused discussions. The CPD seeks to create a national policy consciousness where members of civil society will be made aware of critical policy issues affecting their lives and will come together in support of particular policy agendas which they feel are conducive to the well being of the country.

In support of the dialogue process the Centre is engaged in research programmes which are both serviced by and are intended to serve as inputs for particular dialogues organised by the Centre throughout the year. Some of the major research programmes of CPD include ***The Independent Review of Bangladesh's Development (IRBD), Governance and Development, Population and Sustainable Development, Trade Policy Analysis and Multilateral Trading System and Leadership Programme for the Youth***. The CPD also carries out periodic public perception surveys on policy issues and developmental concerns.

Dissemination of information and knowledge on critical developmental issues continues to remain an important component of CPD's activities. Pursuant to this CPD maintains an active publication programme, both in Bangla and in English. As part of its dissemination programme, CPD has decided to bring out **CPD Occasional Paper Series** on a regular basis. Dialogue background papers, investigative reports and results of perception surveys which relate to issues of high public interest will be published under its cover. The Occasional Paper Series will also include draft research papers and reports, which may be subsequently published by the CPD.

The present paper titled ***Ongoing WTO Negotiations and Bangladesh's Interests: Insights from CPD's*** *Tracking Mission to Geneva* 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 globalization and liberalization. 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 paper has been prepared by *Dr Debapriya Bhattacharya,* Executive Director, *Professor Mustafizur Rahman*, Research Director, *Dr Ananya Raihan*, Research Fellow, *Dr Fahmida Akter Khatun*, Research Fellow of CPD and *Dr Manjur Alam Tipu,* Associate Professor, Independent University, Bangladesh based on their experiences gathered during their visit to Geneva to track the ongoing negotiation as regards Doha Development Agenda.

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PART A

Ongoing WTO Negotiations and Bangladesh's Interests: Insights from CPD's Tracking Mission to Geneva

Introduction and Background

The ongoing Doha Development Round negotiations is expected to have critically important implications for Bangladesh and other least developed countries (LDCs) both in terms of accessing the opportunities emanating from the evolving global trading system, and also from the perspective of addressing the attendant challenges. It is thus of practical significance to Bangladesh to monitor these negotiations in order to formulate and firm up negotiating positions on the various issues embodied in the Doha Development Agenda. In the context of the forthcoming WTO Ministerial Meeting in Cancun, this has become an urgent task of enormous importance. In view of the importance of the current negotiations for long term development prospect, along with the diplomats in Geneva, civil societies in these countries are also taking in increasing interest in these issues.

As agreed at the Doha Ministerial Conference, a new round of multilateral trade negotiations will be launched in the near future. A number of built-in trade issues (agriculture and services) are already on the negotiating table, whilst many new issues (investment, environment, trade facilitation, competition policy and government procurement) are expected to come up for future negotiations. These issues will be discussed in the course of future negotiations in Geneva, under time-bound deadlines.

In view of this importance, the study plan of CPD's Trade Policy Analysis and Multilateral Trading Regime (TPA-MTR) Programme for the year 2002 approved by the Programme Steering Committee included a number of research studies which focused on particular issues of interest to Bangladesh in the context of the current and future negotiations including GATS, AoA, TRIPS and Market Access.

It is to be noted here that CPD was invited by the GOB to participate in the government delegation in Doha. The meeting of the extended Programme Steering committee held in January 2002 following the Ministerial Meeting in Doha was participated by Mr. Suhel Ahmed Choudhury, Secretary, Ministry of Commerce, Government of Bangladesh who is the Chairman of the Steering Committee of TPA and Dr. Toufiq Ali, Ambassador and Permanent Representative of Bangladesh in Geneva along with chamber leaders, academics and experts. In this meeting the importance of monitoring the ongoing negotiations in Geneva was particularly underscored and emphasised. Subsequently, when the Ministry of Commerce set up the WTO Advisory Committee and five Working Groups on key WTO issues of interest to Bangladesh, CPD was invited to be member of the Advisory Committee and also the various Working Groups.

In the course of implementing the various activities under the CPD's TPA Programme and also in the work of the various Working Groups mentioned above CPD felt that a first-hand knowledge on the ongoing negotiations in Geneva would be of much help in getting useful insights and indepth understanding about the relevant issues of interest of Bangladesh. Accordingly, CPD constituted a five-member team of experts to travel to Geneva and familiarise with the ongoing negotiation process.

It was felt that such a visit would be helpful on three counts: (a) the visit would enrich the implementation of study programme under the TPA; (b) it will enable CPD to be on the cutting edge of WTO related issues during the run-up to the fifth WTO Ministerial Meeting in Cancun, Mexico; and (c) will enable CPD to more meaningfully contribute to trade related policy making in Bangladesh. To broad base this opportunity for national trade related capacity building CPD decided to invite two CPD Fellows who are affiliated with other institutions, premier public sector research institution of the country, BIDS and a leading private university, Independent University, Bangladesh, to be members of delegation.

The CPD delegation visited Geneva during October 19-30, 2002. Each team member was to concentrate on a particular issue of priority interest to Bangladesh in the context of the ongoing negotiations. The visit of the CPD delegation was supported under CPD's TPA programme which is being implemented in collaboration with CTPL, Ottawa and with support from CIDA.

Members of the CPD Delegation

Name of Delegate	Designation	Research Focus
Dr. Debapriya Bhattacharya	Executive Director, Centre for Policy Dialogue (CPD), Dhaka, Bangladesh Head of the Delegation	Singapore Issues
Professor Mustafizur Rahman	Research Director, Centre for Policy Dialogue (CPD), Dhaka, Bangladesh	Market Access Issues
Dr. Ananya Raihan	Research Fellow, Centre for Policy Dialogue (CPD), Dhaka, Bangladesh	GATS
Dr. Fahmida A. Khatun	Fellow, Centre for Policy Dialogue (CPD), Dhaka and Research Fellow, Bangladesh Institute of Development Studies (BIDS), Dhaka	Trade and Environment
Dr. Manzur A Tipu	Fellow, Centre for Policy Dialogue (CPD) and Associate Professor, School of Business, Independent University, Dhaka Bangladesh	TRIPS

The CPD delegation was also joined by *Mr. Wenguo Cai,* Program Director (Asia-Pacific), Centre for Trade Policy and Law (CTPL), Ottawa, Canada.

Mandate of the Mission

The delegation met three times in preparation for the visit. It was decided that each member of the delegation will be responsible for the following activities:

Pre-Visit Activities

- Familiarise with the state of knowledge on the assigned issue available from published sources and relevant websites
- Prepare a checklist with key issues of interest to Bangladesh in the assigned theme which will serve as a background document for discussions in Geneva

Activities During the Mission

- Participate in the various meetings which would be organised with key players and organisations in Geneva
- Try to get an indepth understanding of the work of the various committees dealing with relevant issues in Geneva
- Draw insights as regards the stand of major actors on issues of interest to Bangladesh, and also the tensions that exist among them with respect to positions and perspectives on particular issues
- Examine the interface of the ongoing discussions with Bangladesh's interests and opportunities
- Collect relevant reference materials and documents to take back home
- Focus on cross-cutting issues and some of the other important areas of interest to Bangladesh such as Agreement on Agriculture
- From interaction with Missions, try to understand the priorities of the key players and the emerging tensions
- From discussion with Bangladesh Mission, try to understand Bangladesh country perspective in the context of the ongoing negotiations.

Post-Visit Activities

- Prepare a back to office report
- Brief the Secretary Ministry of Commerce as regards the outcome of the visit and also share the experience with other stakeholder groups.
- Provide inputs to the Ministry of Commerce by drawing on the experience gained in the course of the visit
- Each member of the delegation will prepare a study report on the assigned theme
- CPD will publish a monograph which will include the study reports prepared by the members of the Mission. The target date for the volume is early 2003.

Organisation of Meetings in Geneva

CPD's partner organisation CTPL helped to set up a number of meetings. CPD used its own contacts to set up some of the other meetings. For this purpose CPD prepared a background document which was sent to the various organisations with which appointments were sought. Thus, the host organisations were alerted beforehand as regards the key areas of interest to the CPD team members. The Bangladesh Mission in Geneva extended all possible help and was instrumental in setting up meetings of the delegation with the Mission of the EU, USA and India.

During the visit the CPD delegations participated in a total of 18 meetings. The mission spent one day each in WTO and UNCTAD where relevant officials briefed mission members on the state knowledge as regards various issues of interest to the delegation members. Other organisations which were visited by the delegation included the UNEP, ICTSD, WIPO, CIEL (detailed list attached). The delegation also held a debriefing mission with H. E. Ambassador Dr. Toufiq Ali at his office. Dr. Ali also shared his views

as regards the priorities and Bangladesh country perspective in the context of the ongoing negotiations.

Expected Outcome

- More in depth understanding about ongoing negotiations in Geneva, perspectives of key institutions and key players, and the attendant tensions
- CPD's trade related research capacity strengthened
- Strengthened capacity for more informed policy input for the country in the context of ongoing negotiations in the WTO
- More informed inputs to the preparation for Cancun Ministerial Meeting
- More informed advisory service to the Ministry of Commerce
- Strengthened capacity to contribute to the national trade related capacity through seminars, workshops
- Publication of a dedicated volume on trade related issues which will draw on the Mission experience which will be widely disseminated and will help raise awareness on critical relevant issues in Bangladesh.

PART B

SECTION I: MARKET ACCESS

1.1 Background

Market access issues continue to remain a focal point of interest for the developing countries and the LDCs in the context of the ongoing negotiations in the WTO. As may be noted, the GATT Uruguay Round discussions focused mainly on market access for industrial products – the developed countries committed to bound 99% of their tariff lines in industrial products from the previous 78%, whilst the share of bound tariff lines committed by the developing countries increased from 21% to 73%. Average tariffs on industrial products imported by developed countries were reduced by 40% on imports from all countries, and by 37% on imports from developing countries; for the developing countries the corresponding figures stood at 25% and 21%. These reductions were negotiated line by line, rather than through either a *formula approach* or a *sectoral approach*. An attempt was also made to deal with non-tariff barriers (NTBs): voluntary export restraints (VERs) were prohibited and as is widely known, a phase-out was agreed with respect to the multi-fibre arrangement (MFA) under the Agreement on Textiles and Clothing (ATC).

However, LDCs such as Bangladesh, as also the developing country members in the WTO, were concerned by a number of outstanding issues which were not adequately addressed during the GATT Uruguay Round. Some of the more pressing concerns were: (a) although average tariffs in developed countries have come down sharply, from the pre-UR level of 6% to post-UR level of about 4%, because of existing *tariff peaks* (high tariff rates on particular commodities) in developed country markets, import duty on a number of export goods of heightened interest to LDCs, such as textiles, leather and food products, continued to remain at very high levels; (b) because of *tariff escalation* (tariffs on goods increasing with higher degree of processing) in the developed country markets, export of manufactured goods from developing countries and LDCs was being penalised; (c) trade in agricultural commodities remained highly constrained and distorted because of high level of farm subsidies in the OECD countries (total OECD subsidies currently stand at one billion dollar a day) and tariff rate quotas (TRQs); (d) developed countries and some of the developing countries were showing a growing tendency to use non-tariff barriers (NTBs) in the form of ADDs and CVDs, technical standards and compliance requirements with respect to sanitary and phytosanitary measures (SPSM), which hindered market access of exports from developing countries and the LDCs, and (e) a visible lack of enthusiasm on the part of the developed countries to include in the ongoing negotiations issues relating to market access in services of interest to the developing countries and LDCs, including access to the labour market.

1.2 Issues of Particular Concern to LDCs

LDCs did indeed receive important concessions and derogations with respect to market access commitments during the UR, particularly through special and differential (S and D) treatment. This was ensured by way of lower levels of commitment, protracted implementation schedule and promises of supportive measures, albeit only in the form of *best endeavour* clauses. However, the constraints mentioned earlier continued to inhibit LDC market access in recent years, primarily in the developed country markets as well as in the developing country markets. It is to be noted here that the LDCs were also confronted with a dilemma: lowering of tariffs also amounted to reduced preferential margins under the various GSP Schemes offered by the developed world. On the other hand, stringent rules of origin (RoO) provisions in the GSP Schemes meant that often LDCs were not being able to take full advantage of those schemes because of inability to

comply with the RoO requirements. Thus far, there has been little progress with respect to the demand of the LDCs to make the RoO more flexible. They are also dismayed by the lack of any real effort to implement the *Positive Agenda* in support of the LDCs as was agreed during the Singapore Ministerial of the WTO and the *Programme of Action* agreed in successive UN LDC Conferences. LDCs are finding it increasingly difficult to address the emerging NTBs in the global market, particularly because of their weak supply side capacities. It needs to be pointed out here that market access barriers faced by the LDCs were not confined to the developed countries: in many instances LDCs are facing formidable difficulties in accessing the markets of developing countries and regional markets.

1.3 Market Access and the Doha Round

In the context of the emerging market access difficulties, developing countries and LDCs made a concerted attempt to reflect their attendant concerns in the final declaration emanating from the Doha Ministerial Meeting of the WTO. However, LDCs were particularly disappointed to find that no firm endorsement of their demand for a *zero-tariff and quota-free market access* emerged from the Doha Ministerial. It should, however, be noted that the Doha Ministerial did not entirely ignore the emerging concerns of the LDCs. Thus, the Doha Mandate commits members to "reduce, or as appropriate, eliminate tariffs, including reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of interest to developing countries", and goes on to mention that the forthcoming negotiations "shall take fully into account the special needs and interests of developing and least-developed country participants, including through less than full reciprocity in reduction commitments". The Doha Ministerial Meeting set up a *Negotiating Group on Market Access* to discuss the relevant issues in the WTO. At the beginning of March 2002, Members also decided that the Group will also discuss market access for environmental goods, which will be monitored by the special session of the Committee on Trade and Environment (CTE).

1.4 Current Debates and Bangladesh's Interests in the Negotiating Group on Market Access

The Negotiating Group on Market Access working in Geneva has discussed a broad spectrum of issues in the areas of: (a) market access for industrial and agricultural goods; (b) market access in environmental goods and (c) non-tariff barriers. A large number of countries have submitted proposals articulating their position, some times individually, often in groups. Market access issues are complex, with north-north, north-south, as well as a south-south divide as regards approach, modalities, priority of issues and readiness to undertake commitments and concede concessions. A close scrutiny of the market access proposals submitted by various countries and debriefing of key players and organisations evince some early signals as regards similarities of interest, emerging tensions and the prioritisation of the relevant issues by individual countries, major players and coalitions of interests. The following sections highlight the focus of some of the ongoing discussions in the Negotiating Group.

1.4.1 Schedule for Discussion on Modalities

The Issue: Modalities relate to the negotiating formulas which will need to be followed in addressing the issues of tariff reduction, tariff peaks, tariff escalation, tariff dispersion and tariff rate quotas.

State of Debate: From the very beginning of its work, structuring of the market access talks became a hotly debated issue in the discussions in the Negotiating Group. India and the Africa group initially argued that Doha Declaration did not prescribe a dead line for modalities or negotiating formulas; the EC on the other hand was pushing for a deadline of March 31, 2003 to agree on modalities.

Subsequent to protracted and intensive consultations, members agreed in July, 2002 to reach a common understanding on a possible outline on modalities by the end of March, 2003 with a view to reaching agreement on modalities by May 31, 2003.

Bangladesh's Interest: Once the modalities are firmed up, these will provide the building blocs for decision making in Cancun and beyond. The reference points as regards outline and agreement on modalities have now been fixed. Accordingly, it will be in Bangladesh's interest to seriously start thinking on which of the modalities would best serve her interests in the current negotiations.

1.4.2 Modalities for Tariff Reduction

The Issue: Three options have emerged from the proposals submitted by the various countries in the Negotiating Group: (i) formula approach; (ii) request-offer approach and (iii) sectoral approach. The formula approach includes the well-known *Swiss Formula* (which envisage deeper cuts for higher tariffs) as also the linear tariff cuts of equal magnitude (a harmonised rate which is usually a percentage, and cuts across whole classes of products). A sectoral approach would mean a unique formula for each of the broad sectors. A request-offer approach is usually based on bilateral requests and offers with the results to be subsequently extended to all WTO members on a most favoured nation (MFN) basis.

State of Debate: The tensions in the abovementioned context are becoming increasingly apparent. Many developing countries and LDCs are not yet ready to liberalise their markets in a linear fashion fearing import surge, deindustrialisation and revenue loss. On the other hand, a formula approach is perceived to be a more convenient and expeditious way for reaching an agreement within a short time frame (such as the January 1, 2005 deadline for the Doha Round). India, China and Kenya seem to prefer the request-offer approach, while South Korea and Japan have indicated preference for the formula approach. EC submission indicates some flexibility, noting that while there are different ways to reducing tariffs, "the modality to be chosen has to bring about the greatest possible reduction across the board for all the WTO Members".

Bangladesh's Interest: Bangladesh should ensure that tariffs are reduced to a certain targetted level by taking cognisance of the stage of development of individual countries and their competitive strength. The strategy of Bangladesh as other LDCs should to take as few commitments as possible by taking advantage of S and D provisions.

1.4.3 Tariff Peaks and Tariff Escalation

The Issue: Tariff peaks refer to the continuing existence of high tariffs on a number of commodities inspite of fall in the average tariff rates agreed during the Doha Round. On the other hand, tariff escalation refers to higher levels of tariffs with increased degree of processing. Both tariff peaks and tariff escalation create market access barriers in countries which take resort to these practices.

State of Debate: Inspite of the overall reduction in the tariff rates, many developing countries are concerned about the tariff peaks and tariff escalation which continue to inform the tariff structure of the developed countries. A number of countries including India and China have argued that high value-added products from developing countries are being subjected to higher tariffs because of existing tariff peaks. The European Union and Japan have underscored the need to reduce tariff peaks, but have not explicitly come out in favour of reduction in tariff escalation. It is to be noted here that discussion on reduction of tariffs principally concerns *bound tariffs,* and not *applied tariffs*. For countries which were able during the Uruguay Round to bound their tariffs at high levels compared to applied tariffs, the immediate impact of reduction in the tariff rates will obviously have limited value.

Bangladesh's Interest: It will be in Bangladesh's interest to ask for reduction in tariff peaks and tariff escalation in all the non-LDC economies, including developed and developing countries. This is to be implemented on a non-reciprocal basis under the S and D treatment for the LDCs.

1.4.4 Market Access for Environmental Goods

The Issue: Environmental goods was not been included in the UR discussions. Countries were reluctant to widen the ambit of goods to be brought under multilateral discipline in the WTO. However, some countries now want to discuss two issues here: (i) environment-friendly issues of goods, (ii) goods that improve environment-friendly production.

State of Debate: Some developed countries are trying to broaden the ambit of the market access debate in the Negotiating Group. Thus, the submission by the USA calls for greater coordination between the Committee on Trade and Environment (CTE) and the Market Access Group to ensure greater market access for environmental goods. The inherent danger here, for countries such as Bangladesh, is that once enhanced market access for environmental goods is agreed upon, exports of LDC industrial products to the developed country markets may be subsequently subjected to environmental standards. Malaysia and a number of other countries have cautioned against this possible development. The EU would like to include goods which were produced in an environmental-friendly way, thus also bringing the process issues into trade dispute. Many of the developing countries are opposing this stance. Cairns group is divided on this with Australia favouring and some of the other group members opposing. As a counterweight to EC's position some of the other countries including Chile is trying to promote organic goods for favourable market access, on environmental grounds. Some countries are trying to promote the idea of formulating a definition of 'environmental goods' whilst others are opposing it.

Bangladesh's Interest: It will not be in the interest of the LDCs to support attempts to widen the debate as regards the inclusion of the PPM issues because of its potential use as a market access barrier.

1.4.5 Non-Tariff Barriers

The Issue: A number of countries would like the Negotiating Group on Market Access to pay priority attention to the issue of NTBs since in many instances these not only pose serious threat to further liberalisation of trade in goods, but also undermine the efficacy of earlier agreed provisions. The discussion has attempted to (a) identify the NTBs, (b) see which of the NTBs can be best addressed and (c) find ways as to how those could be removed. Discussion has also centred on the issue of *legitimate rights* to impose NTBs. There has been discussion also as regards mutual recognition of regulations and conformity compliance with participation of major stakeholders including governments, regulators and the private sector.

State of Debate: Many developing countries have argued that the Negotiating Group should clearly identify the various categories of non-tariff measures, and list particular NTBs under each category. India, New Zealand and Korea are most vocal in this regard. In the context of market access difficulties faced by Bangladesh because of NTBs, she has important stakes in these discussions. The discussion here has marked some progress. The Negotiating Group has come up with an inventory of the NTBs in place. These have been categorised under five headings: (a) Government Participation in Trade, and Restrictive Practices Tolerated by Governments; (b) Customs and Administrative Entry Procedures; (c) Technical Barriers to Trade; (d) Specific Limitations; (e) Charges on Import.

Bangladesh's Interest: The strategy for Bangladesh and other LDCs here should be to come up with proposals which identify the NTBs in the developed economies which LDCs would like to see removed on a priority basis. LDCs should cite *'real life cases'* to show how the NTBs have constrained their access to developed country markets. An issue which LDCs will have to seriously consider relate to market access barriers their exports face in some of the developing country markets.

1.4.6 Market Access for Agricultural Goods

The Issue: It appears that market access negotiations in agriculture which relate to all the three pillars of *tariffs, export subsidies* and *domestic support*, will be one of the *deal makers or (deal breakers)* of the Doha Development Round. Commitments negotiated under the Agreement on Agriculture (AoA) envisaged that all NTBs will be tariffied and the existing and newly introduced tariffs will be reduced by 36% over a period of six years (24% by developing countries over a period of 10 years). It is to be noted that tariff reduction approach followed here was a *line by line approach* with the minimum level of reduction being (with some exception) 15% for developed and 10% for developing countries. Commitments were also made in terms of subsidies and domestic support.

State of Debate: US appears to have changed its stance on subsidies after the introduction of the *US Farm Bill*. EU does not support any radical proposal and is in favour of a formula approach which will lead to gradual reduction in tariffs over a prolonged period of time. Its position is that *phase out does not mean elimination.*

The tension as regards subsidies is clearly borne out by the approaches pursued by the two major trading blocs, the EU and the Cairns Group. The Cairns Group would like to see further commitments in terms of reduction in subsidies and other support measures in agriculture. Many of the developing countries are complaining that commitments under the Agreement on Agriculture (AoA) required reductions on an unweighted average basis which allowed developed countries to maintain high tariffs on such products as sugar, rice and dairy products by taking recourse to deeper cuts in less sensitive tariff

lines with little trade. Developing countries such as India are playing a key role in the discussions on market access for agricultural commodities. India's submission is that the provisions of Article 6.4 (a) (i) & (ii) only serves to restrict the flexibility of use of domestic support measures by countries that provide support below the *de minimis* levels. These disciplines are however not applicable to countries that provide domestic support above *de minimis* levels. India has argued that the operation of Article 6.4 (a) (i) & (ii) be suspended till such time as the domestic support levels of all Members come down to the *de minimis* levels.

Some developing countries are seeking continuation of the current exemption as regards export subsidies available to developing countries in Article 9.4 beyond the implementation period ending in 2004. Some of the developing countries have argued that the *peace clause* as it is stipulated by Article 13 provides a *reverse* S&D status to the developed countries, allowing them safeguard against countervailing duties with respect to amber measures for nine years. They are proposing abolition of the peace clause for the developed countries. They are also arguing that under the S&D treatment developing countries should be provided with the flexibility to use the peace clause by at least 10 years. Developing countries are also pushing for effective measures to prevent the rolling over of unused subsidies to the next year.

Bangladesh's Interest: Bangladesh has strong interest in supporting proposals for opening up of the developed country markets for agriculture commodities through phase-put of subsidies and reduction of tariff rates. On the other hand, she should has an interest in safeguard measures by way of derogation through *food security* and *development box.*

1.4.7 GATS and Market Access

The Issue: The most critical market-access related issue of interest to Bangladesh in the GATS relates to making market access in services balanced and freeing of movement of labour in which all the developing countries have strong interest.

State of Debate: A number of proposals have been submitted in support of enhanced access to the labour markets of the developed world under Mode-IV of GATS which relate to *movements of natural persons*. India has proposed an *Occupational Approach* to identify skills of interest to developing countries from the perspective of market access. Developing countries and the LDCs are also arguing against the *economic needs test (ENT) and local needs test (LNT)* in the developed countries which constrain movement of labour. However, till now, the focus of the developed countries have been mainly on the movement of professionals in the context of Mode-3 relating to *commercial presence*. As regards the request and offer lists, it transpires that the deadline for submission of request and offer lists is rather tentative and allows for some flexibility.

Bangladesh's Interest: Bangladesh should support the Indian proposal as regards movement of labour, but at the same time press for more meaningful market access initiatives in support of LDCs, specially in case there are discussions about enhanced quota and flexibility in ENT and LNT. Bangladesh will have to very carefully craft the offer list in GATS and by using the S&D status try to commit sectors which are either already liberalised or which are least likely to disrupt domestic supply. Accordingly, Bangladesh should start serious work in preparing the offer and request lists.

1.4.8 Rules-making and Market Access

Developing countries are increasingly feeling that they would need to take a more proactive stance in the area of rule making since in future this would play a most crucial role from the perspective of market access in real terms. The talks on rule-making cover such areas as trade facilitation, customs valuation, trade procedures and transparency which will have important implications for market access. Here priority attention should be given to systemic improvement in the area of rule making, and on making decision making process in the WTO more democratic and transparent. There is a feeling that LDCs have till now pushed more for S and D, and have ignored discussions on rules and that this may undermine their trade related interest in the long run.

1.5 Concluding Remarks

The Doha Round of negotiations has been dubbed as the *Doha Development Round* and it is important to spotlight on the term 'Development' here. There is a need to relate market access to development in a manner in which market access is made to serve the agenda of overcoming the *development deficit* in the LDCs. What the LDCs stand to benefit from is not trade liberalisation or market access *per se*, but *meaningful market access* and in order to achieve this objective LDCs in the WTO will need to move as a coherent group, and also at the same time try to build issue-specific coalitions of interest in the context of the current negotiations.

Much will depend on what emerges in the end from the ongoing negotiations in Geneva which are mandated to be continued till 2005. In this context the deliberations and decisions of the Fifth Ministerial Meeting of the WTO which is expected to take place in September, 2003 in Cancun, Mexico is likely to play a crucial role. It emerges from the ongoing discussion in Geneva that there is little prospect for a favourable outcome as regards a *quad* initiative favouring global zero-tariff, quota-free market access for the LDCs. However, in all probability, this issue will come up for discussion as the date for the Cancun Ministerial Meeting draws closer. As regards more flexible rules of origin in which Bangladesh and other LDCs have critical interest, concrete proposals are yet to be forthcoming. It will be in Bangladesh's interest to maintain vigilance as regards both the abovementioned issues during the run up to the Cancun Ministerial since these have crucial market access implications for Bangladesh.

Evidently, in order to successfully address market access concerns in the context of the evolving global trading regime, Bangladesh will need to pursue two mutually reinforcing strategies: appropriate domestic supply side initiatives, and active participation in the ongoing negotiations in the WTO.

SECTION II: GATS

2.1 Background

The first round of negotiations on GATS was to start no later than five years from 1995 under the *Built-in-Agenda* in the GATS Agreement as an outcome of the Uruguay Round Negotiations. Accordingly, the services negotiations started officially in early 2000 under the Council for Trade in Services.

As a result of negotiations till March 2001, the first stage of the negotiations, the Services Council established negotiating guidelines and procedures (Article XIX:3). Assessment of trade in services was also one of the main agenda.

Doha Declaration endorsed the work already done. The paragraph 15 of the Doha Declaration reaffirmed the request-offer approach as the main method for the negotiations, establishing that the current national schedules should the starting point of the process, without prejudice of the content of the requests. The Doha Declaration reaffirmed the negotiating guidelines and procedures, and established some key elements of the timetable including, most importantly, the deadline for the conclusion of the negotiations as part of a single undertaking. The second stage of the negotiations continued for one year from April 2001 to March 2002.

Doha also reaffirmed that negotiations shall take place within and shall respect the existing structure and principles of the GATS. It was also reaffirmed that there would not be any prior exclusion of any service or mode of supply and MFN exemptions would be subject to negotiations.

The third stage started from April 2002. According to the schedule countries were to make request for liberalization by June 30, 2002. Initial offers of market access to be made by individual countries is scheduled for March 31, 2003. The deadline for concluding the negotiations has been fixed at December 31, 2004. Meanwhile, a stock taking of the developments in the negotiations will take place in the fifth Ministerial in Mexico, 2003.

As June 30, 2002 was the deadline for submission of requests to individual countries by the members, more than 160 proposals had been submitted since 2000, almost half from the developing countries, in cases jointly with the developed countries. The major areas of proposals are on domestic regulation, transparency and predictability, on small and medium enterprises, classification issues and assessment of trade in services. At the sectoral level, financial services, telecommunications services, energy services, environmental services, maritime transport services, construction and related engineering services, and some professional services dominated the initial request list. Bangladesh also submitted requests to some developed countries in the mode 4 across the sector. A number of countries submitted requests to Bangladesh to open some sectors. The countries are: USA, EU, Singapore, Japan and Norway.

The GATS Agreement is one of the exceptions in the whole WTO framework while an agreement came under the WTO umbrella with a “positive list” approach and with flexibility. In fact, this flexibility facilitated inclusion of the GATS under the WTO framework. This flexibility set the initial tone in the negotiation and tension around the negotiations is insignificant in comparison with the negotiations in agriculture and goods.

2.2 Major Issues of Concern Before Cancun

The GATS included in the built-in-agenda the negotiations under Article XIX. The Working party on GATS Rules currently deals with some unfinished business in the Uruguay Round viz., safeguards (Article X), subsidies (Articles XV), qualifications, Technical Standards and Licensing (Article VI), and government procurement (Article X3), which are also included in the current negotiations.

Currently Working party on Domestic Regulation deals with Domestic Regulation and Committee on Specific Commitments deals with the classification and scheduling issues.

2.2.1 Making the "Negotiated best Endeavour Clause"

The main challenge before the developing countries is making this clause contained in Article IV operational. The objectives in Article IV would only be achieved if current negotiations result in a strengthened domestic services capacity in developing countries, in improved access to the distribution channels and information networks for services suppliers of developing countries, and in commercially meaningful access to the developed market by developing countries service providers in sectors and modes of interest.

There is an understanding in Geneva that an active participation in the process is a necessary condition to achieve these objectives.

2.2.2 Bilateral vs. Multilateral

Some initial requests submitted by countries may infringe upon issues that are being dealt with in WPDR, the WPGR and in the Committee of Specific Commitments. Some of the requests address, *inter alia*, the issue of subsidies, domestic regulation and the classification of some services. Some issues are placed bilaterally which are not possible to resolve multilaterally. Some requests suggest the adoption of definitions of some important concepts, terms and conditions used in the scheduling of specific commitments. A concern in this regard is if these discussions and decisions should be undertaken in the bilateral process or a multilateral approximation could best serve the interests of all participants.

2.2.3 Sequence of Negotiations

The Guidelines and Procedures for the negotiations established that the rule-making negotiations should be completed prior to the conclusion of the negotiations on specific commitments. Rule making negotiations and negotiations on specific commitments are integral parts of a single whole, and the commercial value and sensitivity of different commitments could be different under different multilateral rules and discipline concerning safeguards, subsidies and government commitment.

There is a significant empirical evidence that energy services and environmental services are highly subsidised. At the same time, many countries are seeking deep liberalisation commitments in these sectors.

There is real concern among the developing countries that the launching of request –offer negotiations would further slower the process of negotiations in rule making. Major developed countries are following this strategy. In the light of the negative experience in the past, it should be ensured that both processes evolve in harmony.

2.2.4 Assessment and Review

According to the Guidelines and Procedures the process shall be subjected to the different reviews and evaluations prior to completion of negotiations. Council for trade in services shall take the required decisions to assure effective implementation of Article IV and XIX:2 of the GATS. Paragraph 14 of the Guidelines and Procedures for the Negotiations establishes that "negotiations shall be adjusted in the light of the assessment of trade in services" which is an ongoing activity of the Council.

The concern is that the assessment process is almost non-existent other some activities by the UNCTAD which provide a guideline for assessment in trade in services in individual country. There is a serious misunderstanding about the initiation and ownership of the assessment process. Definition of mechanism of review, benchmark for evaluation is not yet finalised.

2.2.5 Special Modalities for LDCs

Despite the agreement that there should be special priority to the LDCs regarding their flexibility in adopting specific commitments, and this priority should be expressed through special modalities for negotiations, to date no progress has been achieved in defining the modalities. This was an issues which was multilaterally agreed. LDCs could explore limiting their participation in the current request-offer process until the special modalities for their participation in the negotiations are finalized.

2.2.6 Mode 4

According to the agreement and negotiating guideline and procedures the schedule of commitments of a country provides a list of limitations on *market access (MA) and national treatment (NT)* across four modes of supply: cross-border supply, consumption abroad, commercial presence, movement of natural persons.

Temporary movement of natural persons is not being adequately addressed in the current requests. There is an idea of seeking a re-launching of negotiations under Annex on the Temporary Movement of natural persons at Multi-lateral level. This strategy is being considered as one of the ways to achieve the Article IV objectives. Indian proposal on GATS Visa is gradually becoming popular both in developed Members and developing members who successfully distinguished between temporary provision of service supply and migration.

2.2.7 Lack of Commitment at the Level of Practice

The GATS expressly recognizes the right of member countries to regulate the supply of services in pursuit of their own policy objectives. This recognition provides space for Bangladesh government to identify and protect interest of domestic service producers. The Positive list approach also facilitates to give minimum commitments. While all countries are to make commitments at horizontal level and also sector specific, the absence of commitment at the level of practice will create problems for countries like Bangladesh. The developed countries can use instruments and institutions beyond the WTO framework to create pressure to implement particular commitment or obligation; however, it will be difficult for the developing countries to force the developed countries to implement commitments taken under the GATS.

2.2.8 Operationalisation of Article IV

Article IV of the GATS emphasizes on the increasing participation of developing countries. This article obliges the developed countries to provide specific commitments for access to technology for the developing countries, which is very important for Bangladesh. The article also include provision for improved access to distribution channels and information networks, which has been considered as a major impediment for the developing countries to get easy access to the developed market. The article IV also includes the provision for liberalization of market access in sectors of export interest to developing countries. There is a provision for establishment of contact points by developed countries to facilitate access of services suppliers.

While the provisions are made for improving the capacity of the developing countries to participate in the services trade an more equitable basis it is very doubtful how the provision are going to be implemented. In the current negotiation process this is a major concern for developing countries. Currently, the developing countries are trying to negotiate the operationalisation issues of Article IV and expect concrete outcome in the Cancun.

In the upcoming negotiations it is important for the developing countries to work for attaining an implementation mechanism which will be a part of the GATS agreement. Bangladesh recently submitted a proposal in this regard to the WTO. Although the mechanism for implementation of the provision is dealt under TRIPS, it has implications under this article.

2.2.9 Classification Issues

It is to be mentioned that the negotiations are not yet completed in the areas of definitions of services and identification sectors and sub-sectors. Classification issues are becoming very important at least in two respects: definition of products and services under e-commerce, and difficulties of data in compliance with the current classification system. The issue of classification will not be resolved before the Cancun Ministerial.

2.3 What Goes to Cancun

The negotiators from developed Members are optimistic with negotiations in the area of GATS and a status report is expected form the Council for Trade in Services to the General Council before the Cancun. However, the developing countries are serious about the issues of assessment and progress review to ensure effective implementation of Articles IV and XIX:2. The developing countries expect that the status report on GATS negotiation will go with the evaluation also in the broader context of the “single undertaking” adopted in the Doha Declaration. By the end of the initial offer submission process, the status of negotiations will be more clear and the Cancun outcome will be predictable.

2.4 Interests of Bangladesh

Issues of trade in services have become more important for Bangladesh for some fundamental reasons which include the following:

- Competitiveness in goods export
- Increasing tradability of services
- Opportunities in services export

With an export oriented economic development policy Bangladesh has no other way to be competitive in exporting goods and services. Along with the problems of market access in the areas of non-agricultural goods, which are exogenous to domestic policy making in many cases, for initiating the process of attainment of sustainable market access improvement in the services component of the whole value chain of export is essential. It is really difficult to be competitive in agriculture and manufacturing trade without having competitive services (financial services, telecom, transport but also retail, storage, advertising, etc.).

Some recent technological developments opened a new horizon of services trade. Information and communication technology has become not only a determining factor in business reengineering for enhancing competitiveness, it has also created a opportunities to export a spectrum of services which were earlier not possible due to the limitation in technology. Many services now a days are provided without crossing the border through telecommunication network using Internet technology. These new opportunities also heighten Bangladesh's interest in GATS negotiations.

2.4.1 Domestic Regulation

Under Article VI countries have to streamline the domestic regulations consistent with the commitments and other provisions of the GATS. It should be mentioned that the GATS expressly recognizes the right of member countries to regulate the supply of services in pursuit of their own policy objectives, so the pressure is lesser under the GATS for streamlining domestic regulations than in GATT. However, it does not mean that there is no demand for improvement of domestic regulations and their enforcement. The prime condition for attracting foreign investment is predictability and enforcement of domestic laws and regulations. So, it is important to ensure a predictable legal environment in our interest rather than for compliance with the GATS article or provisions. It is noteworthy that Members have also the mandate to ensure that qualification procedures, technical standards and licensing requirements do not create unnecessary barriers. This provision has double edged implications for Bangladesh: on the one hand, in the ongoing negotiations, Bangladesh along with the partners should pursue for elimination of barriers in this area, on the other hand, it is important also to ensure that there is no unnecessary barrier which will not give any advantage to Bangladesh but create an impression of protectionism. The streamlining of domestic regulation is a tedious and costly process, which often impossible to implement without international support. The upcoming technical assistance program for Bangladesh should include an agenda for streamlining domestic regulations.

2.4.2 Mutual Recognition

The Article VII of the GATS deals with the issues of mutual recognition, which is very special for the services sector liberalization, Bangladesh has huge interest in this area. Bangladesh currently an exporter of both skilled and unskilled manpower to the developed and developing countries. The problem of recognition of the certificate and degrees awarded to the professionals of the country are often not recognized abroad, which create a barrier to trade with business services and also services under mode 4. In the ongoing negotiations this is an arch important agenda for Bangladesh. It is important to mention here that all SAARC countries have common interest in the area of mutual recognition. Development of common strategy in this area will be useful in the negotiations. The negotiations terms should be based on facts and figures because the six measures of limitations which have been mentioned above are relevant to negotiations

for this issue. While there are quantitative restrictions in number of professional are in place in many developed countries, it should be studied whether those quantitative restrictions are limiting the potential of exporting services. This quantification of potential and restriction practiced in the potential market will make the negotiations more effective and will facilitate to reach fruitful outcome for the parties involved in the process of negotiations. As the business services and movement of natural persons have huge potential for Bangladesh a study may be commissioned under the future program of technical assistance which will facilitate the negotiations.

2.4.3 Strategy for Request-Offer Game

The strategy in the negotiation process is very important for Bangladesh. According to particular negotiating objectives experts recommend to consider the following kind of requests:

- Seeking clarification and technical improvement of scheduling of existing commitments (clear description of MA and NT limitations, sectoral identification, definition of concepts, terms and conditions);
- Seeking full implementation of existing commitments;
- Seeking binding of existing limitations;
- Seeking the adoption of further liberalization commitments; elimination of scheduled limitations, or new commitments binding unbound modes and the scheduling of unscheduled sectors or sub-sectors;
- Seeking the elimination of MFN exemptions;
- Seeking additional commitments under Article XV3.

2.5 Effective Participation of Developing Countries in the Negotiations

The time elapsed since Doha attests to the difficulties for the developing countries in elaborating the initial requests. Three different factors have been identified as reasons for the current situation: (a) lack of human resources; (b) the complexities involved in identifying concrete trading interests at the national level; and (c) in some cases lack of adequate understanding of the GATS.

SECTION III: THE SINGAPORE ISSUES

3.1 Introduction

The so-called "Singapore Issues", i.e. the issue of Trade and Investment Policy (Articles 20, 21 & 22), Competition Policy (Articles 23, 24, & 25) and Trade and Transparency in Government Procurement (Article 26), and Trade Facilitation (Article 27) have been incorporated into the WTO post-Doha work programme for the next two years. During the preparatory process of the Doha Ministerial Conference, a large number of developing countries (mainly from Asia, Africa, the Caribbean and Central America) had made their views opposing to the commencement of negotiations on these issues, and instead suggested that the study process on these subjects should continue in the WTO. However, these positions were not reflected in the draft Ministerial Declaration transmitted to Doha. At Doha many developing countries again stated their opposition to the draft Declaration committing the WTO to negotiate the Singapore Issues. However, such a negotiating commitment was placed in two further drafts during the Conference. In the final draft, which the WTO Secretariat released on November 14, 2001, Ministers agreed, on all four Singapore issues, that negotiations would take place after the Fifth Ministerial Conference, which will be held in Cancun, Mexico, September 10-14, 2003, *on the basis of a decision to be taken by explicit consensus at the Conference on modalities of negotiations* according to the operational part of the relevant paragraphs of the Doha Declaration for each of the four issues.

It may be recalled that in the final consultation meeting at Doha, more than ten developing countries suggested that the text be changed, to remove the commitment to negotiations on the four issues. India indicated it could not agree to the Declaration unless amendments were made. Eventually a compromise was worked out, in which at the formal closing ceremony the Doha Conference Chairperson, Mr Youssef Hussain Kamal, the Minister of Finance, Economy and Trade of Qatar, read out "Chairman's Understanding" informing that a decision would indeed need to be taken at the Fifth Ministerial Conference by "explicit consensus" before negotiations could proceed on the four issues. He also clarified that this would give each Member the right to take a position on modalities that would prevent negotiations from proceeding until that Member is prepared to join in an explicit consensus.

The text of the Doha Declaration states that negotiations would begin after the Fifth Ministerial on the basis of an "explicit consensus" on the modalities of the negotiations. *However, the Chairperson's statement clarifies that a decision by consensus needs to be taken before negotiations could proceed*. By not stating that the required decision is on the modalities, the implication of the statement is that a consensus is needed on whether there should be negotiations or not. Thus, there seems to be some confusion regarding how to interpret the two positions. One of the problem in this regard is that the "Chairman's Understanding" has no legal standing under the current WTO practices.

Since Doha Ministerial the four Working Groups have held meetings, received proposals from the member-countries and WTO Secretariat had also prepared a number of Notes for discussion (particularly on Investment and Competition Policy). Countries objecting to the launch of negotiations have also put up proposals keeping their dissent on record. It is expected that chairpersons of each of the groups will soon circulate a summary overview.

3.2 Issues

3.2.1 Investment Policy

Background

At the Singapore WTO Ministerial (1996), when the Working Group was formed to study the "Relationship between Trade and Investment", it was explicitly stated that there was no commitment to negotiate an agreement. For the next five years (1997-2001) the WTO Working Group on the relationship between trade and investment has held several discussions. Major developed countries, particularly the EU, pressed very hard to have the Working Group transformed into a Negotiating Group that would negotiate a Multilateral Agreement on Investment (MAI) in the WTO. However, the majority of developing countries were extremely reluctant to agree to this. The reasons cited to justify the inappropriateness of an investment regime in a trade organization were: the resulting loss of developing countries' policy autonomy over investment policy would damage development options; the lack of understanding of the issues and their implications for development; the adverse effects of new obligations; diversion of time and human resources from other vital work in the WTO. They wanted the study process to continue, and were adamant that negotiations for an agreement should not start. However, these views were subsequently not reflected in the various drafts of the Declaration, including the final one.

In any case, the Doha Declaration has already laid out a work mandate for the next two years for the four Singapore issues. In the area of investment, the Working Group's mandate until the Fifth Ministerial Conference is to focus its work on the clarification of the following seven issues:

(i) Scope and Definition

(ii) Transparency

(iii) Non-discrimination

(iv) Modalities for pre-establishment commitments

(v) Development provisions

(vi) Exceptions and balance of payments safeguards

(vii) Consultation and settlement of disputes between Members.

Major Debates

(i) Scope and definition is one of the core controversial issues. Majority of the members prefer a narrow definition of investment, i.e. only foreign direct investment (FDI) – not to include portfolio investment or other type of hot money. Some prefer application of IMF definition of investment and enterprise. USA wants to have a broader definition of investment included in the scope of the proposed MAI.

(ii) Transparency is not a very hotly debated issue. The major concern is the cost of implementation of the transparency provisions to be agreed upon. However, some countries are strongly raising the issue that the purview of transparency should not be limited only to host country measures, but should also include home country requirements.

(iii) Whilst almost everybody agrees on non-discrimination, i.e. national treatment and most favoured nation status, there is, however, the issue when does the "non-discrimination" start – "before entry" or "after entry" of the foreign investment to the host country. If the second option is accepted, it will take away all the leverages of the host government to hold back or channelise FDI into certain sectors.

(iv) Regarding modalities of pre-establishment commitments three approaches are being discussed. However, there is a broad based agreement on GATS type positive list approach. Moreover, one can put in various conditions (e.g. time frame for enforcement, required number of investments to ensure competition) as safeguard measures.

(v) Although search is going on for operationalisable S&D Development provision in the proposed MAI, but nothing could be identified as yet.

(vi) Related to Development Provision is the issue of Exceptions and BOP Safeguards. Standard GATT type exception and safeguards are being considered. Special case of LDCs are yet to be focused.

(vii) The major concerns regarding dispute settlement under the proposed MAI is whether one would entertain state versus business enterprise dispute (along with traditional state to state disputes) in the WTO. US is in favour of allowing the private enterprise to be a litigant under the proposed MAI.

(viii) The issue of "Incentives" does not appear in the list produced by Doha Work Programme (Article 22), yet the WG has discussed it extensively. Similarly, the issue of "Performance Requirement" was also addressed by the WG.

(ix) Other aspects which came up, as the Doha mandate, include – balance of interest, development policy objectives of the host government, right to regulate invest in public interest, financial needs of the developing countries and LDCs, relationship to other relevant WTO provisions (e.g. TRIMS), implications for existing bilateral and regional agreements on investment.

The WG has finished examination of all the seven core principle issues and a Report from the Chairperson is expected to be available by end 2002. Currently, the country positions are fundamentally divided between two camps:

(a) The Pro-Negotiation Groups – EC and other European countries, most of Latin America and Morocco.

(b) The Anti-Negotiation Group – India, Pakistan, Malaysia, Indonesia, and most African countries.

Position of China is still unclear. US has expressed partial and conditional support. However, it is observed that the country positions, since Doha, have increasingly become less "dogmatic" and the issue of modality is going to be more in the focus, than the question – negotiate or not to negotiate.

3.2.2 Trade and Competition Policy

Background

As government barriers to trade and investment have been reduced, there have been increasing concerns in the WTO that the gains from such liberalization may be thwarted by private anti-competitive practices. There is also a growing realization that mutually

supportive trade and competition policies can contribute to sound economic development, and that effective competition policies help to ensure that the benefits of liberalization and market-based reforms flow through to all citizens.

Approximately 80 WTO Member countries, including some 50 developing and transition countries, have adopted competition laws, also known as "antitrust: or "anti-monopoly" laws. Typically, these laws provide remedies to deal with a range of anti-competitive practices or monopolization, mergers that limit competition, and agreements between suppliers and distributors ("vertical agreements") that foreclose markets to new competitors. The concept of competition policy includes competition laws in addition to other measures aimed at promoting competition in the national economy, such as sectoral regulations and privatization policies.

The WTO Working Group on the interaction between Trade and Competition Policy was established at the Singapore Ministerial Conference in December 1996 to consider issues raised by Members relating to the interface of these two policy fields. Since its initial meeting in July 1997, the Group has examined a wide range of such issues. In 1997 and 1998, the work of the WTO Working Group was organized around a checklist of issues suggested for the study, which was developed at the first meeting of the group. In addition, since 1997 the WTO has organized four symposia on issues related to the work of the Working Group in cooperation with UNCTAD and the World Bank.

The Doha Declaration (Article 25) mandated the WG to focus on clarification of core principles, including the following four:

(i) Transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels

(ii) Modalities for voluntary cooperation

(iii) Support for progressive reinforcement of competition institutions in developing countries through capacity building.

While discussing the above issues, the all is to take account of needs of the developing countries and the LDCs and allow appropriate flexibility to then. Since Doha, the WG has met for three meetings where large number of proposals have been submitted. However, it seems the competition policy issue has been more controversial than the MAI, because of the opposition of the US.

Major Debates

(i) The major debate relates to the issue of "hard core cartels". While most of the countries are for including the provision to fight collusive price fixing, market sharing, involvement in public procurement behaviour of the hard core cartels, US is very reticent about it.

(ii) The other debate is the area of non-discrimination and flexibility, particularly with respect to freedom to support small and medium enterprises.

(iii) Regarding cooperation with any authorities the question is whether such cooperation would be binding or voluntary. Most of the countries feel that without a binding commitment it will be difficult to get response from the concerned US authority; however, it will also entail keeping their scarce resources tied upto respond to similar requests. US is for a non-binding approach.

(iv) Regarding dispute settlement, the question is whether there will be limited to only peer review or go for an elaborate dispute settlement mechanism including judicial review.

(v) The relatively underdeveloped issues under the WG include: vertical restraints, abuse of dominant position, merger control.

(vi) It is being strongly advised that it will be in the best interest of the developing countries and LDC to have a multilateral agreement on competition policy in general. However, it becomes a most if the WTO really adopts the MAI.

3.2.3 Transparency in Government Procurement

Background

Since 1996, the WTO has actively been pursuing a work programme on the subject of Transparency in Government Procurement. This has been based on a mandate adopted by Ministers at the WTO Singapore Ministerial Conference held in December 1996 to "establish a working group to conduct a study on transparency in government procurement practices, taking into account national policies, and, based on this study, to develop elements for inclusion in an appropriate agreement".

The Singapore mandate reflects the heavy emphasis placed throughout the WTO system of rules and practices on transparency. Transparency is often referred to as one of the three fundamental principles of the WTO, the others being *most-favored-nation* (MFN) and *national treatment* (NT). The GATT and now the WTO have for a long time had a plurilateral agreement, with some of the WTO members (mostly developed countries), with detailed requirements in respect of transparency in government procurement. The object of the transparency provisions in this agreement, according to WTO, is not only to ensure that adequate information on procurement opportunities is made available and that decisions are fairly taken, but also to facilitate monitoring of the commitments made under that agreement not to discriminate against suppliers and supplies from other parties.

The focus of the multilateral work which the WTO took on transparency in government procurement is somewhat different. *First*, this work is multilateral in nature and aimed at drawing up an agreement to which all the WTO Members will be parties. *Second*, the focus is on transparency as such, rather than on transparency as a vehicle for monitoring market-access commitments. It is understood among WTO Members that the work presently under way on transparency in government procurement does not seek to regulate the extent to which governments provide preferences to domestic supplies or suppliers, provided of course that such preferences are transparent. However, some members have indicated that they would wish future negotiations to keep the door open also to address obstacles to market access on a multilateral basis.

The WTO Working Group on Transparency in Government Procurement, which held its first meeting in May 1997, initiated its work by hearing presentations form other intergovernmental organizations which had international instruments and activities relevant to transparency in government procurement, notably the United Nations Commission for International Trade Law (UNCITRAL) and the World Bank. It then considered a WTO comparative study of the transparency-related provisions in existing international instruments on government procurement procedures as well as in national practices.

The decision taken at the Singapore Ministerial does not specify that this must result in an agreement; it only commits Members to set up a working group to study the subject of transparency and based on this study, to develop the elements to include in an appropriate agreement. As with the other Singapore issues, Paragraph 26 of the Doha Declaration provides a mandate for negotiations in this area after the Fifth Ministerial, stating that negotiations will take place after the Fifth Ministerial on the basis of a decision to be taken by explicit consensus on modalities of negotiations. The Doha Declaration specifically mentioned that the proposed negotiations shall be limited to the transparency aspect and, therefore, will not restrict the scope of the countries to five preferences to domestic supplies and suppliers. Since the Doha Ministerial, the WG has met for three meetings and received a number of proposals.

Major Debates

(i) The first controversy relates to definition and scope of the concept of transparency. India, supported by a number of developing countries are for limiting the scope of discussion in this area and maintains that this area should not be open to dispute proceedings. In contrast, developed countries including US, EC and Switzerland are for broadening the scope as far as possible.

(ii) The second issue relates to procurement method. Australia has proposed a non-prescriptive approach that would leave it up to the discretion of each government to decide what method to use.

(iii) India has proposed to confine this to providing information and opposed to any review or examination of domestic laws and regulations.

In the meantime, the revision of the plurilateral Agreement on Government Procurement is being carried out. And the study phase of the Transparency of Government Procurement has been completed. A Chairman's Survey is awaited.

3.2.4 Trade Facilitation

Background

Trade facilitation was added to the WTO's agenda at the Singapore Ministerial Conference (December 1996) when the Council for Trade in Goods (CTG) was mandated to "undertake exploratory and analytical work … on the simplification of trade procedures in order to assess the scope for WTO rules in this area". In the course of the following five years, a great deal of such exploratory and analytical work was undertaken with an objective to identify the principal obstacles encountered by traders in cross-border transactions and to develop possible ways to overcome those barriers. But open markets can only function properly if , among other factors, procedures designed to facilitate the flow of trade are put in place and a country's capacity to regulate economic activity on its territory is made effective.

The Doha Ministerial introduced a new phase for WTO work on this issue, by providing for negotiations after the Fifth Ministerial in 2003, and by mandating the Council for Trade in Goods to embark on a comprehensive and challenging work programme. The Doha agreement was preceded by intense discussions among Members on how to proceed with future work on trade facilitation. While there has always been broad agreement on the necessity to remove trade distorting red tape and on the overall benefits of embarking on such process, there are widely divergent views on how to go about that in the framework of the WTO.

Paragraph 27 of the final text of the Doha Ministerial states, like the other Singapore issues, "negotiations on trade facilitation will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations". The underlying motif for future negotiations is identified as the recognition of "the case for further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area".

Paragraph 27 sets out an extensive work programme. The Council for Trade in Goods is mandated to "review and, as appropriate, clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994", and "to identify the trade facilitation needs and priorities of members, in particular developing and least-developed countries'.

Major Debate

The pre-Doha negotiating position was essentially put up by the Colorado Group (representing 32 WTO members) which called for an integrated two-track approach. The Track I calls for a negotiating mandate on binding trade facilitation rules, binding upon existing WTO positions (Articles V, VIII, X of GATT), and WTO principles (transparency, due process, simplification, efficiency, non-discrimination).

The Track II emphasises on development and implementation of technical assistance and capacity building programmes parallel to negotiations.

The developing countries recognise the benefits of trade facilitation, but is apprehensive that WTO rules will exceed the implementation capacities of developing countries and expose them to dispute settlement. Thus, the developing countries are agreeing that trade facilitation is essentially about domestic capacity building, not multilateral rules.

After Doha, it was difficult to agree on work programme. The initiative was taken by China, CTG three of he four agreed meetings have already taken place, the fourth one is expected to be in December, 2002.

It is held that it will be easier to start with Article X (Transparency) as it is the easiest. The involved issues are: (1) Classification and Rules of Origin (advance ruling), (2) Inquiry Point (where to get the information, notification to WTO, problem of translation of domestic documents, (3) Right of Appeal (how to make it operational), (4) Allowance for adequate time between adoption and implementation.

On Article VII (Fees and Formalities) the issues are: (1) Simplification, standardization and streamlining (no reference to specific standard), (2) Acceptance of relevant available commercial information (retyping again available info), (3) Reductions of data requirements, (4) Utilisation of automation and use of risk assessment, (5) Pre-arrival processing and post-auditing.

Regarding Article V (Transit), the issue is Risk Assessment for which goods are to be grouped in three categories (Green, Orange and Red) for physical information. A corollary of these issues is the question whether transit right is actionable.

The developing countries did not put up any proposal (if Brazil is not considered) in this areas.

3.3 Pre-Cancun Scenario

The dissenting developing countries regarding the negotiation of Singapore Issues, informed by their experience with negotiation of TRIPS, have decided to play a pro-active role in the respective WGs from the very beginning keeping their objection on record. They feel that a late entry will not allow them to influence the course of negotiation. This is being considered a step forward by the developing countries.

The developing countries want to settle the probable outcome of the Singapore Issues at Geneva, i.e. before leaving for Cancun. They feel they will be out-maneuvered in Cancun, as was the case in Doha.

Regarding relative maturity of the four issues, the ranking varies depending on the interest of the party. However, the broad concensus is (in descending order): (1) Trade Facilitation, (2) Transparency in Public Procurement, (3) Investment Policy, and (4) Competition Policy.

Till date, the issue of "unbundling" of the Singapore Issues is not being considered. It is reckoned that these issues hold together and should be on for negotiation together as well. However, it cannot be emphatically said that one or the other issue will not be traded-off within a single undertaking. It is suggested that the developing countries should not propose unbundling as it may end up having all other than the competition policy.

3.4 Bangladesh's Interest

Till date Bangladesh has remained ambivalent about the Singapore issues, i.e. she has voiced her reservations through collective platform without identifying herself directly. However, as it is becoming increasingly apparent that prospect for launching of a negotiation on these issues are very real, the country has to take note of the substantive issues at stake. More importantly, as trade-offs will be done in other areas including those are of active interest to Bangladesh, the country will have to keep a tab on the developments regarding all the four Singapore Issues.

The other operational aspect should be to carry out a "Need Assessment" exercise regarding implementation of the four proposed agent and actively seek technical assistance for capacity building in these areas.

SECTION IV: TRIPS

4.1 Background

TRIPS (Trade Related Aspects of Intellectual Property Rights) is one of the three pillars of WTO, the other two being GATT and GATS. Intellectual Property Rights (IPR) refers to the rights given by appropriate legal authority, to the creator of new ideas (usually with commercial applications) an exclusive right over the use of his/her creations for certain period of time. Ideas become legally sanctioned intellectual property by granting of patents and copyrights, and the recognition of the rights on trademarks, industrial designs, geographical indications, integrated circuit layout-designs and undisclosed information.

Individual developed countries started recognizing intellectual property rights (IPR) at a fairly matured stage of their economic development with a view to encourage creativity and technological development. At a later stage developed countries felt that IPR's need protection beyond borders which was given concrete shape in Paris Convention (1967) Berne Convention (1971) and the Rome Convention and the Treaty on IPR in Respect of Integrated Circuits. As is the nature of conventions and treaties, implementations were voluntary. It is through the TRIPS agreement that all WTO members signed as a part of the single undertaking at the end of the Uruguay round, that protection of IPR derived its teeth for global enforcement.

The TRIPS agreement sets *minimum* standards for protecting IP which are quite high for developing countries and many feel that they signed to this without understanding its implications. TRIPS agreement does incorporate some sensitivity to this feeling by allowing for some flexibility for developing countries and still further flexibility for the least developed countries.

When the WTO was created at the conclusion of the Uruguay round developing countries were mostly focused on traditional GATT and to a little lesser degree to GATS issues and thought that TRIPS is not going to bother them too much. However they had a rude awakening when they saw how the one of the biggest proponent of strong IPR protection, the pharmaceutical companies of the developed US and EU dealt with the AIDS related public health crisis in Africa.

Profound public health related implications of the TRIPS agreement and the African AIDS epidemic related publicity led the Doha ministerial meeting adopted a separate declaration on the issue of TRIPS and public health. In addition to asking to find solutions to certain specific aspects of TRIPS and public health the Doha ministerial provided mandate for the TRIPS council to work on (i.e., included in the work program) geographical indications (GI), protecting plant and animal inventions (article 27.3 b), biodiversity (i.e., examination of the relationship between TRIPS and Convention on Biodiversity (CBD), traditional knowledge and folklore, the general review of TRIPS agreement (article 71.1). The Doha Implementation Decision, which is separate from the main declaration, instructs the TRIPS Council to examine the scope and modalities of non-violation complaints (paragraph 11.1) make recommendations to the 5th Ministerial and asks developed country members to report on the steps they have taken to implement technology transfer to LDCs (paragraph 11.2 on the TRIPS Article 66.2) by the end of 2002.

The first regular meeting of the TRIPS council after the November 2001 Doha Ministerial was held on 5-7 March 2002. The meeting was chaired by Ambassador Boniface Chidyausiku of Zimbabwe. After the first meeting the Chairmanship was

handed over for the rest of the year to Ambassador Eduardo Perez Motta of Mexico. Two other regular meetings on 25-27 June, and 17-19 September were held under his chairmanship this year. The last regular meeting of the year is scheduled for 25-27 November[1]. Submissions and statements in these meetings are giving an idea of positioning of the major players before the 5th Ministerial in Cancun.

Below we describe the debates, major contentions, developments and educated guess about the likely outcome on the important issues covered in the Doha agenda based on the CPD's Geneva Tracking Mission's meetings and discussions with informed individuals representing various institutions and missions in Geneva.

4.2 Major Issues of Concern before Cancun

4.2.1 Public Health

4.2.1.1 The Issue: Among all TRIPS issues under Doha agenda items, most of the work attention has been drawn by the paragraph six of the Doha declaration on public health, which is a separate declaration (i.e., separate from the main ministerial declaration). Paragraph six of the Doha declaration on public health specifically asked for the formation of a working group to " find an expeditious solution" on "making effective use of compulsory licensing" by "WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector" to report to the council by the end of 2002. This involves article 31.f of the TRIPS agreement that says that production under compulsory licensing would be restricted to domestic market.

4.2.1.2 Developed Country Positions: US hold the view that a waiver of 31.f, with restrictions on importing as well as exporting countries would be sufficient. EC has proposed that it will favor an amendment if some other conditions (involving restrictions on exporting countries and some safeguard measures) are agreed to. One major concern of the developed countries is the prevention of re-export of drugs made under compulsory licensing and avoiding the use of the proposed solutions to further industrial policy rather than public health policy.

4.2.1.3 Developing and LDC Positions: Developing countries have come up with a paper sponsored by the African group (41 WTO Members), Brazil, India, Thailand, Indonesia among others with the demand that no restrictions be placed on importing or exporting countries with regard to compulsory licensing and parallel imports.

Some developing countries including LDC group emphasized the need for technology transfer to build domestic production capacity.

Another development in Doha of direct interest to Bangladesh and other LDCs was the waiver[2] providing patent protection for pharmaceuticals for up to year 2016 for LDCs. The General Council approved the waiver on 8 July 2002.

4.2.1.4 Possible Outcome in Cancun: Developing countries would like this issue to be resolved by December 2002 and certainly before Cancun. If they fail to resolve this issue before Cancun, developing countries fear that this may be offered as a major concession to developing countries in Cancun and developed countries would extract major concessions in other areas.

[1] Each of the regular sessions are followed by special session on the negotiations regarding a multilateral system of registration of geographical indications in wines and spirits.
[2] Waiver on exclusive marketing rights is also included.

4.2.1.5 Bangladesh's Position and Recommendations for the Government: Bangladesh has not sponsored any proposal so far although its interests generally coincide with the developing country interests. Bangladesh has some specific interest in the pharmaceutical sector with regard to utilization of the LDC waiver for the growth of the local pharmaceutical industry.

During our meeting with the Legal Advisory Center in Geneva, the officials of the Center suggested to us that we should advise Bangladesh's Geneva mission to formally seek the Center's advice on the legality (under the TRIPS agreement) suspending GOB's patent laws to take advantage of the patent waiver up to 2016. Private Sector Pharmaceuticals have a great opportunity to invite Indian producers of active ingredients to take advantage of Bangladesh's waiver from enforcing pharmaceutical patents from 2006 to 2016 when Indian firms will no longer be able to perform reverse engineering on new products in India but will be able to do so from Bangladesh. However before making any definitive conclusion or recommendation there is a need for looking at Bangladesh's existing patent laws, the possible impact on suspending patent protection on the potential R&D activities (if there had been any R&D of any substance at all in the local industry).

One caveat to bear in mind is that amendment in legislation is most probably *not retrospective*[3] and therefore those products that are already protected will have to enjoy protection.

4.2.2 Non-Violation Complaints

4.2.2.1 The Issue: Non-violation complain is about a member's ability to bring a dispute to the WTO, based on loss of an expected benefit caused by another member's actions even if no WTO agreement or commitment has actually been violated. While non-violation complaints are possible in the areas of goods and services[4] TRIPS Agreement set a temporary moratorium on this. TRIPS council has been asked to make recommendations on scope and modalities of non-violation complaints by the 5th Ministerial, 2003 in Cancun.

4.2.2.2 Developed Country Positions: Developing countries would like to see that the scope of non-violation is not extended to TRIPS.

4.2.2.3 Developing Country Positions: Developing countries feel that they are not even prepared for the violation complaints. Therefore acceptance of the extension of the application of the non-violation complaints in the area of TRIPS Agreement would impose excessive burdens on them.

4.2.2.4 Possible Outcome in Cancun: Developing countries fear that the moratorium may be lifted in Cancun. Developing countries are still hoping that the moratorium will stay put. Outcome looks very uncertain and perhaps tilted against the developing countries, although LDCs might get further extensions.

4.2.3 Technology Transfer

4.2.3.1 The Issue: Article 66.2 of the TRIPS Agreement says "Developed country Members *shall* provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfers to least-developed country Members in order to enable them to create a sound and viable technological base". The

[3] This issue should also be clarified from the Legal Advisory Center.
[4] Article XX3 of GATT 1994 under subparagraph 1(b) and 1(c).

use of the word '*shall*'' instead of *should* makes technology transfer a binding responsibility on the part of the developed countries. Paragraph 11.2 of the Doha Implementation Decision reaffirms that provisions of 66.2 are mandatory and that "TRIPS Council will put in place a mechanism for ensuring the monitoring and full implementation of the obligations." It asks developed countries to submit detailed reports on how their incentives are functioning in practice by the end of 2002. This issue was reiterated again in the March meeting of the TRIPS council by the then Chairman Ambassador Boniface Chidyausiku of Zimbabwe despite the clear lack of interest among the developed country members.

4.2.3.2 Developed Country Positions: Developed countries are in no mood of doing anything extra for satisfying the obligations under Article 66.2. In the March 5-7, 2002 meeting US submitted descriptions of USAID projects like Micro Credit and Afforestation Project ($ 209,332 over 5 years) in Uganda, contribution to Paprika Growers' Association ($ 209,332 over 5 years) in Zimbabwe as instances of dispensation of responsibilities for implementing their obligations under 66.2. Canada's submission also had similar but little less comical (!) elaboration of their way of dispensing their obligations. EC went on to confuse the issue by recalling that paragraph 37 of the Doha Ministerial declaration asks the *General Council* to form a working group to examine the relationship between trade and transfer of technology.

4.2.3.3 Developing and LDC Position: LDCs insist that atricle 66.2 should be understood as a counterweight to the burdensome demands and severe implications of the TRIPS Agreement. They want something concrete is done in this area.

4.2.3.2 Possible Outcome in Cancun: LDCs fear that the comical descriptions of the developed countries may be accepted by the TRIPS council as valid steps for fulfilling the developed country obligations under Article 66.2.

4.2.4 Protection of Traditional Knowledge and Folklore

4.2.4.1 The Issue: In 1995 US Patent Office (USPTO) granted patent on "use of *turmeric* in wound healing". In 1994 European Patent Office (EPO) granted patent for a "method for controlling fungi on plants by the aid of hydrophobic extracted *neem* oil". In 1986 USPTO had granted patent on plant variety, *Banisteriopsis caapi,* the bark of which had traditionally been used by the shamans of indigenous tribes living in the Amazon Basin to produce a ceremonial drink known as the "ayahuasca". Although the patent claims in the first two cases were overturned later, they brought the issue of protecting Traditional Knowledge (TK) against bio-piracy in forefront of IPR related controversy. Related to the issue of bio-piracy is the issue of granting copyright protection of pirated folklore and traditional art to private individuals.

4.2.4.2 Developed Country Positions: Developed countries are clearly not very happy about this issue because their corporate lobbies are not rich in traditional knowledge. They want a quick resolution of this issue so that their corporations can get on with their profit making activities.

4.2.4.3 Developing Country Positions: Although developing countries have greater interest in this issue there is considerable difficulty in devising an appropriate way to administer the protection of TK because no single individual claims the ownership. Moreover several communities across countries may share the same traditional knowledge. Discussion about alternative ways of handling this complex issue is going on with several different approaches being tried out in different developing counties.

4.2.4.3 Expected Outcome from Cancun: Mandate for further studies seems most likely.

4.2.5 Article 27.3 (b): Protection of Plants and Animals

4.2.5.1 The Issue: Article 27.3(b) of the TRIPS agreement says that "members shall provide for the protection of plant varieties either by patents or by an effective *sui generis*[5] system or by any combination thereof". Patents clearly provide a high level of protection that is not favored by developing countries. Developed countries[6] insist that effective *sui generis* system should modeled in accordance with the 1991 UPOV[7] that imposes restrictions on the farmers to sell and exchange seed of the protected[8] variety.

In addition to asking members to give strong protection for plant varieties article 27.3(b) allows the members to exclude plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. This means that plants and animals and essentially biological process can be patented with unfavorable consequences for developing country exports.

4.2.5.2 Developed Country Positions: Developed countries, especially US, are clearly in no mood for weakening article 27.3(b). However, some developed country based NGO's like the Quaker are against patentability of life forms.

4.2.5.3 Developing Country Positions: Developing countries are concerned about farmer's rights, food security and opposed to patentability of animals and plants. India, in particular has proposed (in the March 02 meeting) that Article 27.3(b) should be modified by declaring that all plants and animals or any parts thereof cannot be patented.

4.2.5.4 Possible Outcome in Cancun: Not much has progressed has been achieved in this area and nothing is expected to be negotiated before or at Cancun.

4.2.6 Convention on Biological Diversity (CBD) and TRIPS

4.2.6.1 The Issue: The Convention which was agreed in 1992, seeks to promote the conservation of biodiversity and the equitable sharing of benefits arising out of the utilization of genetic resources. This reflects the understanding that while the developing countries are rich in biodiversity and genetic resources and the developed countries are rich in technology, the benefit arising out of application of technology on genetic resources should be shared by the communities in the developing. CBD encourages countries to adopt legislation so that unhindered access to genetic resources for the purpose of research and development is guaranteed and there is due recognition and rewards for the owners of the resources. Although the CBD principles sounds simple and there appears to be no conflict with TRIPS, in practice this is an extremely complicated issue and there is lot of disagreements even among developing countries on issues involving adoption of legislation that are administratively practical and satisfy both CBD objectives and TRIPS at the same time.

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[5] Latin expression meaning "of its own kind".

[6] Recently concluded Vietnam-US trade agreement obliges both parties to be members of UPOV of which US is already a member.

[7] Union Internationale pour la Protection des Obtentions Végétales/ International Union for Protection of New Varieties of Plants (UPOV)

[8] Minimum time period of protection is 20 years and the protected variety doesn't have to be a result of invention. As long as a variety is only distinctive, uniform and stable it the breeder is eligible to enjoy exclusive property rights under 1991 UPOV.

4.2.6.2 Developed Country Positions: Developed countries like to say that there is no conflict between CBD and TRIPS and actually the objectives of CBD are better achieved with stronger form of IP protection. In the March 02 meeting US have given examples of its preferred arrangements with communities which were of voluntary nature and did not satisfy developing country concerns.

4.2.6.3 Developing Country Positions: A number of developing countries[9] have adopted patent laws that applicants of IP rights which consist of or are developed from genetic resources must identify the source of these materials and provide proof that they were acquired with the prior informed consent of the country from which they were taken.

4.2.6.4 Possible Outcome in Cancun: No significant movement is expected on this issue as well.

4.2.7 Higher Level of Protection for Geographical Indications (GI)

4.2.7.1 The Issue: The idea of protection of GI is similar to the idea of protection of trade marks, only difference being that in the case of GI the distinction is made for particular geographical location. From its inception, the issue has been highly contentious which is reflected in the original TRIPS agreement which deals with GI protection on wine and spirits in a separate article although no a priori logical distinction can be between wine and spirits and other products. The issue of GI protection has created deep divisions among the developed as well as among the developing countries.

4.2.7.2 Developed Country Positions: EC and some developing countries are pushing for extension of GI protection beyond wine and spirits. US, Canada and Australia are opposed to expansion of protection under GI.

4.2.7.3 Developing Country Positions: This issue has divided the developing countries. Some see benefits, some see losses (an important consideration being higher administrative cost) while many are unable to predict the net outcome. Some developing countries have noted that while

4.2.7.4 Possible Outcome in Cancun: While negotiations on the multilateral registration system are to be completed by the 5th Ministerial the issue of expansion will continue to be debated.

4.2.7.5 Bangladesh's Position and Recommendations: Bangladesh has not taken any position on this issue yet. Although a good deal of research is needed before anything definitive can be recommended on this issue it appears that extending higher level of GI protection beyond wine and spirits should serve our interest if we can take advantage of the richness of the diversity of various products produces in various districts and localities. In this regard one of the important questions is if we shall be able to make use of the protection of international registration system to convince multinational companies to market our patented indigenous products. There appear to be good potential for Tangail Sari, Shitol Pati of Sylhet, sweets and pickles of different districts etc. Once these products and the process of producing these products are well protected foreign investors may be willing to invest in marketing, packaging and perhaps further developing these products by paying appropriate royalties and fees. As Bangladeshi people are settling in many different parts of the world multinationals also may see these people as their target markets. If some exploratory research reveals that we have an

[9] India, Andean communities and Costa Rica has adopted this disclosure provision in their patent laws.

interest in extending higher level of protection of GI, we should seek help of WIPO to advise and provide technical assistance in this regard.

SECTION V: TRADE AND ENVIRONMENT

5.1 Background

The Doha Ministerial Meeting agreed to negotiations on the relationship between WTO rules and Multilateral Environmental Agreements (MEAs), and the reduction or elimination of tariff barriers on environmental goods and services. The Committee on Trade and Environment (CTE) has been asked to work on other issues such as market access, TRIPS agreement and labeling and give a report on future action, including the desirability of negotiations. The Doha meeting also recognized the importance of technical assistance and capacity building in the field of trade and environment to the developing and least developed countries (LDCs). A report should be prepared on the activities for the Fifth Ministerial Meeting.

At the first meeting of the Trade Negotiating Committee (TNC) on 1 February 2002 it was agreed that negotiations on trade and environment would take place in the Special Session of the CTE in the WTO. However, there is also a general understanding that negotiation on environmental goods will be conducted in the Negotiating Group on Market Access while negotiations on environmental services is to be conducted in the Council for Trade in Services. Three Special Sessions of the CTE have been held between March and October 2002. Till October 9, 2002, eight proposals have been submitted. The submitting countries are Japan, the USA, New Zealand, Korea, Qatar, Saudi Arabia and Switzerland, and Taiwan, Penghu, Kinmen and Matsu. Recently, Japan has submitted a proposal on the list of environmental goods at the meeting of the WTO Negotiating Group on Market Access during 4-5 November 2002.

5.2 Current Debates on Major Issues

5.2.1 Relationship between the Existing WTO Rules

Relationship between the existing WTO rules and specific trade obligations set out in the MEAs described in paragraph 31(i) is one of the three basic parts of Doha declarations on trade and environment. The CTE where such negotiations would be held was already dealing with issues what has been spelt out in paragraph 31(i).

In paragraph 31(i) only one scenario has been mentioned, that is a “party versus party” conflict. The case of party versus non-party MEA conflict is excluded since the USA has not signed many MEAs such as Convention on Climate Change, Convention on Bio-diversity, and they did not want to lose any WTO rights.

Paragraph 31(ii) on the procedure for regular information exchange between MEAs and the WTO is much less controversial. This was a give away for EC on environment as it had to comply with the US proposal on taking out party versus non-party conflict from paragraph 31(ii). Observer status referred to paragraph 31(ii) is a difficult status since no NGOs were given the observer status, and the IGOs with their observer status are not allowed to negotiations. Moreover they will have the observer status in all the WTO meetings except on agriculture and services negotiations. Currently, there is a deadlock on observer status since the USA and Israel have blocked the observer status of the Arab League.

5.2.2 Reduction of Tariff and NTBs on Environmental Goods and Services

The reduction on tariff and non-tariff barriers to environmental services described in paragraph 32(3) has been initiated even before Doha, in 2002, though liberalization of environmental good is a new addition. However, there is no clear idea on the services to

be included as environmental services. Environment related consultancy services such as firms giving advice on waste management or pollution treatment have been considered as environmental services. The proposal on environmental services was driven mainly by the USA, European Commission (EC), Japan and Australia as they have a number of environmental services.

The definition of environmental goods has also created concerns among the developed as well as the developing and least developed countries. A list has been conceived by the Organization for Economic Cooperation and Development (OECD) which is not acceptable by all parties. The EC wanted to include those as environmental goods which would be produced in an environmentally friendly way. At the meeting of the WTO Negotiating Group on Market Access during 4-5 November 2002 the EC reiterated its position. The EC also emphasized its desire to negotiate deeper-than-average-tariff cuts for environmental goods. India supported by Malaysia and some other developing countries disagreed with the EC's proposal on the definition of environmental goods as this list would include products based on Production Process Method (PPM). Some argue that environmental goods can be agricultural goods and PPM issue is linked to agricultural goods. Australia said "no" to PPM, that is, to agricultural goods to be an environmental good. Some of the countries of the Cairns Group, such as Chile and Senegal are pushing EC to include agricultural goods as environmental goods. India has suggested Jute as an environmental good while Qatar recommended that energy efficient technologies such as combined-cycle natural gas-fired generation systems and advanced gas turbine systems should be included in the category of environmental goods. Another section within the Cairns Group is in favour of no particular definition of environmental goods as such. They opine that whether a good is an environmental one or not will depend on the requests and offers by the countries into negotiations.

5.2.3 Fisheries Subsidies

Though negotiating group on WTO Rule (paragraph 28 of the Doha Declaration) has been assigned to deal with fisheries subsidies it has also been referred to in paragraph 31 as it is an important sector for the developing countries. EC and Japan give massive subsidies to their fisheries and do not want to stop. Developing countries and the Cairns Group are against subsidies as it affects the access to a resource and can have negative environmental consequences. There prevails a controversy as to whether a sector specific subsidies agreement can be sought or not since fisheries sector is unique because of its migratory nature. The USA and the Cairns Group are asking for a specific treaty to deal with this. Some countries such as Japan say that subsidies is not an environmental issue, so WTO should not go into this. On the other hand, fishery is not a direct trade issue as well and the effect of subsidies on trade cannot be measured easily. Therefore, the role of the WTO in this regard has been questioned.

5.2.4 Market Access, TRIPS and Labeling

The regular CTE has been asked to look into the impact of environmental measures on market access, agreement on TRIPS and labeling requirement as described in paragraph 32 of the Doha mandate. Recommendations should be made to the Fifth Ministerial Meeting at Cancun on the desirability of negotiations – whether any of these issues can be included in paragraph 31. EC is insisting that these go for negotiations. Developing want that none of these issues go into paragraph 31 since they are scared that these may lead to trade restrictions.

Concerns are also expressed on the issue that environmental measures and requirements may adversely affect the competitiveness and market access opportunities for the small and medium size enterprises (SMEs), especially in developing and least developed countries. The

CTE emphasized the importance of market access opportunities to assist these countries. (See Section V of this Report for more details on market access issues).

The environmental aspects of the TRIPS agreement is reflected in paragraph 19 of the Doha Declaration where the relationship between the TRIPS agreement and the Convention on Bio Diversity (CBD), the protection of traditional knowledge and folklore is mandated to be examined. Tension between the developed and developing countries on these issues still exists. It is extremely important to know how TRIPS will deal with many issues which have been agreed upon through MEAs like the CBD. This Convention allows a country to resort to compulsory licensing of or excluding from the IPR protection, a crop variety that uses genetic resources from its territory. Similarly, Article 27.2 of the TRIPS agreement makes it clear that members could exclude from patentability, inventions within their territory of the commercial exploitation of which is necessary to avoid "serious prejudice" to the environment. Though TRIPS agreement excludes from the patentability plants and animals, micro-organisms are not excluded. Micro-organisms are also living organisms, and their patentability may indirectly lead to patenting of all life forms. Whether these clauses will create a situation for imposing penalties or trade sanctions are matters of concerns for the developing and least developed countries. (See Section IV of this Report for more details on TRIPS).

EC has very stringent rules on labeling requirements that demands consumer information on social and health safety. Canada and the USA say that labeling is equivalent to ban.

Another related issue is the application of the Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT). Most of the trade barriers are SPS in nature which applies in case of food and health and TBT for all other cases. The agreement on the application of SPS and agreement on TBT in the WTO recognize the rights of countries to put mandatory and voluntary regimes in place for the protection of human health and safety, animal or plant life or health or the environment. The existing WTO rules can deal with SPS, TBT, safety and environmental requirements issue. Environmental measures could in principle be dealt under SPS or TBT in GATT rules.

5.2.5 Technical Assistance and Capacity Building

The importance of technical assistance (TA) and capacity building (CB) in the field of environment to the developing countries, in particular to the LDCs has been recognized in paragraph 33 of the Doha mandate. A report shall be prepared on these activities for the fifth Session at Cancun. A number of programmes have been initiated in this regard, for example, the UNCTAD/FIELD (Foundation for International Environmental Law and Development) project on Building Capacity for Improved Policy Making Negotiation on Key Trade and Environmental Issues, the UNEP (United Nations Environment Programme)-UNCTAD Capacity Building Task Force on Trade, Environment and Development (CBTF), and the UNCTAD TrainForTrade Programme. However, these programmes are yet to be offered more intensively and to a wider set of countries.

The Expert Meeting on Environmental Requirements and International Trade held during 2-4 October 2002 observes that assistance for TA and CB to developing countries is necessary when a new environmental requirement is introduced. TA and CB should be provided for the development of national standardization body, conformity assessment services and accreditation agencies in exporting countries. On the other hand, developing countries and the LDCs should also be keen and active in taking advantage of these programmes. Bangladesh may seek TA and CB under the programmes mentioned above.

5.3 What Goes to Cancun

Environment was a deal maker or deal breaker issue for the European Union (EU) who pushed environment to the Doha Ministerial Declaration. However, the structure of the environmental lobbies in many European countries have changed since then as they are divided on many issues on many occasions which has given rise to a basic question, that is, whether environment is considered as a concern or as a negotiating tactic. The realization of what has been achieved in Doha still requires substantial activities. Nothing substantial has come out of the CTE meeting and it is anticipated that the report on environment might go empty to the Cancun meeting. This could be a relief for both the developing countries as well as for some developed countries but it is also indicative of the fact that these countries are still way behind in adopting policies on trade and environment which are mutually supportive and essential for sustainable development.

5.4 Interests of Bangladesh

Environmental agenda is considered to be a damage control agenda for the developing countries and LDCs like Bangladesh. Though there is not much to be done by the developing countries like Bangladesh it could find out what are the areas to concentrate, what MEAs we are party to and what is affecting its trade if Bangladesh wants to get involved in the MEAs. Environmental goods and services are an opportunity for Bangladesh. Pushing for greater market access, pressure on the EC to reduce fisheries subsidy are the areas. TA and CB are another areas where Bangladesh can make requests. Though Bangladesh may extract some trickle down benefits from the moves and positions taken by the developed countries like USA who oppose many of the environmental measures, the country has to be prepared for facing a situation of trade liberalization and environmental measures which are becoming increasingly important component of the new development regime.

SECTION VI: NEGOTIATIONS ON AGRICULTURE

6.1 Background

Three important pillars of Agreement on Agriculture (AoA) include: (1) Export Competition (2) Market Access, and (3) Domestic Support. These were the built-in-agenda of Article 20 of the AoA initiated in March 2000 through the Uruguay Round Agreement. The Doha mandate recognized and recalled the objectives set out in the AoA in the paragraphs 12 and 13 of the Doha declarations. The declarations commit Members to comprehensive negotiations on the above three issues as well as reasserted the need for a Special and Differential Treatment. After the Doha meeting the negotiations went into the phase for establishing the "modalities" for further agricultural liberalization. Two informal meetings were held in June and September 2002, one on export competition policies and another on market access. The modalities will have to be agreed upon by 31 March 2003 through discussion s in four meetings.

Between April 2001 and March 2002 there were "in-depth" discussions on 24 technical issues which showed differences of opinion at various levels: among developed countries themselves, between developed and developing countries, as well as among developing countries.

6.2 Negotiation Status on Major Issues

6.2.1. Export Competition

In the first negotiations on modalities held on export competition in June 2002 the focus was on the timeframe of possible "phasing out" of export subsidies. Most of the developing countries hope to complete this programme within the period of the Doha agenda. The reason for concern for the developing and least developed countries in this respect is the guidelines of the new export competition policies which include export subsidies, export credits, food aid and export tax which they fear will have a negative impact on the food security of the respective countries. There have not been any modalities suggested to address this issue.

6.2.2 Market Access

Substantial tariff cuts may lead to a loss of market shares to some developing countries due to the erosion of trade preferences. There are divergent positions of the developing countries themselves. Some developing countries prefer to maintain high bound tariffs in order to protect their farmers from international competition for food security and rural development. On the other hand some other developing countries argue that a limited degree of tariff cuts by developing countries would minimize the gains from the South-South trade.

6.2.3 Domestic Support

Most developing countries give neither domestic support nor export subsidies to their agriculture. So the negotiation on reducing the trade distorting domestic support will depend to a great extent to the developed countries. The developed countries have to reduce or eliminate subsidy to their farmers in order for the developing countries to make tariff concessions.

6.2.4 Special and Differential Treatment

The developing countries say that they are already sufficiently liberalized and it is time for them to concentrate on their food security, rural development and product

diversification. Though Special and Differential Treatment (SDT) issue comes up as an integral part of the discussions on three pillars of the AoA the disparity among developing countries in terms of economic development and agricultural production capacity have made it difficult for them to arrive at a common standing on SDT provisions.

6.2.5 Marrakesh Decision

The *Marrakesh Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least Developed and Net Food-Importing Developing Countries (NFIDCs)* gave rise to the implementation concern in agriculture. The Doha declaration attached "utmost importance" to the implementation-related issues and concerns (paragraph 12 of the Doha declarations).

6.3 Bangladesh's Approach to AoA

Agriculture will be the "deal breaker" or "deal maker" at Cancun. It is imperative to monitor and observe the developments in this area in order to strategise in other issues as everything is interlinked in the WTO system. It is held that the US, in spite of its recently introduced Farm Bill, is keen about movement in negotiations in agriculture. However, the precipitating stalemate observed during the months of September-October, 2002 had been a matter of grave concern as EC, Japan, South Korea and Switzerland have been holding back in this regard. The recent meeting of the ministers from the Cairns Group has highlighted this concern.

SECTION VII: OTHER ISSUES

Some issues brought under the WTO have been progressed less. These issues have been discussed in brief in the following text.

7.1 WTO Rules

The open-ended results of the Uruguay Round negotiations reflect how instruments can be framed to protect interests under a rule-based system, sometimes even at the cost of free trade. Reflections on such open-ended results are found in 'WTO-Rules'. The term 'WTO-Rules' is generally used in the WTO parlance to signify certain agreements or provisions, for instance Agreement on the Application of Sanitary and Phyto-sanitary Measures (SPS), Technical Barriers to Trade (TBT), etc.

The UR has led to erosion of their preferences with the phasing-out of the Multi-Fibre Arrangement (MFA) and declines in most favoured nation (MFN) tariffs. In general, the erosion of preferences may not lead to such severe losses since many LDCs already enjoyed quota access to markets in developed countries. However, LDCs could face higher prices for food and vital imports such as pharmaceuticals and technological inputs due to the agreements to reduce agricultural subsidies and to observe trade-related intellectual property rights (TRIPS). TRIPS may also reduce the incentives to undertake R&D in LDCs. With the agreements on trade-related investment measures (TRIMS) associated with the UR, local content requirements will be abolished and many local firms may lose privileges. To the extent that they narrow the range of industrial policy options available, TRIMs will have important implications for LDC policy makers. LDCs competitiveness may also be seriously compromised by various attempts to link trade with human rights and labour and environmental standards in the WTO.

Whether LDCs will be able to successfully exploit these new market opportunities and mitigate the dangers arising from the new open rules-based world trading system will depend to a significant extent on LDCs themselves being able to undertake major domestic policy reforms at the macro-level as well as being able to combat their considerable industrial supply weaknesses. These are the well known weaknesses in terms of lack of adequately skilled human resources - particularly managerial and entrepreneurial resources -, technological and institutional capacities and physical infrastructure; as well as the required supporting banking and industrial services. Without technical cooperation matched with the requirement the LDCs will not be able to comply with the WTO rules.

7.2 Electronic Commerce

The declaration on global electronic commerce adopted by the Geneva Ministerial in 1998 urged the WTO General Council to establish a comprehensive work programme to examine all trade-related issues arising from global electronic commerce. The General Council adopted the plan for this work programme initiating discussion on issues on e-commerce and trade by the Goods, Services and TRIPS Councils and Trade and development committee.

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 the LDCs. Among the major hindrances absence of network of communications, lack of capacity in the central bank to develop robust infrastructure and regulate the transactions, 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 Doha Declaration endorsed the work already done and suggested to consider the most appropriate institutional arrangements for handling the work programme. A report on further progress will be presented in the fifth Ministerial.

Countries agreed in the second Ministerial to apply moratorium on the imposing customs duties on electronic transmission. The Doha Declaration extended the moratorium.

Considering the potential of e-commerce for the export oriented industries, requirement for quick and efficient import or supply chain management, and of opening new opportunities of trade in goods and services, Bangladesh should prepare a negotiating position on this issue. Technology transfer is also important cross cutting issue which should also be addressed by Bangladesh in the future negotiations.

7.3 Integration of Small Economies in to the Global Trade System

Small economies face unique challenges in participating in world trade due to lack of economies of scale and lack of natural resources. The Doha Declaration mandates the General Council to examine these problems and to make recommendations to the fifth Ministerial as to what trade related measures could improve the integration of small economies. There is no progress in addressing the Doha mandate on this issue.

7.4 Establishment of a Working group on Trade, Debt and Finance

Many developing countries and LDCs are severely indebted and faced financial crises. It was decided in the Doha to form a working group on Trade, debt and Finance to look at how trade related measures can contribute to find a durable solution to these problems. A report will be prepared for presentation in the fifth Ministerial in this regard.

The mention in 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 specialized multilateral development agencies.

Although, the LDCs have since long emphasizing the issue of policy coherence among various international development agencies, it is difficult to work out any comprehensive plan with goodwill of the developed countries. It is noteworthy, that while it is important to bail out most severely affected countries with debt burden, it is counter productive not to provide support to the countries, whose debt servicing is very good. Bangladesh's debt service ratio is excellent. However, under the current policy it is not possible to get waiver from the outstanding debt.

On 1 March 2002, the General Council agreed that:

- The question of small economies would be a standing agenda item of the General Council;
- The Committee on Trade and Development (CTD) will hold dedicated sessions on this question and report to the General Council; and

- In the light of the outcome of this work, relevant subsidiary bodies will be asked by the General Council to frame responses on the trade-related issues identified in the CTD.

Since then no meeting took place on this issue in the general council.

7.5 Establishment of a Working Group on Trade and Transfer of Technology

A number of provisions in the WTO agreements mention the need for a transfer of technology to take place between developed and developing countries. However, no working mechanism is developed yet to realize flow of technology to the South. A working group was established in the Doha Ministerial and a report will be presented on this issue.

Issues of technology transfer are also most neglected in the South. Although under TRIPs a mechanism of technology transfer is being prepared through some incentive, still it is far cry to realize such provision due to lack of any procedure of its operationalisation. Bangladesh can take a leading position in working out a complete feasible proposition for technology transfer linking relevant commitments by the develop countries. Recently, Bangladesh government prepared a proposal for submission on this issue.

7.6 Operationalising Special and Differential Treatment

The WTO agreements contain special provisions which give developing countries special rights. These special provisions include, inter alia, longer tie period of implementing agreements and commitments or measures to increase trading opportunities for developing countries.

It is widely recognized those special rights in many instance are not adequate and in may cases they remained in papers. In Doha, member governments agreed that all special and differential treatment provisions should be reviewed with a view to strengthening them and making them more precise. More specifically, the declaration (together with the Decision on Implementation -related issues and Concerns) mandates the committee on Trade and Development to identify which of those special and differential treatment are mandatory, and to consider the implications of making mandatory those which are currently non-binding. There was a decision that the recommendation on these issues should be made before July 2002.

Most of the developing countries lost their initiative to keep knocking with this issue. It is very interesting that the CTD will commission a study to consider the implications of making mandatory the provisions of S& DT. This step shows that the S& DT provisions were not designed for implementation rather just wash eyes for the developing countries. There are two approaches in identification of the provisions for implementation. One is *across the border approach* and another, *framework approach*. Under the *across the border* approach, there is an idea to complie all the S & D issues in various agreements into a comprehensive document. Bangladesh has prepared a document following this approach.

A version of study on implications of mandatory S& D T provision form the developing countries perspective will be able to provide more insight to the process of making S & D T provisions binding, which are very essential for countries like Bangladesh.

7.7 Technical Cooperation and Capacity Building

Doha Ministerial instructed some specific steps in the areas of technical assistance. The issues are:

- Delivery of technical assistance to developing and least developed countries
- Enhancement and rationalization of trade related technical assistance framework and program by the WTO director General
- Development of a plan of long term funding for WTO technical assistance to be adopted by General Council by December 2001
- Ensuring technical assistance for LDCs seeking accession to the WTO by the WTO secretariat

Within the specific heading "technical cooperation and capacity building", paragraph 41 lists all the references to commitments on technical cooperation within the Doha Declaration: papa 16 (market access for non-agricultural products), para 21 9 trade and investment), para 24 9trade and competition policy), para 26 (transparency in government procurement), para 27 (trade facilitation), para 33 (environment), para 38 – 40 (technical cooperation and capacity building), para 42 and 43 (least developed counties).

It was decided in Doha that technical assistance must be provided by the WTO and other relevant international organizations within a coherent policy framework.

Following the declaration's instructions to develop a plan ensuring long-term funding for WTO technical assistance, the General Council adopted in December 2001 anew budget that increases technical assistance funding by 80% and establishes a Doha Development agenda Global trust fund with a proposed core budget of 15 million Swiss francs. Till March 2002 the total pledges for the fund as 30 million Swiss francs of which EU pledges is 24 million.

By December, 2002 Director General will report the General council on the development in this regard. Another reporting will be in the fifth Ministerial.

Capacity building is of key importance to help LDCs participate effectively in the WTO and make use of the opportunities offered by trade liberalisation and rulemaking.

The 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 declaration 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 on 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

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.

There is an increasing feeling among the missions that WTO is overstretching itself regarding the delivery of TA. It is reckoned that WTO should be a “manager”, rather than a direct provider of TA. Its core competence lies in providing TA in the area of negotiation skills and that should be the focus of WTO’s activity.

7.8 Dispute Settlement Understanding

The 1994 Marrakesh Ministerial mandated WTO member governments to conduct a review of the Dispute Settlement Understanding within four years of the entry into force of the WTO agreement (January 1, 1999). The Doha Declaration mandates negotiations with the aim of concluding an agreement by May 2003. The negotiations will be based on the work done so far and on any additional proposals by the members. Para 47 of the declaration mentions that the negotiations on DSU will be beyond the single undertaking, i.e., they will not be tied to the overall success or failure of the other negotiations mandated by the declaration.

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. 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.

The DSU is the most crucial component of the WTO framework, which will ultimately determine the success of global level playing field through a establishment a global mechanism of justice in the trade arena. The provision and execution mechanism of the DSU are quite complex, the LDCs need specific technical assistance in this regard.

PART C

LESSONS LEARNT AND RECOMMENDATIONS

Monitoring the Mileposts During Run-up to Cancun. As the government and private sector continue to monitor the evolving situations during the run up to Cancun, they should also keep it in view the intermediate mileposts emerging from mandated activities in the WTO. Broadly, these are to be in three phases.

(i) Short Term – Upto December 2002, Deadlines for Agriculture and Services. Report on S&D to General Council. Trade Negotiation Committee (TNC) to also sit. Mini-ministerial in Australia to be also over.

(ii) Medium Term – Upto March 2003. Negotiations on Services, Agriculture and Non-agriculture tariffs.

(iii) Long Term – Up to Cancum Ministerial, September 2002. Draft Declaration for Review.

Fifth Ministerial will be in fact a mid-term review of the Doha work programme.

Need to Monitor Progress in All Sectors. In multilateral negotiations everything is interrelated. Outcome of negotiations in one area will have bearing on other areas. No matter how intensively a particular area is studied, uncertainty will remain about the final outcome because of this interface. A comprehensive approach as regards implications of the various negotiations will help Bangladesh better prepare for likely consequences.

Status of Agriculture as the Deal Maker or Breaker. It appears from the way negotiations in Geneva are going that the possibility of any deal being struck in Cancun will crucially depend on negotiations in the area of agriculture. Many experts are of the opinion that agriculture will be the deal-maker or deal-breaker in Cancun. The outcome in agriculture in turn will determine what will be demanded and what will be given away in other areas. Consequently, Bangladesh should give special attention to negotiations on agricultural issues.

WTO Rules Need to be Studied More Carefully. With the progressive cuts in industrial and service sector tariffs as well as with the real prospect of cutback in agricultural tariffs, the WTO rules are going to increasingly define the discipline of multilateral trading regime. In the emerging circumstances, Bangladesh would need to refocus itself to study and participate in the negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions including Subsidies, Anti-dumping Duties (ADD), Counter-vailing Duties (CVD), Sanitary and Phyto-Sanitary Measures (SPSM), Technical Barriers (TBT) to Trade.

Usefulness of Forming Regional Blocks for Negotiations on Particular Issues. As regards many of the issues Bangladesh has commonality of interest with other South Asian countries and also particular groups of developing countries. The implications and ramification will also be similar in many instances. As such, Bangladesh could cooperate with such groups to analyse the issues and understand their likely implications for the country. Once the understanding is clear we should be free to choose our own strategies and form own alliances.

Exploiting LDC Status and Breaking Ranks with Developing Countries. As regards a large number of issues being discussed in Geneva, there is a convergence of interests between the developing countries and the LDCs. However, as LDC Bangladesh may expect additional concessions and non-reciprocity based preferential treatment under the S&D provisions. Accordingly, whilst supporting moves by the developing country bloc'

it will be in Bangladesh's interest not to be identified with any particular developing country block, and if required, to move rank and show the LDC card.

Need for Identification of Concurrence of Interests with Developed Countries. Bangladesh will need to identify which of her interests in the context of the ongoing negotiations coincide with developed country interests. Obviously, confluence of interest on any issue with particular groups of developed countries will help Bangladesh to advance her own agenda in the current negotiations. The most effective strategy seems to be finding out concurrence of its interests with any one of the Quad countries (namely the US, EU, Japan and Canada), who are often in conflict with each other, and try to use their muscle for advancing our interests.

Private Sector Representation in Geneva. It will probably be a good idea to encourage the business chambers to have their own representation in Geneva. The private sector could send people with good exposure to business needs and trade laws. In the context of the lack of human resources to address the manifold needs of the country's Mission in Geneva, such exports could contribute to the national effort in Geneva and strengthen the capacity of the Mission help the local businesses with advice, and respond to particular queries of the business. Such representatives would serve as the link between business and the WTO and could alert them about developments in the WTO.

WTO's Negotiation's Impact Assessment for Project Loans. Bangladesh Bank may consider making it a prerequisite for approval of all large (i.e., above certain specified amount) investment project loans to conduct a review of the impact of WTO negotiations on the project's future (i.e. like environmental impact assessment).

Capacity Building. Training of negotiators, lawyers, customs and tax officials and other trade-related cadres who will be capable to deal with the complex multilateral negotiation process is extremely important for advancing Bangladesh's interests in the context of the ongoing negotiations.

Negotiation strategy the WTO. WTO is all about negotiations and as such it has to be approached from which is quite distinct from dealings with development partners. The negotiations in the WTO will be an ongoing process and will continue beyond the Doha Round. Accordingly, Bangladesh will stand to gain enormously if she takes appropriate steps to prepare people who can adequately address the emerging issues. Continuity of services in related field is likely to play a critical role in terms of building up the expertise and building institutional memories.

Tapping the Existing Technical Assistance. Not waiting for the full promises of the Integrated Framework for TA to be realized, Bangladesh should tap all the existing specialized supplies of TA. If necessary with bilateral donor support. For example, Advisory Centre on WTO Laws (ACWL) provides Technical Assistance to the developing countries and LDCs. Bangladesh should actively use the services provided by the centre.

Developing Negotiating Position on the Basis of Empirical Evidence. ITC and UNCTAD developed robust comprehensive trade related databases, which may prove to be exceptionally useful for developing negotiating position on market access up at disaggregated product level. Government may collaborate with private sector and civil society think tanks for exploring these resources.

Engaging Non-Government Experts in the Negotiations. Given the scarcity of trade specialists within the government system on WTO rules as well as specific issues under

negotiation, it is strongly felt that the government should involve trade-subject specialists from outside the government in the negotiation process (Expert Group meetings) in order to complement governments' capacity. Such exposures in the negotiating process will be also useful for the experts in preparing policy advices. Bilateral donor support may be solicited to underwrite this process. A number of developing countries are already resorting to this approach to strengthen their national negotiating capacity in the WTO.

Annex 1

LIST OF PERSONS MET DURING CPD'S TRACKING MISSION TO GENEVA

Institution	***Name and Designation***
UNCTAD	Miho Shirotori Economic Affairs Officer Division on International Trade in Goods and Services, and Commodities
	Ulrich Hoffman Economic Affairs Officer Trade, Environment and Development Section International Trade and Commodities Division
	Luis Abugattas Senior Expert Trade Negotiations and Commercial Diplomacy Branch
	Assad Omer Officer-in-Charge International Arrangements Sections (IPCB) Division of Investment, Technology and Enterprise Development
	Manuela Tortora Coordinator, Commercial Diplomacy Division on International Trade in Goods and Services, and Commodities
	Joerg Weber DITE
	Lucian Cernat Economic Affairs Officer Trade Analysis Branch
	Philippe Brusick Chief, Competition & Consumer Policies Section Division on International Trade in Goods and Services, and Commodities
	Remi Lang Associate Expert Office of the Special Coordinator for Least Developed, Landlocked and Island Developing Countries
	Dieter Koenig Officer in Charge Civil Society Outreach Intergovernmental Support Service
	Jean-Claude Zanga Liaison Assistant Civil Society Outreach Exécutive Direction and Management
	Bonapas Onguglo Economic Affairs Officer Division of International Trade and Services, and Commodities
	Charles G. Gore Senior Economic Affairs Officer Office of the Special Coordinator for Least Developed, Landlocked and Island Developing Countries
	Mercel Namfua Interregional Advisor Least Developed, Landlocked and Island Developing Countries
World Trade Organization Switzerland	Thu-Lang Tran Wasescha Counsellor Intellectual Property Division
	Rudolf Adlung Counsellor Trade in Services Division

Institution	***Name and Designation***
	Nora Neufeld
	Pierre Arhel Counsellor Intellectual Property Division
	Raymond J. Krommenacker
	Suja Rishikesh Services
	Eki Kim
	Alberto Dumont Conseiller Division du commerce et des finances
	Doaa Abdel Motaal Economic Affairs Officer Trade and Environment Division
International Textiles and Clothing Bureau	Guadalupe Fong Administrative Officer
	Weigang Guan Programme Officer
	Dinora Diaz Economic Officer
	Munir Ahmad Executive Director
Permanent Mission of Canada	Frederic Seppey Firs Secretary
	Sebastien Beaulieu Second Secretary
	Adair Heuchan Counsellor, Trade and Development
	Paul Martin Counsellor
World Intellectual Property Organisation (WIPO)	Shakeel Bhatti Senior Program Officer Genetic Resources, Biotechnology and Associated Traditional Knowledge Section Global Intellectual Property Issues Division
	Lucinda Jones Senior Legal Officer Electronic Commerce Section Office of Legal and Organization Affairs
	Karen Danielle Lee Counsellor , Office of Special Counsel to the Director General
	Kifle Shenkoru Head, Least-Developed Countries Unit
	Mansur Raza Senior Counsellor Cooperation for Development Bureau for Asia and the Pacific
	Narendra Sabharwal Director, Asia-Pacific Development Cooperation
European Commission	Ann-Mary Redmond Third Secretary Permanent Delegation to the International Organisations in Geneva
	Rupert Schlegemilch Conseiller Permanent Delegation to the International Organisations in Geneva
US Mission to WTO	Alicia D. Greenidge Assistant Deputy Chief of Mission and Senior Counsel
	Nancy Adams Senior Coordinator for Technical Assistance and Market Access

Institution	*Name and Designation*
Permanent Mission of India to the WTO	V.P. Haran Deputy Permanent Representative
International Trade Centre (ITC)	Friedrich von Kirchbach Chief , Market Analysis Section
	Hendrik G. Roelofsen Director, Division of Technical Cooperation Coordination
	Giovanni Dadaglio Senior Market Development Officer Market Development Section
	Matthias Knappe Senior Market Development Officer Market Development Section
	Francesco Geoffroy Senior Trade Promotion Officer LDC Unit, Division of Technical Cooperation Coordination
	Jaime Crespo-Blanco Chief , Office for Asia-Pacific, Latin America and the Caribbean Division of Technical Cooperation Coordination
	Alex Corpuz Senior Trade Promotion Officer Division of Technical Cooperation Coordination
	Sabine Meitzel Chief , Business Advisory Services Section Division of Trade Support Services
International Centre for Trade and Sustainable Development (ICTSD)	Mahesh Sugathan Programme Coordinator Economics and Trade Policy Analysis
	Alexander Werth International Law Officer and Coordinator Agriculture & Services Monitoring
	Victor Mosoti Programme Coordinator African and Legal Affairs
	C Bellmann Director Policy Dialogues & Partnerships
UNEP	Charles Arden Clarke
QUAKER UN Office	Brewster Grace Jonathan Hepburn
Permanent Mission of the Peoples Republic of Bangladesh to the UN Office	Dr. Toufiq Ali Ambassador
	Badrul Hassan Economic Minister
	Taufiqur Rahman Third Secretary
CIEL	Elizabeth Tuerk Staff Attorney
South Centre	Luisa E. Bernal Agriculture
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	Hamid Tabatabai Commission on Globalisation
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	Rouben Indjikian