

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



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

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

I. INTRODUCTION

1. At the 34th Session of the AALCO (1995) held at Doha, Qatar, the item “WTO as a Framework Agreement and Code of Conduct for the World Trade” was for the first time introduced in the Agenda of AALCO. Thereafter, this item continued to remain in the agenda of the Organization and was deliberated upon during the subsequent sessions - thirty-fifth session (1996) till forty-fourth session (2005). At these sessions, the Secretariat was directed to monitor the development related to the WTO, particularly the relevant legal aspects of dispute settlement mechanism.¹

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

3. At the forty-fourth Session held in Nairobi, Republic of Kenya (2005), the Secretariat provided an update on the developments in the negotiation under the Doha Development Round, with special emphasis on the ‘July 2004 Decision’ of the WTO General Council. In this Session the Organization had directed the Secretariat to “continue to monitor and report on the negotiations under the Doha Development Round, as well as, the outcome of the review process concerning the WTO Dispute Settlement Understanding”.²

4. Pursuant to this mandate, this brief report intends to provide an overview of the Sixth WTO Ministerial Conference 2005, held in Hong Kong, with special emphasis on Negotiation on Agriculture, Non-Agriculture Market Access (NAMA), Trade Related Intellectual Property Rights (TRIPS) and Public Health, Trade Facilitation, Development issues, General Agreement on Trade in Services (GATS) and progress in the review process of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

¹ Thirty-seven AALCO Member States are Members of WTO. They are: Arab Republic of Egypt, Bahrain, Bangladesh, Brunei Darussalam, Botswana, Cyprus, Gambia, Ghana, India, Indonesia, Japan, Jordan, Kenya, Kuwait, Malaysia, Mauritius, Mongolia, Myanmar, Nepal, Nigeria, Oman, Pakistan, People’s Republic of China, Philippines, Qatar, Republic of Korea, Saudi Arabia, Senegal, Sierra Leone, Singapore, South Africa, Sri Lanka, Tanzania, Thailand, Turkey, Uganda, and United Arab Emirates. Saudi Arabia becomes the 149th Member of the WTO on 11 December 2005. It is the world’s 13th largest merchandise exporter and the 23rd largest importer.

² AALCO/44/NAIROBI/SD/RES 14.

II. DEVELOPMENTS IN THE SIXTH WTO MINISTERIAL CONFERENCE, HONG KONG, 2005

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

6. At the Fifth Ministerial Conference of the WTO held in Cancun, 2003, intensive negotiations were held among the WTO Members on the following issues: Agriculture, Non-agricultural market access, Development issues, and other issues. Though a draft text of the Cancun Ministerial Declaration was submitted for Members consideration, due to differences in interests dividing the developed and developing Members, the Conference failed to adopt a Ministerial Declaration. The major reason for the failure was the deadlock in negotiation of Agriculture and NAMA. The only decision that emerged from the Cancun Ministerial Conference was the decision that the General Council of WTO shall convene before 15 December 2003 "to take the action necessary at that stage to enable us to move towards a successful and timely conclusion of the negotiations". A Ministerial Statement issued on 14 September 2003 instructed officials to continue working on outstanding issues with a renewed sense of urgency and purpose and taking fully into account all the views that have been expressed in this Conference.

7. The major breakthrough after Cancun failure came in the form of 'July 2004 Package', which among others adopted a rather unambiguous framework for the negotiation of agriculture, which was the major issue which led to the failure of the Cancun Conference. The 'July 2004 Decision' (also 'July 2004 Package') also adopted 'not so specific' modalities for the negotiation of non-agriculture market access. General Council Decision reveals slightly more flexibility and stronger language in favour of developing countries on market access compared to earlier texts. However, the extent of 'substantial market access' and 'flexibility' is left to rules and criteria, to be developed in future negotiations. The text includes concrete targets, at least for overall domestic support reduction and a cap for permitted Blue Box levels. The Annex simply lays down the basic pillars and a 'framework' for conducting future talks. Negotiations on modalities of substance, much of which had been left undetermined, was the real challenge that Members faced in the Sixth Ministerial Conference 2005.

8. The Sixth WTO Ministerial Conference was held in Hong Kong from 13-18 December 2005. The main issues before the negotiators at the Conference were to set modalities and bring the Doha Development Round into track. The most contentious issues before the Hong Kong Ministerial Conference, like the Cancun Ministerial

Conference, were the negotiations on Agriculture and Non-Agriculture Market Access (NAMA). Before the Ministerial Conference, on November 2005 the WTO presented the first Draft Ministerial Text on the Doha Work Program provided for a weak base for negotiations at the Conference. The draft Text was revised many times before consensus was reached, which of course was rather modest.

9. At the Ministerial Conference, the Members reaffirmed the Declarations and Decisions they adopted at Doha, as well as the Decision adopted by the General Council on 1 August 2004, and urged full commitment to give effect to them. They also renewed their resolve to complete the Doha Work Programme fully and to conclude the negotiations launched at Doha successfully in 2006. Some of the important issues that were discussed at the Hong Kong Conference are highlighted below.

A. AGREEMENT ON AGRICULTURE

10. The starting point for the current phase of the agriculture negotiations has been the mandate set out in Paragraph 13 of the Doha Ministerial Declaration. This in turn built on the long-term objective of the Agreement on Agriculture to establish a fair and market-oriented trading system through a programme of fundamental reform. A major breakthrough after the deadlock in Cancun was in 1 August 2004. The 147 member governments approved a package of agreements that includes an outline (framework) to be used to complete the “modalities” on agriculture. The General Council’s decision on the Doha Agenda work programme (the “July package”), agreed on 1 August 2004, contained frameworks and other agreements designed to focus the negotiations and raise them to a new level. In Agriculture, the General Council adopted the framework set out in Annex A to the decision. Annex A, “Framework for Establishing Modalities in Agriculture” offered the additional precision required at the present stage of the negotiations and thus the basis for the negotiations of full modalities in the next phase.

11. The level of ambition set by the Doha mandate would continue to be the basis for the negotiations on agriculture. It was decided that the final balance would be found only at the conclusion of the subsequent negotiations and within the Single Undertaking. To achieve this balance, the modalities to be developed would need to incorporate operationally effective and meaningful provisions for special and differential treatment for developing country Members. The Framework emphasised that agriculture is of critical importance to the economic development of developing country Members and they must be able to pursue agricultural policies that are supportive of their development goals, poverty reduction strategies, food security and livelihood concerns. It further stated that non-trade concerns, as referred to in Paragraph 13 of the Doha Declaration, would be taken into account.

12. In the Hong Kong Ministerial Conference Member States reaffirmed their commitment to the mandate on agriculture as set out in paragraph 13 of the Doha Ministerial Declaration and to the Framework adopted by the General Council on 1 August 2004. They also welcomed the progress made by the Special Session of the Committee on Agriculture since 2004.

i Export Subsidies and Competition

13. Regarding export subsidies and competition August 2004 framework stated clearly that all forms of export subsidies would be eliminated by a “credible” date. The elimination would work in parallel for all types of subsidies, including those in government-supported export credit, food aid, and state-sanctioned exporting monopolies. The negotiations would also develop disciplines on all export measures whose effects are equivalent to subsidies. Developing countries are allowed more lenient terms. Elimination could take longer. They could continue to subsidize transportation and marketing (Article 9.4 of the Agriculture Agreement) for a reasonable period, to be negotiated., beyond the date for ending the main subsidies. At the same time, when members get rid of subsidized components of credit and insurance, they have to be able to avoid harming the interests of least-developed and net food-importing developing countries. And special consideration is given to poorer countries, state trading enterprises whose monopoly privileges aim to keep domestic prices stable for consumers and to ensure food security.

14. In the Hong Kong Ministerial, the WTO Members agreed to ensure the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect to be completed by the end of 2013. This would be achieved in a progressive and parallel manner, to be specified in the modalities, so that a substantial part is realized by the end of the first half of the implementation period.

15. On food aid, the Conference reconfirmed their commitment to maintain an adequate level and to take into account the interests of food aid recipient countries. To this end, a “safe box” for bona fide food aid will be provided to ensure that there is no unintended impediment to dealing with emergency situations. Beyond that, Member States would ensure elimination of commercial displacement. To this end, Member States will agree effective disciplines on in-kind food aid, monetization and re-exports so that there could be no loop-hole for continuing export subsidization. The disciplines on export credits, export credit guarantees or insurance programmes, exporting state trading enterprises and food aid will be completed by 30 April 2006 as part of the modalities, including appropriate provision in favour of least-developed and net food-importing developing countries as provided for in paragraph 4 of the Marrakech Agreement. The date above for the elimination of all forms of export subsidies, together with the agreed progressivity and parallelism, will be confirmed only upon the completion of the modalities. Developing country Members will continue to benefit from the provisions of Article 9.4 of the Agreement on Agriculture for five years after the end-date for elimination of all forms of export subsidies.

ii. Market Access

16. The August 2004 Framework committed Members to “substantial improvements in market access for all product”. Three or four key points emerged in the bargaining over the framework: the type of “tariff reduction formula” that would produce the agreed

result of “substantial improvements in market access”; how all countries’ “sensitive products” might be treated; how developing countries might be given further flexibility for their “special products” and be able to use “special safeguard” actions to deal with surges in imports or falls in prices; how to deal with conflicting interests among developing countries over “preferential access” to developed countries’ markets; and how to provide market access for “tropical products” and crops grown as “alternatives to illicit narcotics”. Also discussed was a possible trade-off between cuts in some developed countries’ subsidies and improved market access in developing countries.

17. The Framework does not spell out the tariff reduction formula; it sets the scene for the next stage of the negotiations. It stated that the formula must take account of members’ different tariff structures (for example some have tariffs that vary widely from product to product, others have more homogeneous rates), and it spells out key principles for the formula, aimed at expanding trade substantially.

18. The Framework also outlined the purpose of special treatment: for rural development, food security and livelihood security. Specifically, special treatment is to be given to developing countries in “all elements of the negotiation”, including “lesser” commitments in the formula, the number and treatment of sensitive products, “lesser” tariff quota expansion, and a longer implementation period. Developing countries would be given additional flexibility for products that are specially important (special products) for their food security, livelihood security and rural development. How many, how they would be selected, and how they would be treated, has to be negotiated. A new contingency measure for developing countries (Special Safeguard Mechanism (SSM), the details of which are to be established.

19. Hong Kong Ministerial Conference noted the progress made on *ad valorem*³ equivalents. The Conference adopted four bands for structuring tariff cuts, recognized the need to agree on the relevant thresholds — including those applicable for developing country Members. It recognized the need to agree on treatment of sensitive products, taking into account all the elements involved. The Conference also took note that there have been some recent movements on the designation and treatment of Special Products and elements of the Special Safeguard Mechanism. Developing country Members would have the flexibility to self-designate an appropriate number of tariff lines as Special Products guided by indicators based on the criteria of food security, livelihood security and rural development. Developing country Members would also have the right to have recourse to a Special Safeguard Mechanism based on import quantity and price triggers, with precise arrangements to be further defined. Special Products and the Special Safeguard Mechanism shall be an integral part of the modalities and the outcome of negotiations in agriculture.

³ A tax, duty, or fee which varies based on the value of the products, services, or property on which it is levied. The alternative to ad-valorem taxation is a fixed-rate tax, where the tax base is the *quantity* of something, regardless of its price: for example, in the United Kingdom, a tax is collected on the sale of alcoholic drinks that is calculated on the quantity of alcohol contained rather than the price of the drink.

20. On other elements of special and differential treatment, the Conference noted in particular the consensus that exists in the Framework on several issues in all three pillars of domestic support, export competition and market access and that some progress has been made on other special and differential treatment issues. However, the Conference recognized that much remains to be done in order to establish modalities and to conclude the negotiations. Therefore, the Member States agreed to intensify work on all outstanding issues to fulfil the Doha objectives, in particular, resolved to establish modalities no later than 30 April 2006 and to submit comprehensive draft Schedules based on these modalities no later than 31 July 2006.

iii. Domestic support

21. August 2004 Framework agreed that all developed countries would make substantial reductions in distorting supports, and those with higher levels are to make deeper cuts from “bound” rates (the actual levels of support could be lower than the bound levels). The way to achieve this would include reductions both in overall current ceilings⁴ (“bound levels”), and in two components- Amber Box⁵ and *de minimis*⁶ supports. The third component, Blue Box supports,⁷ would be capped; at the moment the

⁴ For the overall level of support (Amber Box, *de minimis* and Blue Box combined), a “tiered formula.” would be used. This will be designed so that higher levels of support (those in higher “tiers”) will have steeper cuts. On top of that, in the first year, each country’s ceiling of permitted overall support will be cut by 20%. Details include how to measure the Blue Box component for the overall cut (“the higher of existing Blue Box payments during a recent representative period to be agreed and the cap established in paragraph 15”, which will be 5% of a country’s agricultural production during a yet-to-be-specified period).

⁵ Amber Box (“final bound total AMS”) supports will also be cut using a tiered formula, so that higher supports have steeper cuts. There will be limits on supports for specific products-“product-specific AMSs will be capped”- in order to avoid shifting support between different products. Since the tiered formula applies to the total of support on all products, the text also says that the result will be cuts in support specified for some products.

⁶ Currently developed countries are allowed a minimal amount of Amber Box support (“*de minimis*”). For support that is not given to specific products, this is defined as 5% of the value of total agricultural production. For support given to a specific product, the limit is 5% of production of that product. Developing countries are allowed up to 10% of these. The framework says *de minimis* will be reduced by an amount to be negotiated, with special treatment for developing countries, which will be exempt if they “allocate almost all *de minimis* support for subsistence and resource-poor farmers”.

⁷ Blue Box supports, currently unlimited, are to be capped at no more than 5% of the value of a country’s agricultural production over a period that still has to be negotiated. Some flexibility will be allowed for countries whose Blue Box supports are an exceptionally large proportion of their trade distorting subsidies.

The framework endorses a point made by countries that defend the use of the Blue Box. They have argued repeatedly that they need to be able to switch from the more trade-distorting Amber Box subsidies to the less distorting Blue Box supports in order to make reform less painful and more feasible. The text therefore says “members recognize the role of the Blue Box in promoting agricultural reforms”. The definition of the Blue Box will be changed to include direct payments that do not require any production, provided the payments are based on certain fixed production conditions (related to acreages, yields, numbers of livestock, or historical production levels). But new criteria will also be negotiated to ensure the Blue Box really is less trade-distorting than Amber Box measures.

Criteria for defining supports as “Green Box” will be reviewed and clarified to ensure that the supports really do not distort trade, or do so minimally. At the same time, the exercise will preserve the basic

Blue Box has no limits. The fine print contained a number of details but also stresses that these have to meet the long-term objective of “substantial reductions.”

22. All of these reduction commitments and caps would apply. However, the new WTO ceiling at the end of the implementation period (“binding constraint”) would be the lower of the value of trade-distorting support resulting from (i) the overall cut and (ii) the sum of the reductions/caps of the three components. In other words, countries would have to make the required reductions in Amber Box and *de minimis* support, and be within the capped limit of the Blue Box. Then, if they are still above the overall limit, they would have to make additional cuts in at least one of the three components in order to match the ceiling set by the overall cut.

23. Developing countries would be allowed gentler cuts over longer periods, and would continue to be allowed exemptions under Article 6.2 of the Agriculture Agreement (they can give investment and input subsidies that are generally available and are integral parts of development programmes, and provide domestic support to help farmers shift away from producing illicit crops).

24. In the Hong Kong Ministerial Conference, it was decided there would be three bands for reductions in Final Bound Total AMS and in the overall cut in trade-distorting domestic support, with higher linear cuts in higher bands. In both cases, the Member with the highest level of permitted support would be in the top band, the two Members with the second and third highest levels of support would be in the middle band and all other Members, including all developing country Members, would be in the bottom band. In addition, developed country Members in the lower bands with high relative levels of Final Bound Total AMS would make an additional effort in AMS reduction.

25. Member countries also took note that there has been some convergence concerning the reductions in Final Bound Total AMS, the overall cut in trade-distorting domestic support and in both product-specific and non product-specific *de minimis* limits. Disciplines would be developed to achieve effective cuts in trade-distorting domestic support consistent with the Framework. The overall reduction in trade-distorting domestic support would still need to be made even if the sum of the reductions in Final Bound Total AMS, *de minimis* and Blue Box payments would otherwise be less than that overall reduction. Developing country Members with no AMS commitments would be exempted from reductions in *de minimis* and the overall cut in trade-distorting domestic support. Green Box criteria would be reviewed in line with paragraph 16 of the Framework, *inter alia*, to ensure that programmes of developing country Members that cause not more than minimal trade-distortion are effectively covered.

THE COTTON INITIATIVE

26. The General Council in August 2004 reaffirmed the importance of the Sectoral Initiative on Cotton and takes note of the parameters set out in Annex A within which the

concepts, principles and effectiveness of the Green Box, and take account of non-trade concerns such as environmental protection and rural development.

trade-related aspects of this issue would be pursued in the agriculture negotiations. Members stated that they considered the cotton initiative to be important in both of its two main points: the trade issues covered by the Framework and the development issues and stressed the complementarity between the trade and development aspects.

27. As regards Development issues are concerned, referring to the WTO Secretariat's 23-24 March workshop on cotton in Cotonou, Benin, and other activities, the main part of the text instructed the Secretariat and the Director General to continue to work with the development community and international organizations (World Bank, IMF, FAO, International Trade Centre), and to report regularly to the General Council. Members themselves, particularly developed countries, "should" engage in similar work.

28. As regards Trade issues are concerned, the annex (the "framework") instructed the agriculture negotiations (the "Special Session" of the Agriculture Committee) to ensure that the cotton issue is given "appropriate" priority, and is independent of other sectoral initiatives. It said that both the overall approach of the framework and the cotton initiative itself are the basis for ensuring that the cotton issue is handled ambitiously, quickly and specifically within the agriculture negotiations.

29. The Cotton Sub-Committee was set up under the Framework at the 19 November 2004 meeting of the agriculture negotiations. Its purpose was to focus on cotton as a specific issue in the agriculture talks. The terms of reference say that the sub-committee would be open to all WTO members and observer governments. International organizations that are observers in the agriculture negotiations would also be observers in the sub-committee. It will report periodically to the agriculture negotiations body, which in turn reports to the Trade Negotiations Committee, General Council and Ministerial Conference. The sub-committee was tasked to work on "all trade-distorting policies affecting the sector", in all three key areas of the agriculture talks, the "three pillars of market access, domestic support, and export competition"- as specified in the 2001 Doha Declaration, which launched the current negotiations, and the "Framework" text, which is part of the 'July 2004 Decision'.

30. The Hong Kong Ministerial Conference recalled the mandate given by the Members in the Decision adopted by the General Council on 1 August 2004 to address cotton ambitiously, expeditiously and specifically, within the agriculture negotiations in relation to all trade-distorting policies affecting the sector in all three pillars of market access, domestic support and export competition, as specified in the Doha text and the July 2004 Framework text. It noted the work already undertaken in the Sub-Committee on Cotton and the proposals made with regard to this matter. Without prejudice to Members' current WTO rights and obligations, including those flowing from actions taken by the Dispute Settlement Body, the Conference reaffirmed its commitment to ensure having an explicit decision on cotton within the agriculture negotiations and through the Sub-Committee on Cotton ambitiously, expeditiously and specifically as follows: All forms of export subsidies for cotton will be eliminated by developed countries in 2006; on market access, developed countries will give duty and quota free access for cotton exports from least-developed countries (LDCs) from the

commencement of the implementation period. It is recognized that the objective is that, as an outcome for the negotiations, trade distorting domestic subsidies for cotton production should be reduced more ambitiously than under whatever general formula is agreed and that it should be implemented over a shorter period of time than generally applicable. They also committed to give priority in the negotiations to reach such an outcome.

B. NON-AGRICULTURE MARKET ACCESS (NAMA)

31. Non-Agriculture Market Access (NAMA) deals with reducing tariffs and non-tariff barriers (NTBs) on industrial goods under the General Agreement on Tariffs and Trade (GATT), and is central to the negotiations agreed in Doha under the WTO.

32. It may be recalled that at the Doha Ministerial Conference (2001), Ministers had agreed to start negotiations to further liberalize trade in non-agricultural goods. The ministers agreed to launch tariff-cutting negotiations on all non-agricultural products. To this end, a Negotiating Group on Market Access was created in 2002. In this regard, the submissions by the Members dealt with the 'modalities' for the negotiations, covering tariff reductions, how to deal with non-tariff barriers, how to give developing countries special and differential treatment, and the possible effects of the reduction in tariffs on the development policies of some countries and on their fiscal revenues, etc. At the Cancun Ministerial Conference, differences remain on the formula for tariff reductions and on sectoral initiatives. While the EU, US and Canada advocated for significant reduction in industrial tariffs, developing countries strongly opposed this and wanted provisions allowing it to make smaller reductions, to apply a different coefficient in tariff reduction formulas, and to be allowed to choose whether to join a sectoral initiatives i.e., duty free import of all products within a sector to be protected.

33. In the July 2004 Decision, the Members agreed that the Negotiating Group should continue its work on a non-linear formula⁸ applied on a line-by-line basis which shall take fully into account the special needs and interests of developing and least-developed country participants. Annex B of the 2004 'July Package', which is the current basis of negotiation, is less specific than the agriculture text, simply placed an additional paragraph outlining developing country concerns, which relate to the tariff reduction formula, the starting point for binding unbound tariff lines, flexibilities for developing countries, and participation in sectoral initiatives. The developing-country participants shall have longer implementation periods for tariff reductions. While some - mostly developing - countries appear to view the language regarding additional negotiations on specifics sufficient to signal their qualified acceptance of the form and content of the ensuing paragraphs, some developed countries have suggested that the additional negotiations will simply involve tweaking the elements but maintaining their essential form. The major issues that were pending before the Negotiating Group are:

⁸ All of the proposals for the tariff reduction formula are based on a 'Swiss' formula approach, or variations thereof. This methodology cuts higher tariffs more steeply than lower ones, and 'harmonises' tariffs by bringing them closer to a level that corresponds to the coefficient associated with the formula.

- Tariff reduction formula;⁹
- AVE conversion;¹⁰
- Non-tariff barriers (NTB);¹¹
- Definition of what would qualify as an environmental good.

34. At the Sixth Ministerial Conference, the main task before the negotiators as detailed by the draft Ministerial Declaration is to fix deadlines for completing the negotiating framework or full modalities for NAMA. In the case of tariff reduction, there was disagreement regarding the percentage of tariff cut and determining the coefficients. Some developing countries indicated that they could accept a 50-percent industrial tariff cut, but only if the EU and the US agree to deeper cuts to their farm subsidies. In the case of bound tariff, the Ministerial Declaration endorsed by the Members after heated negotiations decided to reduce industrial tariff on the basis of a 'Swiss formula,' with an unspecified number of coefficients. This leaves the door open to both the two-coefficient 'simple Swiss' formula and the multiple-coefficient approach linked to each country's average tariff favoured by Argentina, Brazil, and India. The Declaration also addressed the two central concerns of the most developing countries, providing for "less than full reciprocity in reduction commitments" for developing countries and stipulating that the formula "shall reduce ... tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, in particular on products of export interest" to them. The Members also decided that modalities for tariff reduction be established by April 30, 2006.

35. In the case of unbound tariffs lines, the Members adopt a 'non-linear mark-up approach' – this would have them add a certain number of percentage points to the tariff rate that they apply on a particular product to establish the base rate for reduction. The text does not specify whether these marked-up tariffs would be subject to the same Swiss formula as currently-bound tariffs, or to another reduction rate.¹² The Declaration also recognized that Members are pursuing sectoral initiatives. To this end, the Members instruct the Negotiating Group to review proposals with a view to identifying those which could garner sufficient participation to be realized.¹³

36. In the case of environmental goods and services (EGS), the developed and newly industrialized countries, as such favoured the 'list approach,' i.e. identifying a list of environmental goods for liberalization. However, many developing countries liked to keep options open for other approaches, such as India's 'environmental project approach' which would allow countries to temporarily liberalise trade in EGS associated with environmental projects designated by a national authority. However, at the Ministerial

⁹ One of the major issues was the proposal for different coefficients for developed and developing country Members.

¹⁰ Members have broadly agreed to follow the model used in the agriculture talks for the conversion of specific tariffs into price-based *ad valorem* equivalents (AVEs).

¹¹ Elimination of NTB's by converting into Tariff Barriers. The negotiation is lagging behind the tariff reduction formula.

¹² Doha Ministerial Declaration, paragraph 16.

¹³ Doha Ministerial Declaration, paragraph 16.

Conference there was no consensus and finally the Declaration provided only a brief, non-committal language that would simply instruct Members to “expeditiously complete the work” under Paragraph 31(iii).

C. TRIPS AND PUBLIC HEALTH

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

38. The decision directly transforms the 30 August 2003 “waiver” into a permanent amendment of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). That waiver made it easier for poorer countries to obtain cheaper generic versions of patented medicines by setting aside a provision of the TRIPS Agreement that could hinder exports of pharmaceuticals manufactured under compulsory licences to countries that are unable to produce them. This will now be formally built into the TRIPS Agreement when two thirds of the WTO’s members have ratified the change. They have set themselves until 1 December 2007 to do this. The waiver remains in force until then. The latest decision comes a week after WTO members agreed to extend the transition period for least-developed countries, allowing them until 1 July 2013 to provide protection for trademarks, copyright, patents and other intellectual property under the WTO’s agreement. Least-developed countries had already been given until 2016 to protect pharmaceutical patents.

39. The amendment is designed to match the 2003 waiver as closely as possible. The amendment completes a process that began with the declaration on TRIPS and health that ministers made at the Doha Ministerial Conference in November 2001. The deadline for least-developed countries to protect pharmaceutical patents revised in June 2002. This was followed by the waiver in August 2003, which itself called for the eventual amendment.

40. Article 31(f) of the TRIPS Agreement says that production under compulsory licensing must be predominantly for the domestic market. The concern was that this could limit the ability of countries that cannot make pharmaceutical products from importing cheaper generics from countries where pharmaceuticals are patented. As with the 2003 waiver, the permanent amendment will allow any member country to export pharmaceutical products made under a compulsory licence for this purpose. They may need to change their own laws in order to do so. So far, Norway, Canada and India have

informed the WTO that their laws are complete, while the Republic of Korea and the EU have said their new laws are on the verge of coming into force.

41. A group of developed countries are listed as announcing that they will not use the system to import. A number of other countries announced separately that if they use the system as importers, it would only be for emergencies or extremely urgent situations. They are: Hong Kong China, Israel, Republic of Korea, Kuwait, Macao China, Mexico, Qatar, Singapore, Chinese Taipei, Turkey and United Arab Emirates.

42. The amendment itself is in three parts. Five paragraphs come under Article 31 “bis” (i.e. an additional article after Article 31). The first allows pharmaceutical products made under compulsory licences to be exported to countries lacking production capacity.

43. Other paragraphs deal with avoiding double remuneration to the patent-owner, regional trade agreements involving least-developed countries, “non-violation” and retaining all existing flexibilities under the TRIPS Agreement. A further seven paragraphs are in a new annex to the TRIPS Agreement. These set out terms for using the system, and cover such issues as definitions, notification, avoiding the pharmaceuticals being diverted to the wrong markets, developing regional systems to allow economies of scale, and annual reviews in the TRIPS Council. An “appendix” to the annex deals with assessing lack of manufacturing capability in the importing country. This was originally an annex to the 2003 decision. The new Article 31 “bis” and annex of the TRIPS Agreement are attached to a protocol of amendment. This in turn is attached to a General Council decision, which adopts the Protocol and opens it for members to accept it by 1 December 2007.

D. TRADE FACILITATION

44. It may be recalled that the Singapore Ministerial Conference (1996) had mandated the Ministers to establish three working groups i.e., working group on trade and investment, working group on trade and competition policy, and working group on transparency in government procurement, in order to identify any areas that may merit further consideration in the WTO framework. At the Cancun Ministerial Conference, the “Singapore issues” were the priority item on which negotiations were undertaken. Though serious attempt was made by the Chairperson of the Ministerial Conference to avoid a deadlock, the negotiations failed to find a compromise formula which was acceptable to all Member States.

45. After Cancun Ministerial Conference, the WTO General Council meeting held on 15 December 2003, forty four developing country Members of the WTO issued a formal communication titled “Singapore Issues: The Way Forward”, calling for all further work on three of the Singapore Issues (Investment, Competition and Transparency in government procurement) to be dropped from the agenda. Accordingly the July 2004 Decision of the WTO General Council stressed that in the three Singapore issues “no work towards negotiations on any of these issues will take place within the WTO during the Doha Round”. The only remaining item in the agenda was the negotiation on Trade

Facilitation. In the case of trade facilitation, it may be recalled that the Singapore declaration, recognizing that the WTO legal framework lacks specific provisions in some areas of trade facilitation, directed the Goods Council “to undertake exploratory and analytical work - on the simplification of trade procedures in order to assess the scope for WTO rules in this areas.” The Goods Council had been dealing with trade facilitation at its formal sessions.

46. Following the deadlock in the Cancun Ministerial Conference, there was the view that trade facilitation may continue, but only after the clarification of various aspects of the issue. Finally there was agreement among the WTO Members, which is reflected in the July 2004 Decision, to launch the negotiations on trade facilitation. Annex D of the July Decision on Negotiations on Trade Facilitation reiterates that the aim of negotiation in trade facilitation is to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit. Negotiations shall also aim at enhancing technical assistance and support for capacity building and induce effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues. The modalities for negotiations clearly spell out the need for special and differential treatment, technical assistance and capacity-building for developing countries. This includes a caveat that these countries will not be required to implement the final agreement if support and assistance for the required infrastructure are missing or they continue to lack the necessary capacity.¹⁴

47. The Ministerial Declaration adopted by the Members in Hong Kong did not achieve much in terms of pushing the negotiation forward. It only noted with appreciation the report of the Negotiating Group, attached in Annex E to Declaration, and endorsed the recommendations contained in paragraphs 3, 4, 5, 6 and 7 of the report.¹⁵ Work needs to continue and broaden on the process of identifying individual Member's trade facilitation needs and priorities, and the cost implications of possible measures, including special and differential treatment, and capacity building and technical assistance for the developing countries and LDCs.

E. DEVELOPMENT ISSUES

48. At the Cancun Ministerial Conference, all developmental issues were categorized into one group and this group covered special and differential treatment (S&D); implementation; technical assistance; least-developed countries; commodity issues; small economies; trade, debt and finance; and trade and technology transfer. As regards the special and differential treatment (S&D) and implementation-issues, the core development elements of the Doha Declaration, only instructed Members to continue the work that has been underway since early 2002 and reiterated earlier commitments with regard to technical assistance and the work programme for least-developed countries (LDC's).

¹⁴ *Report by the Negotiating Group on Trade Facilitation to the TNC, Annex E, Hong Kong Ministerial Declaration, 2005.*

¹⁵ Paragraph 33, *Hong Kong Ministerial Declaration, 2005.*

Special and Differential Treatment (S&D)

49. On the issue of special and differential treatment, differences remain among the Members as to whether the current package of 24 agreed proposals is acceptable for now. The July 2004 Decision rather than adopting the 27 recommendations on 28 Agreement-specific proposals that were agreed 'in principle' in the lead-up to the Cancun Ministerial Conference, instructed the Special Session of Committee on Trade and Development (CTD) to expeditiously complete the review of all the outstanding Agreement-specific proposals and with clear recommendations for a decision, by July 2005. Since May 2005 Members have examined five agreement-specific proposals from least-developed countries (LDCs), as well as proposals from the African Group. Negotiations, however, have been difficult. In July and September 2005, Members were unable to agree on the LDC and African amendment proposals, with many calling for them to be reworded to better address the needs of their proponents.

50. At the Hong Kong Minister Conference the Members took note of the work done on the Agreement-specific proposals, especially the five LDC proposals and agreed to adopt the decisions contained in Annex F to the Declaration which deals with S&D treatment for LDCs Agreement Specific proposal. On outstanding Agreement-specific proposals a clear recommendations for a decision should be reached by December 2006. The Members expressed concerned at the lack of progress on the Category II proposals that had been referred to other WTO bodies and negotiating groups. They instructed these bodies to expeditiously complete the consideration of these proposals and report periodically to the General Council, with the objective of ensuring that clear recommendations for a decision are made no later than December 2006.¹⁶

Implementation Issues

51. Implementation related issues and concerns are broadly understood to include the implementation of soft law provisions in their favour and addressing the imbalances in WTO agreements that prevent them from benefiting fully from the multilateral trading system. The 2001 Doha Ministerial Conference addressed implementation issues in the Ministerial Declaration itself, a separate Decision on Implementation related Issues and Concerns.¹⁷ In the 2004 'July Package', Members were urged to address outstanding implementation concerns.

52. In the Hong Kong Ministerial Declaration, the Members urged the negotiating bodies and other WTO bodies concerned to redouble their efforts to find appropriate solutions as a priority to outstanding implementation-related issues. The Members also took note of the work undertaken by the Director-General in his consultative process on all outstanding implementation issues under paragraph 12(b) of the Doha Ministerial Declaration, including on issues related to the extension of the protection of geographical

¹⁶ Annex F, Hong Kong Ministerial Declaration, 2005.

¹⁷ WT/MIN(01)/17. See also Compilation of Outstanding Implementation Issues Raised by Members (JOB(01)/152/Rev.1).

indications provided for in Article 23 of the TRIPS Agreement to products other than wines and spirits and those related to the relationship between the TRIPS Agreement and the Convention on Biological Diversity.¹⁸

Least-Developed Countries

53. As regards LDC's, the Hong Kong Ministerial Declaration, building upon the commitment in the Doha Ministerial Declaration, developed-country Members, and developing-country Members declared themselves in a position to do so, agree to implement duty-free and quota-free market access for products originating from LDC's as provided for in Annex F to the Declaration.¹⁹ Annex F provides details on the brand-new developed country obligation to provide duty- and quota-free access for LDC exports as of 2008. The precise date is important since it guarantees an application of the benefits even in case the Doha Round negotiations stretch beyond 2008.

54. There is, however, an important exception with regard to product coverage i.e., developed countries that face difficulties in providing full unrestricted access in 2008 will only be required to do so for 97 percent of tariff lines. This 3 percent reservation would account for some 330 tariff lines, and this would deprive market access for all of products of LDC's.²⁰ There is no deadline for extending this treatment to all products, although the text includes a 'best effort' provision to "take steps to progressively achieve" full product coverage "taking into account the impact on other developing countries at similar levels of development. Other decisions include an increased infusion of funds for the 'aid for trade' programme, designed to increase poor countries ability to trade and technical assistance to help LDCs.

F. GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

55. In 2000, 'services' became a major issue of negotiations in WTO, because Article XIX of the General Agreement on Trade in Services (GATS) required the Member States to progressively liberalize trade in services.²¹ Accordingly the Special Session of the Services Council formally launched the new negotiations on 25 February 2000. The negotiations were conducted in two phases: (1) the "rules-making" phase during which Members will negotiate new rules for services on subsidies, safeguards and government procurement; and (2) and the "request and offer" approach¹, where Members will negotiate further market access. It was also decided that the work in the first phase would take place in the existing Services Committees – like the Working Party on GATS rules – whereas the market access negotiations would take place during Special Sessions of the

¹⁸ Paragraph 47, Hong Kong Ministerial Declaration, 2005.

¹⁹ Ibid.

²⁰ *ICTSD Bridges Daily Update*, Issue 7, 19 December 2005.

²¹ The GATS covers 12 service sectors and 155 sub-sectors and deals with the general obligations (like Article II of the GATS- MFN treatment and Transparency) and specific commitments (like Market Access and National Treatment) also. It refers to four modes of delivering services namely, Mode 1: cross-border supply, Mode 2: consumption abroad, Mode 3: commercial presence of the supplier and Mode 4: movement of natural persons.

Services Council. The services negotiations are required to be concluded as part of the single undertaking agreement by 1 January 2005.

56. At the Doha Ministerial Conference, the Ministerial Declaration committed itself to continue the negotiations on trade in services. Large numbers of proposals were submitted by the Members on several sectors and horizontal issues, as well as on movement of natural persons. Some Members argued for the establishment of mandatory minimum access commitments, otherwise known as 'benchmarks'. The exponents of this commitment opined that they would be eager to improve market access for the services supplied cross border and through commercial presence (Mode 1 and 3) while a number of developing countries argued for commercially meaningful offers in services supplied through the temporary movement of natural persons (Mode 4).²² These countries argued that mandatory market opening commitments would go against the very nature of the GATS, which explicitly recognized countries' right to liberalise in accordance with their individual development situation.

57. The Fifth Ministerial Conference in Cancún, Mexico, was intended as a stock-taking meeting where members would agree on how to complete the rest of the negotiations. But the meeting was soured by discord on agricultural issues and NAMA. Hence, other issues including services were not discussed at the Ministerial Conference.

58. The paragraph and Annex on services in the "July 2004 package"²³ accentuate the liberalisation or re-regulation risks posed by the services negotiations for workers and their unions, for it emphasizes on Mode 4 (temporary work abroad for the supply of a service) which infers that there will be a greater risk of direct WTO interference in the regulation of employment, although, at the WTO, governments have refused to accept even core labour standards or WTO co-operation with the ILO. Further, though the "July package" holds out the prospect of the elimination or reduction of trade-distorting agricultural subsidies by industrialised countries, precise dates or modalities have yet to be agreed. So, the pressure to provide compensatory concessions in services and other trade is likely to be very heavy on developing countries, especially those that have most to gain from agricultural trade reform. For their part, the developing countries will demand more Mode 4 liberalisation from industrialised countries.

59. The draft Ministerial Text on Services, which was hotly contested in Hong Kong Ministerial Conference, had shoved the modalities of GATS toward liberalizing the 19 broad-ranging service sectors, rather than referring to the proposal of counter services. The draft text mandated service privatization for the vast majority of developing countries mandatory, was somewhat rolled back. Paragraph 7, Annex C of the Declaration on services, was revised to explicitly specify that Member's obligatory consideration of collective requests should be based on countries' developmental levels.²⁴

²² With the exception of India, they are generally opposed to the notion of benchmarks.

²³ Decision Adopted by the General Council on 1 August 2004, Annex B, WTO document WT/L/579, para 1(e).

²⁴ The timelines for submitting plurilateral negotiations is February 28, 2006, while revised offers may be submitted by July 31, 2006, which has been inserted within the annexure. The final draft schedule of

The suggested changes to the text reflect concerns that some members have expressed about the earlier draft, which are primarily to reaffirm and underscore that Annex C is not a prescription for action in the negotiations, but it should be aligned even more closely with the GATS Agreement and the Doha mandate for services negotiations. Thus, on Emergency Safeguard Measures in Services (ESM), Government procurement and subsidies, members were requested to engage in more focused discussions and specifically on subsidies, they were required to intensify their efforts to expedite and fulfill the information exchange required for the purpose of such negotiations.

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

60. It may be recalled that while adopting the ‘Understanding on Rules and Procedures Governing the Settlement of Disputes’ (hereafter "DSU"), the Ministerial Conference in 1994 had agreed through a Ministerial Decision, for a “complete review of the dispute settlement rules and procedures under the World Trade Organization within four years after the entry into force of the Agreement Establishing the World Trade Organization and to take a decision on the occasion, modify or terminate such dispute settlement rules and procedure.” Accordingly, the review of the DSU was initiated in the Dispute Settlement Body (DSB) of the WTO in 1997. The DSB conducted extensive discussion on various issues related to the DSU in informal meetings. However, as there was no agreement and there remain a number of suggestions by Members that have yet to be considered, the General Council of WTO had to extend the time for the completion of the review process in 31 July 1999.

61. At the Fourth Ministerial Conference of the WTO, held in Doha, Qatar from 9 to 14 November 2001, the Ministers had agreed to negotiate on improvements and clarifications of the DSU. The Ministers agreed that the negotiation process on improvements and clarifications of the DSU shall take place in the Special Session of the DSB and shall complete the review not later than May 2003, the report of which shall be presented at the fifth Ministerial Conference to be held in Cancun, Mexico on 10-14 September 2003. The Special Session of the DSB was established and number of formal and informal meetings was held. At these meetings, the work progressed from a general exchange of views to a discussion of conceptual proposals put forward by Members by the second half of 2002 to an issue-by-issue thematic discussion. Since January 2003, the work has focused on discussion of specific draft legal texts proposed by Members.

62. The Chairman of the Special Session, on 28 May 2003, circulated a draft legal text under his own responsibility. The text contained Members proposals on a number of issues, including: enhancing third-party rights; introducing an interim review and remanding at the appeals stage; clarifying and improving the sequence of procedures at the implementation stage; enhancing compensation; strengthening notification requirements for mutually-agreed solutions; and strengthening special and differential treatment for developing countries at various stages of the proceedings. However, the

commitments is to be submitted by October 31, 2006. This change was considered necessary to address the concerns of G-90 and the Association of Southeast Asian Nations (ASEAN) countries.

Chairman's Text failed to reflect a number of other proposals by Members due to the absence of a sufficiently high level of support. These proposals covered issues such as accelerated procedures for certain disputes; improved panel selection procedures; increased control by Members on the panel and Appellate Body reports; clarification on the treatment of *amicus curiae* briefs; and modified procedures for retaliation, including collective retaliation or enhanced surveillance of retaliation. The General Council at its meeting on 24 July 2003, agreed to extend the negotiations from 31 May 2003 to 31 May 2004. The Cancun Ministerial Conference, which was supposed to review the progress in the negotiations in the Special Sessions of the DSB, failed to do so, as there was no consensus among the Members.

63. Additional progress has been made in the Special Session since the General Council meeting of 24 July 2003, building on the work done thus far, including the proposals put forward by Members as well as the text put forward by the Chair in May 2003. Some delegations have made additional written contributions to the negotiations during this period, which were welcomed by participants. There was also agreement among Members that the Special Session needs more time to complete its work, on the understanding that all the existing proposals would remain under consideration and bearing in mind that these negotiations are outside the single undertaking. Accordingly, it is suggested that action be taken by the Trade Negotiation Committee and/or the General Council as appropriate, for the continuation of work in the Special Session.

64. On 1 August, as part of the July 2004 Decision, the General Council adopted this recommendation. The Special Session has been based primarily on initiatives by Members to work among themselves in an effort to develop areas of convergence to present to the Special Session as a whole. In this context, various Members and groups of Members have put a number of contributions forward. Specifically, as reflected in my most recent report to the TNC in July, contributions relating to remand, sequencing, post-retaliation, third-party rights, flexibility and Member control, panel composition, time-savings and transparency have been put forward and discussed in this period. The discussion at the Special Session allowed a very constructive exchange of views and led to a clarification of many aspects of the proposed text.²⁵ However, the further work of the Special Session, the onus will remain on participants in the negotiations to continue to develop areas of convergence so as to lay the basis for a final agreement to improve and clarify the DSU.

65. In fact the negotiation on DSU review are effectively on hold, because of the pressing areas of the ongoing talks such as Agriculture, NAMA and Services. At the Hong Kong Ministerial Declaration, the Ministers took note of the progress made in the Dispute Settlement Understanding negotiations as reflected in the report by the Chairman of the Special Session of the Dispute Settlement Body to the Trade Negotiations Committee (TNC) and direct the Special Session to continue to work towards a rapid conclusion of the negotiations.

²⁵ Report by the Chairman to the Trade Negotiations Committee, TN/DS/10 and TN/DS/11

IV. DELIBERATIONS AT THE FORTY-FOURTH SESSION OF AALCO

66. The Forty-fourth Session of AALCO was held in Nairobi, Republic of Kenya from 27 June to 1 July 2005. The item “WTO as a framework Agreement and Code of for International Trade” was introduced by Deputy Secretary-General of AALCO. He pointed out that since the adoption of the ‘July 2004 Package’, no encouraging sign to find compromise solutions among the Member States was visible. Only in the case of negotiation in the area of Agriculture there was slight progress. At the ‘mini-ministerial’ meetings held in May 2005 at Paris, a deal was struck facilitated by the ‘five interested parties’ by reaching a compromise on how to convert ‘specific agriculture tariffs based on quantities imported into ‘ad valorem’ equivalents (AVEs), i.e, tariffs based on the price of the product. He said that efforts were needed by both developed and developing countries to redefine their priorities and focus their attention on developing countries concerns before taking further action on each negotiating item. No effort should be spared to settle differences in Agriculture issues, which is crucial for the success of the Doha Development Round.

67. Delegates from many AALCO countries presented their views on the topic. Most of the delegates, while noting that WTO had grown into a very important organization, were disappointed in the progress of the Doha Development Round of Negotiations. Most delegates agreed that the July 2004 Decision of the WTO General Council was a positive development and hoped that the Doha Round would come to a successful conclusion. Most of the delegates gave their countries view on Special Differential Treatment for developing countries; agricultural negotiations; market access for non-agricultural products; trade related intellectual property rights; and WTO dispute settlement mechanism. Some were of the view that negotiations should be with a view to enhancing market access for their exports, removal of export subsidies and the gradual reduction or elimination of tariffs.

V. OBSERVATIONS

1. The WTO Hong Kong Ministerial Conference participated by 149 Members, concluded on 18 December 2005 by adopting a moderate Declaration which tends to set the Doha Development Round 'back to track'. Even before the Hong Kong Conference, there were less expectation among the negotiating States about the outcome of the Conference. After the failure of the Cancun Ministerial Conference, the Member States were trying hard to bring the Doha Development round of negotiations into track. The 'July Package' lays down only the basic pillars and a 'framework' for conducting future talks. Negotiations on modalities of substance, much of which has been left undetermined, was left for the Sixth Ministerial Conference at Hong Kong.

2. The Hong Kong Conference after six days of intense negotiations, ended adopting a Ministerial Declaration, and as expected, Declaration did not contain specific numbers and formula structures for cutting subsidies and tariffs. Instead, Ministers agreed on some general parameters to guide the development of these 'full modalities' on agriculture and non-agricultural market access (NAMA), and set themselves an April 2006 deadline for finalizing them.

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

- elimination of agriculture export subsidies by 2013 and elimination of cotton export subsidies by 2006;
- reduce industrial tariff on the basis of a 'Swiss formula,' with an unspecified number of coefficients;
- duty and quota-free access for at least 97 percent of products originating from the least developed countries by 2008;
- TRIPS and Public health.

4. These outcomes might create an impression that much has been achieved during the Conference. However, the reality is slightly different. This is because, firstly, in all these issues, there was relatively high level of convergence among the Member States even prior to the meeting. In other words, the Ministers were only endorsing in areas where there were prior consensus, and failed to achieve something substantive during the negotiation.

5. In the case of agriculture, all forms of export subsidies including export credit guarantees, and insurances, should be eliminated by the end of 2013. The developing countries relinquished their initial position that the subsidies should be eliminated by 2010 due to pressure from EU. Elimination of export subsidies would be achieved in a progressive and parallel manner, to be specified in the modalities, so that substantial progress could be achieved by the end of first half of the implementation period. However, this is subject to an agreement on the modalities which should be completed by April 2006. With respect to cotton, all forms of export subsidies will be eliminated in 2006 with duty free-quota access for LDC's cotton.

6. Regarding non-agriculture market access (NAMA), Members adopted the 'Swiss formula' according to which there would be higher cuts if higher tariff were maintained. They also decided to establish the modalities for tariff reduction to be established by April 30, 2006. This provides leeway for both the two-coefficient 'simple Swiss' formula and the 'multiple-coefficient' approach linked to each country's average tariff, as proposed by the developing countries. However, this does not mean that the 'two-coefficient' or 'multiple' coefficient approach would be acceptable for the developed countries, especially when the negotiation in NAMA has direct bearing on the negotiation on Agriculture. Further, in order to implement the 'Swiss formula' there is a need to firstly agree on the modalities, which that Declaration failed to achieve.

7. Regarding TRIPS and public health, the significant development was that the Hong Kong Ministerial Conference approved changes to the TRIPS agreement making it easier for poorer countries to obtain cheaper generic versions of patented medicines. This would allow pharmaceutical products made under compulsory licensees to be exported to countries lacking production capacity.

8. Regarding the special and differential treatment for LDCs, Members agreed to provide duty and quota-free access to exports from LDCs by 2008. However, there is an important caveat. Members could exclude three percentage of the exports from this obligation for protecting certain politically sensitive products eg., textiles in the case of US. This 3 percent reservation, it was argued, would account for some 330 tariff lines, and this would deprive market access for all of products of LDCs. Some of the developing countries also agreed to implement this decision, however, in a selective way. This deal, if implemented in spirit by the developed countries would benefit the 50 LDCs, 34 of which are in Africa, in increasing their exports.

9. In services (GATS), even though the initial draft Ministerial text was rolled back, the developing countries were made to relinquish their earlier position in adopting 'prescriptive and mandatory' language in Annex C of the Declaration, which sets details of the items for future liberalization and is part of the Hong Kong Declaration.

10. As regards the review of the DSU, as usual there was no progress. In fact the negotiation on DSU review are effectively on hold, because of the pressing areas of the ongoing talks such as Agriculture, NAMA and Services. It can be seen that since 1997 when the review initially started, till date, consensus had been reached only on very few provisions, mostly procedural ones'. Chairman of the Special Session of DSB has achieved no further progress in the negotiations even after the circulation of negotiating text of proposals. Neither the Cancun Ministerial Conference nor the 'July 2004 package' did reflect on the progress and direction of the review of the DSU, except reiterating the earlier decisions.

11. It is indeed a remarkable achievement of the Hong Kong Ministerial Conference that the Doha Development Round had been put on track. The Declaration by the Ministers at the Conference has created new hopes in the minds of the Member as regards the successful completion of the Doha Development Round. However, the Declaration

has imposed on the Members the formidable challenge of finalizing full modalities on Agriculture and NAMA by April 2006. Further, they must also submit comprehensive draft schedules of commitments based on them by 31 July 2006 that is within three months.