

**Development Issues in the WTO in the  
Post-July Package Period:  
Myth or Reality?**

BONAPAS ONGUGLO

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Third World Network

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**NOTE:**

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# 1

## Introduction

Addressing development issues in the WTO in the post-July Package period so as to mainstream development into the multilateral trading system (MTS) is a key challenge facing WTO Members and the international community at large.

Missed deadlines in the Doha Work Programme (DWP) on most “development issues”, juxtaposed against the emphasis placed on the needs and interests of developing countries have raised the stakes for substantive, commercially meaningful and development-oriented results.

Linkages with the Millennium Declaration and internationally agreed goals regarding the contribution of trade to development and poverty reduction have further heightened the political move internationally for the attention given to development to be carried out in practice.

This paper examines whether mainstreaming development into the WTO and the MTS is a myth, a fiction, or is it a reality, a fact that can be realised to meet the expectations of developing countries. Can the spirit of Doha, which launched a new round of negotiations and work with an explicit pledge to deliver development-friendly results, be redeemed?

This is a major challenge and opportunity as positive results would rectify some of the development shortfalls of the Uruguay Round, mainstream development into the WTO as a central principle, and provide development-enhancing rights and obligations that would enable the entire membership to use multilateral

trade liberalisation and rules as a facilitating engine of trade as well as of development and poverty reduction.

The July 2004 Package adopted by WTO members provides some hope in this direction, but it needs to be translated into concrete steps in the period leading to the 6th WTO Ministerial Conference and beyond. This is especially pertinent in view of the lack of substantive progress in meeting the interim deadlines set in the July Package to draft the July 2005 first approximations and clear recommendations on development issues.



# 2

## GATT 1947 to WTO 1995

### 2.1 GATT 1947

In the pre-WTO period of GATT 1947, “development issues” were somewhat synonymous with special and differential treatment (SDT) that was instituted at the genesis of the GATT. In the late 1940s, it was recognised that some flexibility was needed for the contracting parties of GATT at early stages of industrialisation, mostly developing countries.

Thus GATT Article XVIII on “Governmental Assistance to Economic Development” was fashioned to (a) permit developing countries to grant tariff protection required for the establishment of a particular industry (akin to infant industry argument), and (b) to apply quantitative restrictions for balance of payment purposes.

GATT Article XXV (waiver provisions) also provided some scope for countries to engage in staged (rather than full scale) tariff liberalisation. Likewise, GATT Article XXIV permitted countries to engage in regional trade agreements and customs unions and offered to one another better than MFN treatment as long as such treatment was not prejudicial to the trading interests of third parties.

On 8 February 1965, Part IV of the GATT on Trade and Development was added (and entered into force on 27 June 1966), introducing the element of “non-reciprocity” for developing countries in multilateral trade negotiations. It was introduced after a period of discussion and work by the contracting parties

on ways of improving the weak performance of developing countries in international trade, based on the "Haberler Report".<sup>1</sup>

Such work on special measures for developing countries also benefited from the intergovernmental deliberations that resulting in the creation of UNCTAD in 1964. Then from the Tokyo Round emerged the most classical development provision of the GATT/WTO, namely the Enabling Clause or the Decision of 28 November 1979 on "Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries.

The Enabling Clause further consolidated the SDT acquis of GATT 1947 and provided developing countries with "differential and more favourable treatment" in respect of trade preferences (without reciprocating) legalising the provision of GSP (Generalised System of Preferences), their mutual regional trade agreements, and special treatment for LDCs. Significantly, it provided that in reforming existing rights and obligations or elaborating new disciplines, these should be "designed and, if necessary, modified to respond positively to the development, financial and trade needs of developing countries."

SDT provisions of GATT 1947 provided important flexibility to developing countries in undertaking and implementing multilateral obligations so as to use trade policy as an instrument of development. It was recognised that there cannot be full reciprocity between trading partners that are unequal in terms of economic size, industrial capacity and services development, entrepreneurial capacity, technological advancement, market power and various vulnerabilities. In such situations of unequal competition, having uniform one-size fits all rules and disciplines would operate to the benefit of the stronger, competitive partner and to the detriment of the weaker, less competitive partner creating a vicious cycle of dependency and poverty in these countries and undermining their effective participation in and support for the MTS.

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<sup>1</sup> The Haberler Report was prepared by a panel of experts comprising Gottfried Haberler as chairman, and Jan Tinbergen as a member, submitted the report on "Trends in international trade", particularly of developing countries, at the request of the contracting parties of GATT at their twelfth session held in November 1957.

Hence policy flexibility was provided to protect infant industries, and to apply quantitative restrictions when faced with balance of payment difficulties. Flexibility in undertaking tariff liberalisation commitments was also provided by way of not reciprocating in trade negotiations, benefiting from unilateral preferences offered under the GSP, engaging in regional trade agreements, and LDCs could benefit from special treatment additional to those available to developing countries. Moreover, developing countries were not obliged to participate in any of the agreements or codes of the GATT.

## 2.2 WTO 1995

The Uruguay Round and the resultant WTO Agreements brought in many changes and innovations. With respect to SDT, the Uruguay Round results eroded the principle of SDT as established under GATT. SDT was redefined mostly as a transitional device, and specific to each agreement, so as to ensure implementation of the agreement under the single undertaking principle which in itself removed the option of *à la carte* participation. These included transitional periods (most of which have expired), certain flexibility arising from exemptions and different thresholds in certain cases and primarily for LDCs, special treatment of LDCs and best endeavour undertakings including for technical assistance.

National policy space was also curtailed by the TRIPS Agreement, TRIMs Agreement, prohibition of industrial subsidies, tightening of the waiver provisions, and measures to rein in regional trade agreements, among others. These innovations capped, and in some cases weakened, the flexibility that was provided under the various GATT Articles, Part IV and the Enabling Clause even though these instruments were integrated into the WTO Agreements. Again, as under the GATT 1947, SDT was equated with the “development” orientation of the new MTS and the WTO.

It appeared that SDT was not integral to the architecture of the new MTS – it became a casualty of the movement towards emphasising reciprocity and less of the favourable and more differential treatment for developing countries, so



as to bolster the MTS and its cardinal principles of MFN and national treatment. There was one notable exception of the GATS which provides developing countries with the flexibility to take into account their development interests and to make commitments accordingly.

The lacuna in the WTO and the MTS in addressing “development issues” became immediately apparent in the post-WTO period. Starting at the first WTO Ministerial Conference (MC) in Singapore in 1996, an attempt was made by mostly developed countries to launch a new, comprehensive round of negotiations based on the built-in agenda negotiations under the agriculture and services agreements, and the introduction of the four so-called Singapore issues. This became very evident during the preparatory process for the Seattle MC in 1999. Developing countries in contrast heavily resisted the attempts to launch a new round even as some proposals were made to call it the Millennium Round or the Development Round.

These developing countries, particularly African countries, began to realise when implementing their obligations and commitments under the WTO that the results of the Uruguay Round were heavily imbalanced particularly in terms of:

- (a) onerous obligations for developing countries with limited implementing capacity and financial support;
- (b) erosion of policy space leading to insufficient flexibility for developing countries to implement policy options necessary for achieving their development goals, contrasted with weakened SDT; and
- (c) lack of coherence and consistency between some of the multilateral rules and disciplines that were adopted during the Uruguay Round, and trade and other economic policies that were pursued by individual developing countries at the national level.



As a result of these imbalances, developing countries were faced with many implementation problems and concerns arising from WTO Agreements, and in turn, denying them some expected benefits with some countries, particularly those from Africa, experiencing stagnation in economic growth. Conversely, it was felt that developed countries continued to reap a disproportionate share of the benefits arising from the Uruguay Round of multilateral trade negotiations, and were even proposing a new round to further consolidate such gains. Thus between Singapore and Seattle, developing countries emphasised the need to address implementation-related issues and concerns, encompassing also SDT, while developed countries tended to emphasise the launching of a new round to address new issues and deepen the liberalisation process under the WTO

During the Seattle MC preparatory process, developing countries put forward some 100 specific implementation problems and concerns that needed to be addressed for them to be better able to implement their obligations and, more importantly, benefit from the inherent rights in the WTO Agreements. They felt that the Seattle MC provided the opportunity to redress the past imbalances and not to launch a new round of trade negotiations. Further, it was emphasised that multilateral trade rules and disciplines were not an end in itself, but should serve as a means of facilitating the participation of particularly developing countries in international trade and their eventual beneficial integration into the world economy. Multilateral rules should contribute to the development of developing countries, in addition to expanding their trade. It was the insistence of developing countries that their implementation problems and concerns should be resolved as a matter of priority which also contributed to the failure of talks at the Seattle MC.

After the setback of the Seattle MC, there was an attempt to address implementation problems and concerns of developing countries as a way of building the confidence of the developing countries in the MTS. However progress was very slow and the achievements were minimal until the 4th WTO MC at Doha when developing countries accepted the launch of a new comprehensive round based on the promise that their implementation problems and concerns, combined with strengthening of SDT, would be addressed on a fast track basis within the

overall framework of the Doha Work Programme (DWP). Further, at that time the world economy was experiencing a recession aggravated by the 11th September, 2001 terrorist attacks in the United States. WTO members, therefore, felt that there was need to launch a development round that would redress the past imbalances and also inject new momentum in the world economy. Momentum for a new round was also facilitated by evolving consensus on a decision on TRIPS and public health to address the pandemics prevalent in many developing countries.

The Doha Ministerial Declaration (DMD) adopted by the Doha MC was momentous in the history of GATT/WTO in terms of providing specific directives on the integration of “development issues” into the WTO and the MTS. The WTO membership agreed to place the needs and interests of developing countries at the heart of the work programme that was launched.<sup>2</sup> A declaration was adopted on the TRIPS Agreement and public health, a decision on implementation-related issues and concerns, and a decision on the waiver for the EC-ACP Partnership Agreement, all key development issues linked to trade for developing countries.

That “development” was given central attention in the new round led to the Doha work programme being coined the “Doha Development Agenda” or “DDA”. However, only when the round has been completed with development enhancing results can the round be deserving of its appellation as the “Doha Development Agenda,” i.e., the DDA, with the middle “D” being justified. The final destination has not yet been reached and the journey so far has been full of broken promises and missed deadlines, including most recently, the July 2005 approximation deadlines.

Following the adoption of the DWP and the start of its implementation, issues of particular interest to developing countries encountered resistance from other members. Indeed the deadlines set out in the Doha Declaration and subsequent ones on SDT, TRIPS and Public Health, and outstanding implementation issues

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<sup>2</sup> See paragraph 3.

were missed due to lack of commitment particularly on the part of the developed countries. Instead issues of interest to developed countries such as the Singapore issues and industrial tariff negotiations were given undue prominence in the negotiations. Implementation-related issues and concerns which were prioritised by the DWP after the Seattle setback were neglected and no substantive progress was made on them.

This state of affairs disturbed the balance achieved originally in the DWP that development issues represented by implementation issues and SDT will be resolved first and only then will developing countries engage in and make concessions in market access and rules negotiations. Developing countries became even more disillusioned and strongly resisted attempts to attain explicit consensus on negotiations on the Singapore issue.

In an attempt to rescue the Cancún MC, Members acting through the WTO General Council agreed on the eve of the MC on 30 August 2003 to a Decision on the "Implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and public health".<sup>3</sup> The Decision provides legal changes that will make it easier for developing countries to import cheaper generic drugs made under compulsory licensing if they are unable to manufacture the medicines themselves. Despite this last minute positive step, it was not sufficient to promote agreement among Members on the wider package being developed and this contributed to the collapse of talks at the Cancún MC.

After Cancún, the lack of consensus on many critical issues persisted despite the numerous consultations that were held among the Members. Wide divergences on many issues under negotiations raised serious concern as to whether WTO Members were committed to the effective implementation of the DWP and its development agenda. Political guidance particularly on agriculture, cot-

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<sup>3</sup> The effect of the Decision, as significant as it was, is somewhat limited as it was adopted in the light of a statement read by the Chairman of the General Council (see WTO document JOB(03)/177). This statement reflects several key understandings by Members on the Decision, its interpretation and implementation aimed at assuring those who feared that the Decision might be abused and undermine patent protection.



ton, non-agricultural products and development issues were found necessary in order to move the process of negotiations forward.

A number of informal Mini-Ministerial meetings were held and the outcomes fed into the Geneva process. Also the UNCTAD XI preparatory process and the Conference itself provided important stimulus to the Geneva negotiating process by promoting general understanding and consensus between the Group of 77 and other countries on the contribution of international trade and trade negotiations to assuring development gains for all countries. Various initiatives were discussed by trading partners to reach agreement on the way forward. For example, the EU offered in the Lamy/Fischler letter a concept of “round for free” under agriculture and NAMA negotiations for “weak or vulnerable developing countries” essentially the G-90 (LDCs, Africa, ACP States). Finally on 1st August 2004 a Decision was taken by the WTO General Council which provided a positive basis for the next phase of the negotiations.

### 4.1 The Decision and Changing Perceptions

The 1 August 2004 Decision<sup>4</sup> (hereinafter Decision) contains the July Package re-launching the negotiations and work under the Doha round after the Cancún setback. In doing so, it re-establishes its viability, and enhances its chances of being concluded, not in early 2005 as originally envisaged, but much later. In this regard, the Decision seems to imply that the round could be completed by the 6th WTO Ministerial Conference (MC), scheduled for 13-18 December 2005;<sup>5</sup> however caution has been expressed by the WTO Director General and some major trading partners that the 6th MC should not be viewed as the end date for the round. Rather every effort should be made to achieve substantial progress by the 6th MC and conclude the round some time in 2006, and prior to the 7th MC. This provides the expected timeframe within which negotiations, including on development issues, can be expected to be completed. Indeed, there is an evolving international consensus that the Doha negotiations should be concluded by 2006, as recommended for example by the Sachs Report, Blair Commission report and the UN Secretary General.

Apart from the fact that much remains to be accomplished in terms of the specifics on the frameworks and recommendations in the Decision and other aspects of the DWP, other factors can cause a delay in the negotiations in reaching

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<sup>4</sup> WT/L/579 (2 August 2004).

<sup>5</sup> Paragraph 3 of the Decision gives this impression by stating that "The [WTO General] Council agrees to continue the negotiations launched at Doha beyond the timeframe set out in paragraph 45 of the Doha Declaration, leading to the Sixth Session of the Ministerial Conference."



the new deadlines set in the July Package. One such factor is the relentless move towards regional trade agreements by all countries, mostly as an insurance policy against limited market access openings at the multilateral level. Some apprehension also surfaced regarding the focus of attention (away from negotiations) on the election of the new WTO Director General, and the installation of the new US administration and new EC administration and the setting of their priorities on international trade. In retrospect such fears were groundless as the negotiations post-July Package progressed and there had been renewed expressions of commitment to the round.

Several mini-Ministerial meetings were held in 2005 to enhance common understanding and create a critical mass of consensus among some members on various market access modalities and recommendations. However it can be recalled that the Seattle MC took place just after a change of guard at the head of the WTO. Mr. Mike Moore had just been selected as Director General of the WTO and took office on 1 September 1999, leaving him with barely two months to assist Members in finalising the MC preparations. A similar situation is arising with regard to the 6th MC. Mr. Pascal Lamy, the 5th Director General of WTO, started work on 1 September 2005 and has just over three months to guide WTO members in meeting the commitments in the July package at the 6th MC which would set the basis for an expeditious conclusion to Doha negotiations, after missing the original one.

It can be recalled that in the history of the GATT 1947, the longest and most ambitious round was the Uruguay Round which took over eight years to complete. The Doha round is the first multilateral trade negotiations round to be conducted under the WTO, and has over lasted three years (up to September 2005). Re-launching the Doha round is important for developing countries since they have much to lose from a failure – a failure, would mean a lost opportunity in mainstreaming “development” into the heart of the MTS. The Decision “re-dedicates and recommits Members to fulfilling the development dimension” of the DWP. It is also important in that it reaffirms the value of multilateralism and can help contribute to arresting the growing protectionist tendencies,

unilateralism and security measures having considerable negative impact on trade flows from developing countries.<sup>6</sup>

The Decision thus serves as a good launching pad for further negotiations under the Doha round. Such general endorsement of the Decision emanated from the comprehensive intergovernmental review of the Decision and the July Package undertaken by the 51st session of UNCTAD's Trade and Development Board on 8 October 2004.<sup>7</sup> The background document provided by UNCTAD for this meeting provides an insightful analysis of the July Package and the development implications for developing countries.<sup>8</sup>

In the period leading to the Hong Kong MC, WTO Members have to come up with specific, elaborate and detailed elements of the frameworks and recommendations. For this process to be beneficial to developing countries in ensuring fair, equitable and development-oriented outcomes, several broad conditions are important. These include:

- (a) the need to prioritise and make concrete progress in addressing the development needs and interests of developing countries, including in core market access issues and rules so that the results are commercially meaningful and development enhancing;
- (b) achieve a participatory approach to the negotiations and decision making process that is transparent and inclusive; and
- (c) ensure that the MTS enhances, and not hinders, the ability of developing countries to adopt trade policies and measures that will enable them to achieve development and reduce poverty. This "policy space" has to be reflected, if not in letter, then in spirit in the negotiations and the resulting obligations and rights.

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<sup>6</sup> A comprehensive review of the Decision and July Package has been conducted by UNCTAD. See secretariat note on "Review of development and issues in the Post-Doha work programme of particular concerns to developing countries: A post-UNCTAD XI perspective" (TD/B/51/4, 31 August 2004).

<sup>7</sup> See the President of the Trade and Development Board's summary of the deliberations by UNCTAD Member States on the July Package (see TD/B/51/L.8).

<sup>8</sup> UNCTAD secretariat, TD/B/51/4.

The focus on development in the MTS is important for positive movement towards the commitment that the world Heads of State and Government adopted in the Millennium Declaration on an open, equitable, rule-based, predictable and non-discriminatory multilateral trading system that contributes to development and poverty eradication.<sup>9</sup> The need to incorporate development in trade is gaining momentum worldwide. For example, in his address to the 59th session of the UN General Assembly in December 2004, Mr. Gordon Brown, Chancellor of the Exchequer (United Kingdom) advocated a new approach to trade that is development enhancing and eradicates poverty. The new approach proposed comprises a triple track as follows:

*"First, it is time for the richest countries to show we believe in fair trade, agree to open our markets, remove trade-distorting subsidies and in particular, do more to urgently tackle the scandal and waste of the European Common Agricultural Policy.*

*Second, it is time to move beyond the old Washington consensus of the 1980s and recognise that while bringing down unjust tariffs and barriers can make a difference, developing countries must also be able to carefully design and sequence trade reform into their own poverty reduction strategies.*

*And third, because it is not enough to say to the poorest countries "you're on your own, simply compete" we have to say "we will help you build the capacity you need to trade" – not just opening the door but helping you gain the strength to cross the threshold. .... I know that developing country governments themselves recognise that it is important to create the right domestic conditions for trade and commerce – a stable economic environment, improved infrastructure, and sound legal processes that strengthen property rights and deter corruption. But we also have to recognise at the same time that the poorest countries will need additional resources both to build the economic and infrastructure capacity to take advantage of trading opportunities and to prevent their most vulnerable people from falling further into poverty."*

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<sup>9</sup> General Assembly resolution A/RES/55/2, paragraph 13.



The emphasis on trade, development and poverty eradication by Mr. Brown follows similar exhortations by other eminent personalities. Mr. Kofi Annan, the UN Secretary General, has persistently called for practical trade policy measures and initiatives that can contribute substantively to development in the poorest countries. For example, his statement to the 5th WTO Ministerial Conference at Cancún emphasised, *inter alia*, the need for additional resources for trade – i.e., additional to resources for development – so that one is not done at the expense of the other.<sup>10</sup> Some aspect of this recommendation is evident in the third pillar of Mr. Brown's new trade deal. In his report in March 2005 on follow-up to the Millennium Summit entitled "In larger freedom: Towards development, security and human rights for all",<sup>11</sup> Mr. Annan advocated that the Doha negotiations should fulfill its development promise and be expeditiously concluded no later than 2006. He underscored that the first step in this direction of development is for all countries to provide duty-free, quota-free treatment for all exports of LDCs.

In June 2004, Mr. Joseph Stiglitz and Mr. Andrew Charlton produced for the Commonwealth Secretariat a publication on "An Agenda for the Development Round of Trade Negotiations in the Aftermath of Cancun". They argued that "development", not trade, should be the motivating force of the Doha round and to that end measures that would enable developing countries to effectively promote development through trade should result from the Doha negotiations. Notably in the preparatory process for, and at the eleventh UNCTAD Conference (June 2004), member States discussed and adopted commitments relating to the Doha negotiations which underscored the importance of a "qualitative" integration of developing countries into the MTS, in addition to purely "quantitative" integration. This is encapsulated in the appellation of the sub-theme on

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<sup>10</sup> Message of the UN Secretary-General, Mr. Kofi Annan, Delivered by Mr. Rubens Ricupero, Secretary-General, UNCTAD (WT/MIN(03)/12, 10 September 2003). Specifically, Mr. Annan expressed that "There is a need for synergy and proper sequencing – between the capacities of the developing countries, the level of obligations they are to take on, the cost of implementation, and the adequacy of financial and technical resources available to them. Developing countries need aid for trade, and such aid must not come at the expense of aid for development."

<sup>11</sup> A/59/2005 (21 March 2005).

“assuring development gains from the international trading system and trade negotiations” – trade leading to gains that are financial and that are welfare enhancing.<sup>12</sup>

Equally important, the WTO membership appears to be paying heed to adhering to the development promise of Doha enshrined in the Doha Ministerial Declaration of placing the needs and interests of developing countries at the heart of the DWP. The July Package is replete with recommendations on “development issues”. It provides a definition of what “development issues” are. Significantly for the negotiations and rule-making within WTO generally, the modalities adopted for trade facilitation provide that developing countries will not be required to implement commitments beyond their implementation capacities for undertaking investments in infrastructure projects and every effort will be made by developed countries to ensure the necessary support and assistance, including provision of investment, to developing countries in implementing the trade facilitation commitments.

In early 2005, three prominent reports were released almost simultaneously (after several years of comprehensive work by and in-depth reflection) with different messages on development issues in the MTS. These are the United Nations Millennium Project (UNMP) Report entitled, “Investing in Development: A Practical Plan to Achieve the Millennium Development Goals, directed by Professor Jeffrey Sachs, released in January; the Report of the Consultative Board of the WTO Director General (Dr. Supachai Panitchpakdi) on “The Future of the WTO: Addressing Institutional Challenges in the New Millennium,” chaired by Mr. Peter Sutherland (former Director General of GATT), released also in January; and the Commission for Africa (Blair Commission) Report entitled “Our Common Interest”, released in March.

**The Sachs Report** on follow up to the Millennium Declaration underscores the development dimension of the MTS. It calls for SDT measures to be more ef-

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<sup>12</sup> See Report of the United Nations Conference on Trade and Development on its Eleventh Session (TD/412, 20 August 2004).



fective and operational which is in line with the ambition of the Doha Declaration. At the same time, it cautions that SDT should be focused (not extensive) and not applied across-the-board to developing countries but to those that need them. The Report proposes a cost/benefit analysis to determine what SDT to grant and to whom on the basis of four factors, namely: (i) market access-related (ii) consistent with development priorities (iii) implementation costs and (iv) relative costs to others of non-implementation. The Report also suggests that concrete technical and financial assistance should be assured, including via mandatory (i.e., binding) commitments integrated into WTO rules *ex ante*. This is further strengthened by the suggestion for an “aid for trade” fund to deal with adjustment costs of liberalisation. But fundamentally, the report suggests implicitly that SDT is a transitional measure that should expire as the world moves towards complete free trade by 2025 with universal enforcement of reciprocity and non-discrimination.

**The Sutherland Report** on the reform of the WTO describes SDT as a threat to non-discrimination and the non-reciprocity principle. It also states that SDT is no longer relevant as its underlying assumptions are no longer valid in the light of the emergence of so-called “advanced” developing countries (thus obviating the need for blanket non-reciprocity coverage), and that discriminatory (non-reciprocal) market access tools like the GSP and other preferences basically have been ineffective but have undermined non-discrimination (leading to a situation in which the norm seems to be “least”, rather than the “most” favoured nation treatment). Thus, the report suggests that SDT should be avoided, even for LDCs as they must undertake a minimum of commitments. It however recognises that liberalisation will make adjustments necessary, and these adjustment costs must be borne by the liberalising system, including being specifically included in new agreements as binding commitments. So there should be no special treatment in trade liberalisation rules, but some adjustment support can be provided to help developing countries meet their obligations.

**The Blair Commission Report** makes a fervent call for development-related provisions and features of the WTO to be made to work better so that the expected development impact can be realised, especially in African countries. In

this regard, the report emphasises the principles of fairer trade including in the WTO. Such goals should include building African capacity to trade; providing assistance with adjustment for trade liberalisation reforms; trade liberalisation reforms should be consistent with poverty reduction and development objectives of countries, rather than on purely mercantilist precepts; making trade preferences actually work, including by providing immediately duty-free and quota-free market access to all exports from low-income sub-Saharan African countries;<sup>13</sup> and making SDT actually work.

## **4.2 Development Issues at Stake in the Lead up to Hong Kong and Beyond**

The journey from Singapore (1996), to Seattle (1999), to Doha (2001), to Cancún (2003) to São Paulo (June 2004) at the UNCTAD XI Conference and to Geneva (July/August 2004 and July 2005) has revealed that while it is important for “development” to be recognised and accepted that it is the *leitmotif* for the Doha work programme, this recognition must be transformed into reality, into tangible results. The August 2004 Decision provides some reassurance that efforts may be expanded to address the “development issues”. It affirms “development” as central to the Doha negotiations. In paragraph 1(d) of the Decision on “Development”, the following “principles” were articulated:

- That development concerns form an integral part of the Doha Ministerial Declaration.
- That Members are rededicated and recommitted to fulfilling the development dimension of the DWP.
- That enhanced market access, balanced rules and well targeted, sustainably financed technical assistance and capacity building programmes can play an important role in the economic development of developing countries and LDCs.

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<sup>13</sup> For an insightful discussion on potential gains from duty-free, quota-free treatment of LDCs and possible mechanism to make such preferences work including suggestions on WTO instruments to making the provision of preferences binding and thus secure and predictable, see Lakshmi Puri, “Towards a new trade “Marshall Plan” for Least Developed Countries: How to deliver on the Doha development promise and help realise the UN Millennium Development Goals” (UNCTAD/DITC/TAB/POV/2005/1).

The Decision then identifies the following five sets of development issues (thus giving them certain priority): (a) SDT (b) Technical Assistance (c) Implementation (d) Other Development Issues, and (e) LDCs. This demarcation of development issues in the Decision provides the most specific categorisation so far in the WTO of such issues. This is significant also because it clarifies the ambiguity that surrounded development issues in the past, when such issues were basically equated with SDT issues. It establishes that development issues in the WTO and the MTS include SDT, implementation and other issues.

The “other development issues” in the Decision bring new progress in the definition of development issues by asserting that “special attention shall be given to the specific trade and development related needs and concerns of developing countries, including capacity constraints” in the ongoing market access negotiations. These include food security, rural development, livelihood, preferences, commodities and net food imports, as well as prior unilateral liberalisation, which should be taken into consideration, as appropriate, in the course of the Agriculture and NAMA negotiations. Under this rubric, specific mention is also made of the need for the fuller integration of small, vulnerable economies into the multilateral trading system, without creating a sub-category of countries.<sup>14</sup>

The notion of “other development issues” codifies the new concept into the development jargon in WTO, namely that development issues should respond to the specific and unique concerns of different developing countries. Members also reached agreement to deal specifically with cotton, within the context of agriculture negotiations, which was an important result.

Broadly, the Decision provides specific deadlines for progress in SDT. It paves the way to addressing effectively and expeditiously (by July 2005) the core development issues of SDT in legally enforceable manner. The Decision also provided for a July 2005 deadline with respect to implementation issues and

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<sup>14</sup> This repeats the mandate in paragraph 35 of the Doha Ministerial Declaration, but in doing so it identifies it as a priority development issue to be tackled.



concerns of developing countries in the negotiations. This a crucial test for the development dimension of the MTS. These issues, it must be recalled, were supposed to have been addressed first in the Doha round before going into market access negotiations. They never were and were continually down-graded. As regards technical assistance, LDCs, trade-related issues for small, vulnerable economies, the Decision makes general exhortations (best endeavour type promises) that basically renew the determination of Members to fulfill the commitments made in the DWP.

The focus on "development" is an encouraging step especially as it can be recalled that in the immediate post-Cancún period, consultations among WTO Members on revitalising the Doha round concentrated on four issues, namely agriculture, NAMA (non-agricultural market access), Singapore issues and cotton. Development issues were not part of these priorities. The fact that development finds expression in the Decision and the July Package and is given significance, provides optimism that addressing those issues may be realistically possible in the period ahead under the DWP.

Such optimism however was yet again undermined by a lack of substantive progress in attaining a harvest of development related issues, particularly SDT provisions in respect of LDCs which many Members felt would be the easiest to address by the time of the July 2005 approximations.<sup>15</sup> This unfortunately recurring state of affairs with development issues is indicative of deep divergences among the proponents and opponents to the issues notwithstanding the mandate in the Doha Ministerial Declaration and the August 2004 Decision. The Report by the Chairman of the WTO Trade Negotiations Committee to the WTO General Council Meeting in July 2005,<sup>16</sup> highlighted the lack of movement on these issues and urged members to transform their commitments on SDT and implementation issues into tangible, concrete and meaningful results in the remaining months to Hong Kong.

<sup>15</sup> For a discussion of the developments in the Doha negotiations between the July 2004 package and the July 2005 approximation, see UNCTAD secretariat note on "Review of developments and issues in the post-Doha work programme of particular concern to developing countries" (TD/B/52/8, 26 August 2005).

<sup>16</sup> WTO, Report by the Chairman of the Trade Negotiations Committee to the General Council (TN/C/5, 28 July 2005).

#### 4.2(a) Special and Differential Treatment

The August 2004 Decision reaffirms that SDT provisions are an integral part of WTO Agreements. It then refers to the SDT work in the WTO mandated by paragraph 44 of the Doha Ministerial Declaration (DMD) to review all SDT with a view to “strengthening them and making them more precise, effective and operational.” Specific work in this connection was delineated under *cross-cutting* issues in paragraph 12.1 of the Decision on Implementation-Related Issues and Concerns read in conjunction with paragraph 12 of the DMD. Such work should:

- (a) make clear recommendations on converting SDT into mandatory provisions (so they could have legal enforceability);
- (b) make clear recommendations on how developing countries, especially LDCs, could be assisted in making best use of SDT provisions; and
- (c) consider how SDT may be incorporated into the architecture of WTO rules. In this respect the DMD<sup>17</sup> takes note of the proposal by a group of developing countries for a Framework Agreement on Special and Differential Treatment (see Box 3).<sup>18</sup>

The DWP thus launched a dual track strategy to rescue SDT. The first track is to operationalise SDT provisions, so that they can be utilised and implemented, by “strengthening them and making them more precise, effective and operational” and by identifying non-binding SDT provisions and converting them into mandatory provisions. The second track is to incorporate SDT into every aspect of the WTO. Such work on SDT is further underscored by the specific commitment in the DMD to reflect fully the principle of SDT for developing countries and LDCs.<sup>19</sup>

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<sup>17</sup> Paragraph 44.

<sup>18</sup> WT/GC/442, 19 September 2001. Proposal by Cuba, Dominican Republic, Honduras, India, Indonesia, Kenya, Malaysia, Pakistan, Sri Lanka, Tanzania, Uganda and Zimbabwe.

<sup>19</sup> “The negotiations and other aspects of the Work Programme shall take fully into account the principle of special and differential treatment for developing countries and least-developed countries embodied in: Part IV of the GATT 1994; the Decision of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries; the Uruguay Round Decision on Measures in Favour of Least-Developed Countries; and all other relevant WTO provisions” (paragraph 50 of the DMD).



Negotiations in the last 3 years and more has witnessed slow and unsatisfactory progress, and if the opportunity provided by the Decision is not seized by all to break the deadlock and achieve some results, the whole issue could be marginalised and imperiled. A lack of progress in meeting expected recommendations and decisions by the time of the July 2005 approximations has heightened such concerns.

Developing countries took up the challenge and submitted some 88 agreement-specific proposals on SDT<sup>20</sup> (see Box 1) and a number of systemic and institutional cross-cutting issues. The proposals tend to:

- (a) propose amendments in the language used in SDT provisions to make them mandatory mainly by replacing in such provisions the terms “should” or “may” with the term “shall” and only where necessary to consider other amendments;
- (b) propose authoritative interpretations of SDT provisions with a view to clarifying them and rendering them more enforceable; or
- (c) propose a number of cross-cutting issues to mainstream SDT into the architecture of the WTO.

The consideration of the operationalisation of agreement-specific SDT provisions was facilitated by the following six-fold typology elaborated by the WTO secretariat:<sup>21</sup>

- (a) provisions aimed at increasing the trade opportunities of developing country Members;
- (b) provisions under which WTO Members should safeguard the interests of developing country Members;
- (c) flexibility of commitments, of action, and use of policy instruments;
- (d) transitional time periods;

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<sup>20</sup> The 88 proposals were made by developing countries, particularly the African Group, aimed at adding economic and development value to SDT provisions.

<sup>21</sup> See Implementation of special and differential treatment provisions in WTO agreements and decisions (WT/COMTD/W/77/Rev.1, 21 September 2001).

<b>Box 1: WTO Agreements Affected by SDT Agreement-Specific Proposals</b>	<b>Number of proposals</b>
GATT 1994 Article XVII:C (2) ; XVIII: XVIII:A; XVIII:B; XXXVI; XXXVII; XXXVIII	8
Enabling Clause (4); paragraph 3(b)	5
Understanding on the Interpretation of Article II.1 (B) of the GATT 1994	1
Understanding on the Interpretation of Article XVII of the GATT 1994	1
Understanding on balance-of-payments provisions of GATT 1994, Paragraph 8.	1
Understanding on the Interpretation of Article XXIV of the GATT 1994	2
Understanding in Respect of Waiver Obligations under the GATT 1994	2
Understanding on the Interpretation of Article XXVIII of the GATT 1994, Paragraph 1	1
Agreement on Agriculture, Article 6.2; Article 14; Article 15.1 ; Article 15.2 (2)	5
Agreement on SPS Measures Article 9.2 (2); 10.1; 10.1 and 10.4; 10.2; 10.3 (2); 10.4	8
Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries	1
Agreement on Textiles and Clothing, Articles 1.2 and 2.18; Articles 2.18 and 6.6.	2
Agreement on TBT, Articles 11 and 12; 12.3	2
Agreement on TRIMs; Article 3; Article 4; Article 5.3	4
Agreement on implementation of Article VI (Anti-Dumping), Article 15	1
Agreement on implementation of Article VII (Customs valuation), Article 20.1-2; Article 20.3	2
Agreement on Pre-shipment Inspection Article 3.3	1
Agreement on Rules of Origin	1
Agreement on Import Licensing Procedures Article 1.2; Article 3.5; Article 3.5(a)(iv); Article 3.5(j)	4
Agreement on Subsidies and Countervailing Measures 3.1(b) and 27.3; Article 27.1 (2); Article 27.4; Article 27.8; Article 27.9; Article 27.13; Article 27.15	8
Agreement on Safeguards Article 9.1-2	1
GATS IV (2); IV.3 (2); V.3; XXV; Annex on Telecommunications paragraph 6	7
TRIPS Agreement; Article 7, 8 and 66.2; 67; 65, 66.1, 70.8 and 70.9.	4
Dispute Settlement Understanding Article 4.10 (2); 8.10; 12.10 (2); 12.11; 21.2; 21.2, 21.7 and 21.8; 24.1; 27.2	10
Decision on Measures in Favour of Least-Developed Countries; Paragraph 1; Paragraph 2; Paragraph 2(ii); Paragraph 2(v)	5
Rules relating to notification procedures	1
<b>Total</b>	<b>88</b>

- (e) technical assistance; and
- (f) provisions relating to least-developed country Members.

In September 2005, at the request of its members, the WTO secretariat elaborated a note summarising the developmental aspects of the Doha negotiations as raised in the various negotiating bodies and working groups.<sup>22</sup> The summary broadly shows that the issues and needs raised on the basis of national, regional and wider development contexts and which would have to be addressed by the negotiations pertain to “the need for longer transition periods, the need for greater flexibilities in national policy making, the need for more technical assistance to address human resources or institutional or administrative constraints, differentiated treatment in complying with certain agreements and exemptions from some WTO obligations.”

The negotiations on agreement-specific proposals and cross-cutting issues became bogged down for a number of reasons, resulting in the initial deadline of July 2002 being missed, as well as the second one of December 2002 and lack of any results at the 5th WTO MC. This created disappointment among developing countries that the focus on development was a fiction.

The negotiations on agreement-specific proposals and cross-cutting issues became bogged down for a number of reasons. This resulted in the initial deadline of July 2002 being missed. The second deadline of December 2002 was also not met. This, coupled with the lack of results at the 5th WTO MC disappointed the developing countries who felt that the focus given to development was mere fiction.

One source of conflict arose from disagreement among Members as to how to achieve the Doha mandate on rendering SDT provisions more operational. This involved the question of whether the SDT review would entail negotiations that changed the existing balance of rights and obligations – developing countries

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<sup>22</sup> WTO secretariat, “Developmental aspects of the Doha Round of negotiations” (WT/COMTD/W/143, 13 September 2005).



generally expressed that it should, while developed countries were opposed. Then questions were raised about the Doha mandate on SDT, such as whether or not it is appropriate to review all SDT provisions within the Committee on Trade and Development (CTD) Special Session (SS) charged with this task, while there were parallel negotiations on agriculture, services and rules for instance.

Developed countries tended to favour that the agreement-specific proposals on SDT be dealt with under the framework of specific negotiating groups whereas developing countries favoured centralisation of negotiations in the CTD-SS. Developing countries expressed concern that dispersing SDT proposals into various negotiating groups would significantly weaken these proposals, and with their limited negotiating capacities they would not be able to participate fully in all the multiplying negotiating groups.

There was also disagreement as to the priority to be placed between agreement-specific proposals and cross-cutting issues. The latter included the principles and objectives of SDT, a single or multi-tiered structure of rights and obligations, coherence, benchmarking, technical assistance and capacity building, transition periods, trade preferences including the Enabling Clause, utilisation of preferences, and universal or differentiated treatment including graduation and related issue of definition of developing countries, as well as a monitoring mechanism.

Developed countries tended to argue that it was important to agree on a coherent vision on especially the principles and objectives of SDT before engaging in negotiations on agreement-specific issues. They argued that the deliberations should proceed first with clarifying the purpose of SDT and other cross-cutting systemic and institutional issues before discussing agreement-specific proposals. This raised the very difficult differentiation debate i.e., tailoring SDT to those developing countries that need them the most and to move away from generalised SDT, and graduate those developing countries that would not need them owing to their competitive trading situation.



Developing countries, in contrast, tended to favour the resolution of agreement-specific considerations first rather than engaging in a debate on principles which in any case are already well established in Part IV of the GATT and the Enabling Clause. Developing countries were also resistant to the notion of differentiation and graduation in relation to beneficiaries of SDT provisions, and definition of developing countries.

Another concern relates to the monitoring mechanism on SDT proposed by developing countries, especially African countries.<sup>23</sup> The proposal was the establishment of an SDT Monitoring Body under the Committee on Trade and Development, possibly as a sub-committee, to monitor the implementation of and compliance with SDT provisions, facilitate cooperation among Members on SDT, and advise the CTD. The proposal was accepted by WTO Members and in July 2002 the General Council agreed to its establishment. However, disagreement arose on the functions and structure of the monitoring mechanism, and on the institutional structure and the timing of its entry into force.

Difficult issues included the membership of the Mechanism (opened-ended or selective); and whether the monitoring should be carried out in the regular sessions of the CTD, or by the CTD in sessions dedicated exclusively to the issue, or should a Sub-Committee of the CTD be established for this purpose. As regards the entry into force of the Mechanism, some (mostly developed) members considered that the Mechanism should come into force immediately. Other (mostly developing) members expressed that the first task is to strengthen SDT provision prior to defining the modalities of operation of the Mechanism and deciding when it should come into force. In light of such difficulties and the apparent transformation of the sense of the original proposal, the initiative appeared no longer a priority of the African countries that had initially proposed it.

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<sup>23</sup> See African Group proposal on Monitoring mechanism for Special and Differential (S&D) Treatment Provisions in WTO document TN/CTD/W/23, 11 December 2002.

In order to de-block the SDT logjam in the lead up to the Cancún MC, the WTO General Council Chairman<sup>24</sup> was mandated to undertake consultations to carry forward the negotiations. On 7 April 2003, the Chairman came up with a proposal on “an approach for S&DT” in relation to agreement-specific proposals built on two premises.<sup>25</sup> First, all 88 agreement-specific proposals will be addressed, but without prejudice to the outcome of the consultations. Second, for the purposes of his consultation, the Chairman circulated a classification of the 88 proposals in three categories. While the categorisation was informal for the purposes of consultations with a view to de-blocking the negotiations, the three categories (see Box 2 for a list of these proposals) have become accepted as the basis on which to conduct further negotiations and are referred to in the Decision:

- Category I includes 38 proposals which were basically agreeable to Members in principle or for which agreement was reachable in the Chairman’s opinion. These included 12 contained in Annex III of WTO document TN/CTD/7 (10 February 2003) on which agreement had been reached in principle by Members, and a further two agreed upon by Members in May 2003. The remaining 24 proposals were also those which Members could possibly reach agreement on. These issues were to be fast tracked for adoption at the Cancún MC.
- Category II includes 38 proposals which (a) fall within and thus overlap with an existing negotiation mandate (such as on agriculture, services and rules including dispute settlement), or (b) fall within the ongoing work of existing bodies (SPS, TRIMs, safeguard, TRIPS). The issues were referred back to the WTO body with the instruction to report on progress attained at the MC, including indications of areas in which an “early harvest” could be attained.
- Category III includes 12 proposals which, in the Chairman’s assessment, existed a wide divergence of views among Members and thus progress might not be possible without a re-drafting of the proposals.

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<sup>24</sup> Ambassador Perez del Castillo.

<sup>25</sup> WTO document JOB(03)/68.

At Cancún, Annex C on Special and Differential Treatment of the Derbez Text<sup>26</sup> identified 28 proposals from among the SDT proposals for endorsement by the MC (although the developing countries proponents of SDT have consistently argued for treating all 88 proposals as a package). These included all the 14 proposals in Category I on which agreement has been reached in principle by Members (text as transmitted by General Council Chairman) and 14 others from among the remaining 24 proposals in Category I, on which some re-drafting of the text from the original had been done at Cancún. The Derbez Text proposals covered 28 proposals under Category I proposals<sup>27</sup> and one proposal from Category II.<sup>28</sup> The remaining 10 agreement-specific proposals in Category I not included in the Derbez Text relate to proposals 13-14, 22-25, 28-20 and 38 (see Box 2).

The August 2004 Decision instructs an expeditious treatment of SDT by the concerned WTO organs. It firstly instructs the WTO Committee on Trade and Development (CTD) in Special Session (SS) to undertake the following:

- (a) Expeditiously complete the review of all outstanding agreement-specific proposals and to report back to the WTO General Council with clear recommendations for a decision by July 2005 – since there was no agreement to harvest the 28 agreement-specific proposals in Category I that had been agreed upon in principle as contained in the Derbez Text, and there was no reference to them in the Decision. Likewise, Category III issues are not mentioned in the Decision but they would have to be taken up as well.
- (b) Within the parameters of the Doha mandate, to address all other outstanding work, including on the cross-cutting issues, the monitoring mechanism and the incorporation of SDT into the architecture of WTO rules and report, as appropriate, to the General Council.

<sup>26</sup> JOB(03)/150/Rev.2, 13 September 2003, Second Revision.

<sup>27</sup> With one proposal, i.e., GATT 1994 Article XVII:C, responding to 2 proposals on this agreement under Category I, i.e., proposals 16 and 17.

<sup>28</sup> TRIPS Agreement – Article 70.9 (which reflects proposal No.75 under Category II).



The Decision, secondly, instructs WTO bodies to which proposals in Category II have been referred, to expeditiously complete the consideration of these proposals and report to the General Council with clear recommendations for a decision, "as soon as possible and no later than July 2005".

In all three areas of the Decision identified for action, it was apparent by July 2005 that no concrete progress had been achieved despite some serious work that was undertaken. The set deadlines were once again missed.

In fact, following the Decision, the Chairman of the WTO CTD-SS consulted members and in December 2004, submitted informal suggestions for an approach to future work on SDT taking up remaining agreement-specific proposals on the one hand, and remaining cross-cutting issues on the other. Vis-à-vis the agreements specific proposals, suggestions were for them to be redrafted or merged with other similar proposals based on a concept of SDT with three legs namely (a) effective market access (b) enhanced (or additional) flexibilities in WTO rules, consistent with the multilateral rules-based trading system, made available to members in need of them with no a priori exclusion of any developing countries (hence the term "situational flexibility") and (c) enhanced capacity building programmes to implement WTO rules and develop supply capacities.

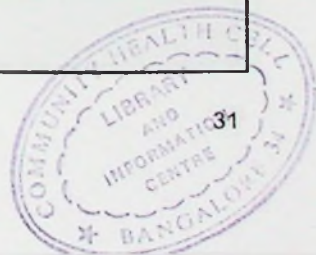
While the first and third legs are standard concerns that all members agree must be addressed, the second leg is somewhat controversial as it falls into the realm of cross-cutting issues especially regarding the principles and purposes of SDT and who should benefit. The concept is one of making available additional flexibilities in WTO rules to developing countries on a basis, to be determined, linked to their specific development situation, i.e., situational basis. Any remaining cross-cutting issues not already addressed was proposed to be taken up under four themes relating to enhanced flexibility in WTO rules, the Monitoring Mechanism, enhanced capacity building, and coherence of policy making and implementation.



**Box 2. List of 88 Agreement-Specific Proposals by Categories**  
*(Derbez Text proposals are shaded)*

Category I (38)	Category II (38)	Category III (12)
<b>12 proposals contained in Annex III of document TN/CTD/7 (10 February 2003) on which agreement has been reached</b>	<b>2.1. Proposals made in areas on which mandated negotiations are ongoing (27)</b>	77. Understanding on the Interpretation of Article II.(B) of the GATT 1994 (Proposal by the African Group –TN/CTD/W/3/Rev.2)
1. GATS Article IV.3	39. Understanding on the Interpretation of Article XXIV of the GATT 1994 (Proposal by the African Group –TN/CTD/W/3/Rev.2).	78. Understanding on the Interpretation of Article XXVIII of the GATT 1994 – Paragraph 1 (Proposal by the African Group – TN/CTD/W/3/Rev.2 )
2. GATS Article XXV	40. Understanding on the Interpretation of Article XXIV of the GATT 1994 (Proposal by the LDCs – TN/CTD/W/4/Add.1)	79. Agreement on the Application of SPS – Article 10.2 (Proposal by India – TN/CTD/W/6)
3. TRIPS Article 67	41. Agreement on Agriculture Article 6.2 (Proposal by the African Group – TN/CTD/W/3/Rev.2)	80. Agreement on Textiles and Clothing - Articles 1.2 and 2.18 (Proposal by the LDCs – TN/CTD/W/4/Add.1): <b>Note: The proposal has become irrelevant in the light of the termination of the ATC in December 2004.</b>
4. Enabling Clause	42. Agreement on Agriculture Article 14 (Proposal by the African Group – TN/CTD/W/3/Rev.2)	81. Agreement on Textiles and Clothing – Articles 2.18 and 6.6 (Proposal by the African Group –TN/CTD/W/3/Rev.2): <b>Note: The proposal has become irrelevant in the light of the termination of the ATC in December 2004.</b>

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5. GATS Article IV	43. Agreement on Agriculture Article 15.1 (Proposal by the African Group – TN/CTD/W/3/Rev.2)	82. Agreement on TBT – Articles 11 and 12 (Proposal by the African Group – TN/CTD/W/3/Rev.2)
6. GATS Annex on Telecommunications, paragraph 6	44. Agreement on Agriculture Article 15.2 (Proposal by the African Group – TN/CTD/W/3/Rev.2)	83. Agreement on TBT - Article 12.3 (Proposal by Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Kenya, Mauritius, Pakistan, Sri Lanka, Tanzania and Zimbabwe – TN/CTD/W/2)
7. Rules relating to notification procedures	45. Agreement on Implementation of Article VI of the GATT 1994 – Article 15 (Proposal by the African Group – TN/CTD/W/3/Rev.2)	84. Agreement on TRIMs – Whole Agreement (Proposal by the LDCs – TN/CTD/W4)
8. Understanding on rules and procedures governing the settlement of disputes, Article 8.10	46. Agreement on Subsidies and Countervailing Measures Articles 3.1(b) and 27.3 (Proposal by the LDCs – TN/CTD/W/4)	85. Agreement on TRIMs – Article 3 (Proposal by the African Group – TN/CTD/W/3/Rev.2)
9. Agreement on rules of origin	47. Agreement on Subsidies and Countervailing Measures Article 27.1 (Proposal by the African Group – TN/CTD/W/3/Rev.2)	86. Agreement on the Implementation of Article VII of GATT 1994 – Article 20.1-2 (Proposal by the African Group – TN/CTD/W/3/Rev.2)
10. Decision on Measures in Favour of Least-Developed Countries, Paragraph 2(v)	48. Agreement on Subsidies and Countervailing Measures Article 27.1 (Proposal by Cuba, Dominican Republic, Honduras, India, Indonesia, Kenya, Pakistan, Sri Lanka, Tanzania and Zimbabwe – TN/CTD/W/1)	87. Agreement on the Implementation of Article VII of GATT 1994 – Article 20.3 (Proposal by the African Group – TN/CTD/W/3/Rev.2)

11. Agreement on Agriculture, Article 15.2	49. ASCM Article 27.4 (Proposal by the African Group – TN/CTD/W/3/Rev.2 )	88. Decision on Measures in Favour of Least-Developed Countries – Paragraph 1 (Proposal by the African Group – TN/CTD/W/3/Rev.2).
12. Understanding on balance-of payments provisions of GATT 1994, Paragraph 8	50. ASCM Article 27.8 (Proposal by the African Group – TN/CTD/W/3/Rev.2)	
<b>2 agreed upon in principle by Members in May 2003</b>	51. ASCM Article 27.9 (Proposal by the African Group – TN/CTD/W/3/Rev.2 )	
19. GATT 1994 Article XXXVII (African Group)	52. ASCM Article 27.13 (Proposal by the African Group – TN/CTD/W/3/Rev.2 )	
20. GATT 1994, Article XXXVIII (African Group)	53. ASCM Article 27.15 (Proposal by the African Group – TN/CTD/W/3/Rev.2	
<b>Remaining 24 proposals on which agreement is reachable</b>	54. GATS Article IV (Proposal by the African Group – TN/CTD/W/3/Rev.2)	
13. GATT 1994 Article XVIII (African Group – TN/CTD/W/3/Rev.2)	55. GATS Article IV.3 (Proposal by the LDCs – TN/CTD/W/4/Add.1)	
14. GATT 1994 Article XVIII: A (African Group – TN/CTD/W/3/Rev.2)	56. GATS Article V.3 (Proposal by the African Group – TN/CTD/W/3/Rev.2)	
15. GATT 1994 Article XVIII: B (African Group – TN/CTD/W/3/Rev.2)	57. Understanding on Rules and Procedures Governing the Settlement of Disputes Article 4.10 (Proposal by India – TN/CTD/W/6)	
16. GATT 1994 Article XVII: C (Saint Lucia –TN/CTD/W/8)	58. DSU Article 4.10 (Proposal by the African Group – TN/CTD/W/3/Rev.2)	



17. GATT 1994 Article XVII:C (LDCs – TN/CTD/W/4/Add.1)	59. DSU Article 12.10 (Proposal by Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Kenya, Mauritius, Pakistan, Sri Lanka, Tanzania and Zimbabwe –TN/CTD/W/2)	
18. GATT 1994 Article XXXVI (African Group – TN/CTD/W/3/Rev.2)	60. DSU Article 12.10 (Proposal by the African Group –TN/CTD/W/3/Rev.2)	
21. Understanding on the Interpretation of Article XVII of the GATT 1994 (African Group – TN/CTD/W/3/Rev.2)	61. DSU Article 12.11 (Proposal by the African Group – TN/CTD/W/3/Rev.2)	
22. Understanding in Respect of Waiver Obligations under the GATT 1994 (African Group – TN/CTD/W/3/Rev.2)	62. DSU Article 21.2 (Proposal by India – TN/CTD/W/6)	
23. Understanding in Respect of Waiver Obligations under the GATT 1994 (LDCs –TN/CTD/W/4/Add.1)	63. DSU Articles 21.2, 21.7 and 21.8 (Proposal by the African Group – TN/CTD/W/3/Rev.2)	
24. Agreement on the Application of SPS Measures, Article 10.3 (Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Kenya, Mauritius, Pakistan, Sri Lanka, Tanzania, Zimbabwe– TN/CTD/W/2)	64. DSU Article 24.1 (Proposal by the African Group – TN/CTD/W/3/Rev.2 )	
25. Agreement on the Application of SPS Measures, Article 10.3 (African Group – TN/CTD/W/3/Rev.2)	65. DSU Article 27.2 (Proposal by the African Group – TN/CTD/W/3/Rev.2)	



26. Agreement on Pre-shipment Inspection, Article 3.3 (African Group – TN/CTD/W/3/Rev.2)	2.2. Proposals made in areas which are being considered by other WTO bodies as a part of their ongoing work programme (11)	
27. Agreement on Import-Licensing Procedures, Article 1.2 (African Group – TN/CTD/W/3/Rev.2)	66. Agreement on the Application of SPS Measures Article 9.2 (Proposal by Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Kenya, Mauritius, Pakistan, Sri Lanka, Tanzania and Zimbabwe – TN/CTD/W/2)	
28. Agreement on Import-Licensing Procedures, Article 3.5 (African Group – TN/CTD/W/3/Rev.2)	67. Agreement on the Application of SPS Measures, Article 9.2 (Proposal by the African Group – TN/CTD/W/3/Rev.2 )	
29. Agreement on Import-Licensing Procedures, Article 3.5(a)(iv) (Thailand – TN/CTD/W/7)	68. Agreement on the Application of SPS Measures, Article 10.1 (Proposal by Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Kenya, Mauritius, Pakistan, Sri Lanka, Tanzania and Zimbabwe – TN/CTD/W/2)	
30. Agreement on Import-Licensing Procedures, Article 3.5(j) (India – TN/CTD/W/6)	69. Agreement on the Application of SPS Measures, Article 10.1 and 10.4 (Proposal by the African Group – TN/CTD/W/3/Rev.2)	
31. Agreement on TRIPS, Articles 7, 8 and 66.2 (African Group – TN/CTD/W/3/Rev.2)	70. Agreement on the Application of SPS Measures, Article 10.4 (Proposal by India – TN/CTD/W/6)	
32. Decision on Measures in Favour of Least-Developed Countries, Paragraph 2 (African Group – TN/CTD/W/3/Rev.2)	71. Agreement on TRIMS, Article 4 (Proposal by the African Group – TN/CTD/W/3/Rev.2)	

33. Decision on Measures in Favour of Least-Developed Countries, Paragraph 2(ii) (LDCs – TN/CTD/W/4)	72. Agreement on TRIMs, Article 5.3 (Proposal by the African Group – TN/CTD/W/3/Rev.2)	
34. Decision on Measures in Favour of Least-Developed Countries – Market Opportunities (LDCs – 30 January 2003 non-paper)	73. Agreement of Safeguards Article 9.1-2 (Proposal by the African Group – TN/CTD/W/3/Rev.2)	
35. Enabling Clause, Paragraphs 1 and 2(d) (LDCs – TN/CTD/W/4/Add.1)	74. Agreement on TRIPS (Proposal by the LDCs – TN/CTD/W/4/Add.1)	
36. Enabling Clause, paragraph 3(b) (LDCs – TN/CTD/W/4/Add.1)	75. Agreement on TRIPS, Articles 65, 66.1, 70.8 and 70.9 (Proposal by the African Group – TN/CTD/W/3/Rev.2)	
37. Enabling Clause (African Group – TN/CTD/W/3/Rev.2)	76. Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries (Proposal by the African Group – TN/CTD/W/3/Rev.2)	
38. Enabling Clause (LDCs – TN/CTD/W/4/Add.1)		

The elements of the proposed conceptual approach were discussed but not agreed upon by members. Instead, members agreed to take up the agreement-specific proposals with priority placed on the outstanding proposals of LDCs. Members have since been discussing, negotiating and possibly re-drafting five proposals on LDCs namely proposals 23 (WTO waiver), 36 (Enabling Clause on erosion of preferences), 38 (Enabling Clause (flexibility for LDCs), 84 (TRIMs Agreement on exemption of LDCs from its disciplines), and 88 (Decision on Measures in Favour of LDCs that exempts them from any commitments that are prejudicial to their interests). A key consideration for LDCs in these negotiations is the extent of re-drafting of the original proposals that would be acceptable without deviating from its original intent and the Doha mandate.

What can be the way forward in implementing this commitment? The point of reference that should continue to guide work on SDT is paragraph 44 of the DMD and paragraph 12 of the Doha Decision on Implementation-Related Issues and Concerns which also gives the CTD the mandate of accomplishing all work on SDT. The August Decision underlines these mandates. On the outstanding agreement-specific proposals, it is important that the Chairman of the CTD-SS engages in informal consultations with a view to bridging the differences among members, working towards tangible proposals that are commercially and developmentally meaningful to LDCs and developing countries. These are the proposals which are still pending in Category I and those in Category III. It should be recalled that when proposals were divided into three broad categories in April 2003, it was on the understanding that this approach did not in anyway imply that certain proposals were being prioritised since all the proposals would be addressed by the membership. Key strategies on the way forward include the following:

- (a) Examine carefully the 88 agreement-specific proposals including in each of the three categories to ascertain which are of greater value (commercially meaningful and development supportive) i.e., some prioritisation may be necessary. In actual fact, the total number of agreement-specific proposals is now **86** as two of them (in Category III) relating to the Agreement on Textiles and Clothing have become irrelevant with the termina-



tion of this agreement in December 2004. This will entail work leading to recommendations on Category I and III proposals in the CTD-SS and on Category II issues in various WTO bodies. The CTD-SS has agreed to priority consideration of outstanding proposals by LDCs. An harvest of these proposals by July 2005 was anticipated but did not take place. It is now a prerequisite for any movement in the SDT debate that the LDCs' related proposals be harvested by the 6th WTO MC as a minimum step forward, and harvested with their original purpose maintained.

- (b) Given that the CTD-SS is where the negotiations on SDT are focused, progress on resolving differences among Members could be more expeditiously addressed in this body. Category I proposals should be resolved on a fast track basis. Many of them are procedural proposals providing further clarity or reiterating the legal applicability of the SDT provisions concerned. To begin with, the 28 proposals in the Derbez Text that have been agreed upon by Members in principle could be simply recommended by the CTD-SS, without further discussion, to the General Council for adoption. Thus, the CTD-SS would prioritise consideration of the remaining 10 Category I proposals to resolve remaining difficulties. The CTD-SS, as stated, is already working on the proposals made by LDCs. With progress in resolving Category I, some momentum may be created for the CTD-SS to take up the now 10 Category III proposals on which there are major differences among Members to be resolved.
- (c) At the same time, Members in the different WTO bodies to which the 38 Category II proposals have been referred should prioritise the consideration of these proposals in keeping with the instruction to propose clear recommendations as soon as possible and no later than July 2005. Since the latter deadline was missed, such proposals should now be a minimum requirement of the outcome of the 6th MC. This Category has two types of proposals, namely 27 proposals made in areas on which mandated negotiations are ongoing specifically over five agreements namely the Understanding on GATT Article XXIV, Understanding on Dispute Settlement, Agreement on Agriculture, Agreement on Subsidies and Countervailing

Measures, and GATS Article IV and V; and 11 proposals made in areas which are being considered by WTO bodies as part of their ongoing work programme, specifically covering five agreements namely the Agreement on SPS Measures, Agreement on TRIMs, Agreement on Safeguards, Agreement on TRIPS and the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries (see Box 2). The concerned negotiating groups and WTO bodies should fast track the consideration of these proposals. Regarding these proposals, many developing countries have stated that the CTD-SS maintains a supervisory role since it is the body mandated to deal with SDT. The Chairperson of CTD-SS and the Chairpersons of the relevant bodies need to coordinate closely to ensure:

- i. The meetings of these bodies do not overlap so as to enable full and effective participation of developing countries in these discussions. This is a concern that has been raised in the past and it is also addressed in the July Package in the paragraph concerning SDT.
- ii. The CTD-SS is kept informed of the progress being made in the respective WTO Bodies so that all agreement-specific proposals could be treated as a single package. Where progress is slow in the WTO body concerned, the CTD-SS could take up the proposals for expeditious resolution.
- iii. Or alternatively, for the other bodies to relinquish the consideration of the proposals to the CTD-SS to centrally discuss, negotiate and reach agreement on all outstanding agreement-specific proposals.

As regards all *other* outstanding work, which mainly pertains to cross-cutting issues, the CTD-SS is instructed to address them and report, as appropriate, to the General Council. No deadline is set here, but as an indicative measure, concrete progress is needed by the 6th WTO MC. It may be strategically wise to focus negotiating energy on resolving the agreement-specific proposals and then proceed to consider in-depth the cross-cutting issues in the period immediately thereafter. The possible results attained in the agreement-specific proposals may provide stimulus to and facilitate consensus on cross-cutting issues. The con-

sideration of cross-cutting issues in the CTD-SS could be structured so as to make recommendations in advance of the 6th MC, and for the MC to set up timelines to resolve these issues in 2006. Otherwise, the somewhat weak injunction to report, as appropriate, to the General Council would leave it an open matter and subject it to further delays (as there is no reporting deadline).

A number of developing countries had proposed during the preparatory process for the Doha MC a “Framework Agreement on Special and Differential Treatment”. This also relates to a proposal by LDCs for a framework for strengthening and improving SDT.<sup>29</sup> The proposed framework agreement provides a succinct and comprehensive case for an umbrella agreement on SDT to provide a level playing field for unequal partners in the MTS (see Box 3). This proposal can be taken up as the basis for the elaboration of an approach to incorporating SDT into the architecture of the WTO and providing the overarching instrument for addressing cross-cutting issues.

The preambular portion of a framework agreement on SDT would establish the “principles and objectives of SDT”, drawing also upon the principles identified in the August Decision, the *acquis* from Part IV of GATT and the Enabling Clause, and other SDT provisions within specific agreements concerning agriculture, NAMA and services; and addressing other systemic issues such as a “single or multi-tiered structure of rights and obligations”, “coherence”, “benchmarking”, and “universal or differentiated treatment including graduation and related issue of definition of developing countries”.

Broadly, there is need to re-think and re-posit the case for SDT within the context of the work on integration of SDT into the architecture of the WTO and MTS. The crux is to change the perception, especially among developed countries’ trade negotiators, of viewing SDT from the short term perspective of static gain and losses, as transitional measures, towards a long term vision of attaining global prosperity for all in which SDT is an essential component of national and international trade policy. Also as part of this reflection for developing

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<sup>29</sup> See WTO document TN/CTD/W/4, 24 May 2002.



countries, it is important to secure more, better and implementable SDT i.e., SDT that works and can be made to work effectively. It is equally important for them to internalise these provisions into their national trade and development strategies. Only then could they make effective use of the SDT provisions – otherwise these measures will remain an empty safety net. For example, the liberalisation process can be calibrated to be commensurate with the SDT provisions in agriculture, NAMA and services.

The Chairman of the CTD-SS articulated his views in an article in Bridges<sup>30</sup> on an approach to addressing SDT issues that is anchored on the premise of de-blocking the intellectual quagmire regarding the role of SDT, and at the same time addressing the agreement-specific proposals. He has done so by highlighting the essential elements of development as incorporating SDT and other issues that can work to provide fair trade, capacity building that addresses supply-side matters, balanced rules, and global governance in the WTO that permits transparency and includes all parties. Such a process of debate and discussion on the *raison d'être* of SDT and development issues is important and needs to continue as agreement-specific proposals are prioritised and dealt with.

The operative portion of a framework agreement on SDT could cater for specific issues like “technical assistance and capacity building”, “transition periods,” trade preferences and the monitoring mechanism. For example:

- (a) Technical assistance should go beyond what the WTO is currently providing on implementing WTO rules, to developing capacities in developing countries and LDCs to negotiate trade agreements, to implementing and complying with the resultant agreements, and to overcoming supply-side constraints and developing competitiveness to take advantage of new trading opportunities created;

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<sup>30</sup> Faizel Ismail, “Evaluating the July Package from a Development Package” in Bridges Year 8 No. 9 October 2004.

### **Box 3. Proposal for a Framework Agreement on Special and Differential Treatment**

The concept of special and differential treatment is a fundamental building block of the multilateral trading system. Special and differential treatment provisions are to be looked at not as exceptions to the general rules but more importantly as an integral and inherent objective of the multilateral trading system. It is imperative to undertake a thorough review of the concept of S&D as its basic objective is to create a level playing field for unequal players in the Multilateral Trading System. This should be seen in the establishment of a concrete and binding S&D regime which is responsive to the development needs of developing countries. There is an urgent need for such S&D regime, which mainly focuses on enhancing market access opportunities (for developing countries) and provides policy options aimed at unlocking their growth and development potential. The system and the rules should ensure equal participation by, and equal benefits to all. In the immediate/short term, all the existing S&D provisions in various WTO agreements should be fully operationalised/implemented. The implementation should go beyond technicalities and include operationalisation of provisions that presently lack operational modalities. In the medium term, the agreements should be suitably amended in the light of the experience by the developing countries that these provisions fall short of providing necessary flexibility to pursue appropriate policies and facilitate economic development in the developing countries. The WTO must demonstrate sensitivity to developmental objectives of majority of its Membership to sustain credibility.

Some of the elements which can form part of the Agreement on S&D could be as follows:

- Special and differential treatment shall be mandatory and legally binding through the dispute settlement system of the WTO (including notification requirements and inclusion of these commitments in country schedules).

- In any future agreement that the Members may agree on, there shall be an evaluation of the development dimension. This evaluation should include the fact as to how these agreements facilitate attainment of developmental targets (e.g. as set out in the Millennium Declaration).
- The Members shall undertake an evaluation of the implications of any future agreement, with respect to implementation costs in terms of financial, capacity building and technical assistance, etc.
- The transition periods shall be linked to objective economic (debt level, level of industrial development, human development index, etc.) and social (literacy and life expectancy) criteria.
- Without an evaluation of the fact whether an Industrial Policy has a demonstrable adverse impact on trade, there shall be no prohibition of policies which promote growth and development in developing countries.
- The application of the concept of Single Undertaking for developing countries should not be automatic.

**Source:** WT/GC/W/442, 19 September 2001.

- (b) Transition periods should be based on objective criteria (and not be arbitrarily set) and for an adequate period, with the option of extending such period upon notification to WTO Members.
- (c) Trade preferences can be enhanced and their utilisation by beneficiaries improved by addressing issues like improving rules of origin, strengthening their predictability, and development assistance provided to assist preference-beneficiaries in carrying out medium to long-term reforms to enhance competitiveness of products and market diversification.
- (d) Develop terms of reference for the monitoring mechanism to monitor the implementation of and compliance with SDT provisions, and also drawing upon reports that all other WTO bodies would be required to provide on the operation of SDT provisions, and make recommendations thereon



as appropriate for consideration by the CTD, the General Council and Ministerial Conferences with a view to ensuring effective utilisation by beneficiaries.

Beyond these issues specific on SDT negotiations, there is the SDT to be incorporated in the substantive negotiations on agriculture, NAMA, services, trade facilitation, and rules including on regional trade agreements. As regards services for example, some developing countries had submitted proposals on “increasing participation of developing countries in international trade in services: Effective implementation of Article IV of GATS”.<sup>31</sup> It would require addressing both the positive and defensive interests of developing countries. On the positive side, there is need to substantially progress in market access and entry conditions for exports from developing countries. On the defensive side, this requires incorporating SDT and preserving appropriate space for development policies.

In preparation for the 6th WTO MC, a number of developing country groups have met and adopted their common positions on the issues on the Doha negotiations. Box 4 below presents those positions taken as regards SDT, which basically underscore the importance of the issues to developing countries and for the Doha ambition on SDT and other development issues to be concretely and expeditiously implemented.

#### **4.2(b) Technical Assistance**

The August 2004 Decision provides that developing countries, particularly LDCs (and low-income countries in transition), should be provided with enhanced trade-related technical assistance (TRTA) and capacity building. In this context, improved coordination by WTO with other agencies is encouraged, including under the Integrated Framework (IF) for LDCs<sup>32</sup> and Joint ITC/

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<sup>31</sup> S/CSS/W/131, 6 December 2001. It argues that GATS Article IV is an integral and important aspect of SDT and its effective implementation needs to be realised including through actions prior to and during market access negotiations and other actions.

<sup>32</sup> For details, see <http://www.integratedframework.org/>

**Box 4. Developing Country Recent Ministerial statements on SDT**

<b>Africa Union Trade Ministers, Cairo, Egypt, 5-9 June 2005</b>	<b>Second South Summit, Doha Plan of Action, Doha Qatar, 12-16 June 2005</b>	<b>Fourth LDC's Trade Ministers, Livingstone, Zambia, 25-26 June 2005</b>
<p>"As a cross-cutting issue, development has to be explicitly incorporated in all areas of the negotiations. In this regard: (a) urgent attention must be given to completing the review of all outstanding S&amp;D Agreement specific proposals before adoption. implementation related issues and concerns and the amendment of the TRIPS Agreement to incorporate the 30th August 2003 Decision on the Implementation of Paragraph 6 of the declaration on TRIPS and Public Health."</p>	<p>"...to achieve the fullest realisation of the development mandate of the Doha Ministerial Declaration and the WTO General Council decision of August 1, 2004 in all areas of the Doha Work Programme particularly in agriculture, non-agricultural market access, services, trade related intellectual property system (TRIPS), rules as well as operational and meaningful special and differential treatment for developing countries and to adopt practical and concrete solutions to the outstanding implementation related issues and concerns raised by developing countries..."</p>	<p>"The full implementation of the provisions of Special and differential treatment, and to make them more precise, effective and operational; and adoption of new special and differential measures to take into account problems encountered by LDCs and address meaningfully the special and differential proposals of LDCs..."</p>

UNCTAD/WTO Integrated Technical Assistant Programme (JITAP) for Selected Least Developed and Other African Countries.<sup>33</sup>

Key strategies on the way forward include the provision of enhanced TRTA which means on the one hand, increased funding of the WTO DDA Global Trust Fund in the WTO to fund increased TRTA. However, WTO TRTA is focused on explaining the WTO Agreements for facilitating their implementation by Members, and for servicing issues under negotiations. These relate to the "softer" end of TRTA, basically trade rules and their implementation. For

<sup>33</sup> For details, see <http://www.jitap.org/>

developing countries, this type of assistance must be coupled with the “deeper” end of TRTA aimed at addressing development issues, building sustainable negotiating capacities, and improving supply and competitiveness including infrastructure building. This type of assistance can only be provided by development agencies, like UNCTAD, ITC, UNIDO, FAO, and World Bank, as well as non-governmental agencies like the South Centre and Third World Network. Thus, the other side of this commitment in the Decision is for donor countries and agencies to increase funding of TRTA of these development agencies to assist developing countries integrate beneficially into the MTS.

Improved funding of IF and JITAP is important so as to deepen the assistance provided, develop sustainable endogenous capacities and to expand the number of beneficiaries. Indeed as the IF is focused on LDCs and JITAP on African countries, there is the need to not only to increase the beneficiaries of these two programmes within the selected group of countries but also to widen them to other developing countries that are increasingly requesting deeper capacity building assistance.

The JITAP in particular has made important contributions to developing human, institutional and trade policy-making capacities of the 16 beneficiary Africa countries. It has evolved innovative TRTA concepts and applied them in the field with success such as inter-institutional committees on the WTO as the national bodies entrusted with the task of assessing trade agreements, developing negotiating positions, engaging stakeholder consultations on trade matters, informing the general public about the agreements, and developing a cadre of expertise on multilateral trade. However it is under-funded vis-à-vis the needs and demands of the current and future beneficiaries and deserves to be substantially strengthened. The UNDP Human Development Report 2005 notes in respect of TRTA projects that some of the more effective ones, like JITAP, are chronically under-funded.<sup>34</sup>

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<sup>34</sup> UNDP, Human Development Report 2005, “International cooperation at a crossroads: Aid, trade and security in an unequal world” (Box 4.10).



#### 4.2(c) Implementation

Regarding Implementation-related concerns, it can be recalled that unsatisfactory treatment of such issues (some 100 issues) in the run-up to the Seattle MC (1999) was a key factor in the failure of that conference. They affect 11 clusters namely GATT 1994, Agreement on Agriculture, Agreement on the Application of Sanitary and Phytosanitary Measures, Agreement on Technical Barriers to Trade, Agreement on Trade-Related Investment Measures, Agreement on Implementation of Article VI of the GATT 1994, Agreement on Implementation of Article VII of GATT 1994, Agreement on Rules of Origin, Agreement on Subsidies and Countervailing Measures, Agreement on Trade-Related Aspects of Intellectual Property Rights, and Cross-cutting issues (SDT, trade preferences). The issues and concerns broadly relate to:

- (a) difficulties encountered by developing countries in implementing (coping with) their obligations under WTO Agreements, including in meeting the costs of implementation ranging from notification related issues to setting up institutional and administrative arrangements including judicial ones such as for the TRIPS Agreement;<sup>35</sup>
- (b) implementation, or lack thereof, of commitments by other (mainly developed) countries, of provisions in favour of developing countries; and
- (c) the issue of the effective operationalisation of SDT, as discussed previously.

Thus, at the MC in Doha (2001), implementation issues and concerns were given top priority in the DWP. Implementation issues were listed as the first element of work in the DWP<sup>36</sup> that was adopted. Further, a Ministerial Decision

<sup>35</sup> Meeting implementation requirements of WTO Agreements is one aspect of the necessary adjustments that countries have to make. Another aspect of adjustment relate to the real side of the economy, e.g., changes in trade, output and employment. This will derive from the changes in MFN tariffs, domestic support and export subsidies, as well as areas such as in trade facilitation, and new rules in services, where it is harder to make estimates. Such experiences suggest, and as borne out in the modalities adopted for Trade Facilitation, that the costs of implementation of any new WTO agreements needs to be factored into that agreement based on an assessment of what has to be done, how long it will take, who will do it, how it will be done, and who will pay while bearing in mind that these costs will vary as between agreements and between WTO Members.

<sup>36</sup> Paragraph 12, DMD.

on Implementation-Related Issues and Concerns was adopted to address some of the specific issues. Such prioritisation was thus part of the overall balance achieved at Doha in terms of addressing developing countries' primary concerns while a new and comprehensive round of negotiations was launched. The Ministerial Decision on Implementation-Related Issues and Concerns addressed some 42 implementation issues from among the 100 issues, including on operationalisation of SDT, mostly with immediate effect and others with a set deadline that generally was the end of 2002.

As regards the issues to be resolved within the set timeframe such as SDT, many of them were not met and thus become outstanding and remain to be addressed. Also, with the gradual implementation of the WTO Agreements, some of the issues such as those related to the Agreement on Textiles and Clothing have lost relevance and therefore obsolete as the Agreement expired at the end of 2004.

Regarding the outstanding implementation issues<sup>37</sup> (some 58 of them), i.e., those not addressed by the Ministerial Decision, the DMD established that: (a) those implementation issues for which a specific mandate is provided in the Declaration shall be addressed under that mandate; and (b) other outstanding implementation issues shall be addressed as a matter of priority by the relevant WTO bodies which shall report to the Trade Negotiations Committee by the end of 2002 for appropriate action. Thus, there was agreement that high priority is placed on addressing in particular outstanding implementation issues in a time-bound manner.

In the last three years and more during the course of the negotiations, the attention placed on the issues has weakened despite vigorous efforts by developing countries to raise their profile so as to address them, and the effort of the WTO Director General leading the search for solutions on these issues. The issues remain to be adequately and meaningfully addressed. This is a major concern

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<sup>37</sup> See WTO document on "Compilation of Outstanding Implementation Issues Raised by Members" (JOB(01)/152/Rev.1, 27 October 2001).

because implementation issues constituted outstanding issues from the Uruguay Round. There is urgency to finding concrete solutions on a priority and time-bound basis prior to developing countries assuming new commitments (and new implementation obligations).

The August 2004 Decision firstly reaffirms Members determination to find appropriate solutions to outstanding implementation issues. The Trade Negotiating Committee, negotiating bodies and others were instructed to redouble their efforts to find such appropriate solutions as a priority. The Director General was requested to continue his consultations on all outstanding implementation issues under paragraph 12(b) of the DMD including on the extension of protection of geographical indications to products other than wines and spirits under Article 23 of TRIPS. A two stage time-bound schedule was established with the Director General reporting to the Trade Negotiating Committee and the General Council “no later than May 2005”, to be followed by a progress review by the General Council and taking of “any appropriate action no later than July 2005”. By July 2005 there was not progress and the Director General in his position as the Chairman of the Trade Negotiations Committee expressed his frustration in his report to the WTO General Council as follows: “I have tried repeatedly to find ways to advance towards the appropriate action that Ministers in Doha instructed the TNC to take, but solutions in that sense have just not been within reach because of the entrenched opposing positions of delegations, in particular on the issue of GI extension.”<sup>38</sup>

What can be the way forward in implementing this commitment? First, there is need to ascertain what progress has been made in resolving the implementation issues identified in the Doha Decision on Implementation-related Issues and Concerns for which a deadline was established. If no progress has been made, then these issues should be taken up expeditiously for resolution as they were supposed to have been resolved by now. These issues concern, in the Decision, paragraphs 1.2 (GATT 1994); 7.2, 7.3 and 7.4 (anti-dumping); 8.2 (customs valuation); 9.1 (rules of origin); 10.1 (subsidies and countervailing measures);

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<sup>38</sup> TN/C/5.



11.1 and 11.2 (TRIPS) and 12.1 (SDT). As previously discussed, SDT, for example, is still yet to be fully resolved.

Regarding the outstanding implementation issues, some prioritisation of their consideration can be developed based on the frequency with which these proposals were made. Box 5 indicates such frequency showing that the largest number of concerns have been raised regarding the Agreement on Subsidies and Countervailing Measures, anti-dumping measures, TRIPS and then customs valuation and TRIMs in that order. These concerns could be taken up by the concerned WTO body for expeditious examination and decision as their resolution may take some time. The other issues would also be examined by relevant WTO bodies and as these concerns only one or two proposals, such consideration could be made rather swiftly.

It should be noted that the setting up of a single negotiating body on implementation issues has been suggested by some developing countries to provide overall supervision of negotiations and monitoring. This can be a functional mechanism to fast-track consideration of implementation issues.

#### **4.2(d) Other Development Issues**

The nomenclature “other development issues” in reality refers to the specific trade and development related needs and concerns of developing countries. The August 2004 Decision states that – “special attention shall be given to the specific trade and development related needs and concerns of developing countries, including capacity constraints.” These specific issues are to be addressed, “as appropriate”, in the ongoing market access negotiations in agriculture and NAMA. In addition, the trade-related issues for small, vulnerable economies should also be addressed consistent with paragraph 35 of the DMD (non-negotiating mandate).

A reason why various specific SDT-related needs and concerns of a variety of developing countries have been increasingly raised in the negotiations is associated with the recognition that SDT should cater to the specific and special

**Box 5. Outstanding Implementation-Related Issues and Concerns:  
Agreement Affected and Frequency of Proposals**

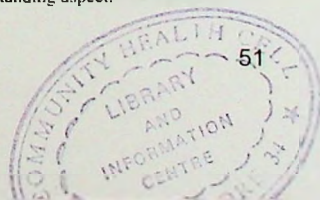
General Agreement on Tariffs and Trade 1994	2
Agreement on Agriculture	1
Agreement on the Application of Sanitary and Phytosanitary Measures	1
Agreement on Technical Barriers to Trade	2
Agreement on Trade-Related Investment Measures	4
Agreement on Implementation of Article VI of the GATT 1994 (anti-dumping)	13
Agreement on Implementation of Article VII of GATT 1994 (customs valuation)	5
Agreement on Subsidies and Countervailing Measures	20
Agreement on Safeguards	1
Agreement on Trade-Related Aspects of Intellectual Property Rights	8
Cross-cutting issues (waivers to Article I of GATT 1994, and negotiating rights in favour of small and medium-sized exporting Members in trade negotiations).	2

problems faced by developing countries in the multilateral trade negotiations and the MTS. Thus general SDT (and LDC-specific SDT) needs to be supplemented and complemented by addressing such specific issues. These specific issues in the market access negotiations on agriculture and NAMA, as identified in the August Decision, include food security, rural development, livelihood, preferences, commodities and net food imports, as well as prior unilateral liberalisation.<sup>39</sup> At the same time, there is need to be careful about arguments for additional SDT beyond the generalised ones to all developing countries as these give currency to arguments on differentiation and graduation among developing countries in accessing SDT.

This provision in the Decision is an additional directive to Members to apply SDT in substantive areas of market access negotiations in the DWP in the July Package context, namely in agriculture and NAMA. It is additional in that in the agriculture and NAMA negotiations, it is already an accepted principle that SDT will be integrated specifically, meaningfully and operationally. This is

<sup>39</sup> It should be noted that the August Decision does not refer to addressing such specific SDT issues in the services negotiations and other areas of the DWP, such as on rules negotiations (e.g., on RTAs). However, in the normal course of DWP, the mainstreaming of SDT into the negotiations is a standing aspect.

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reiterated in the July Package modalities for agriculture and for NAMA. The importance of raising the profile of the issues lies in focusing in the negotiations on measures to resolve the specific issues identified.

*What can be the way forward in implementing this commitment?* One key strategy is to ensure in the agriculture and NAMA negotiations that operationally effective and meaningful provisions for SDT would **specifically** address the issues of food security, rural development, livelihood, preferences, commodities and net food imports, as well as prior unilateral liberalisation. Another is that measures to address trade preferences and commodities will involve both market access issues and development-related issues, bearing in mind that some of the latter type of issues are beyond the scope of the WTO and may have to be addressed by other development bodies like UNCTAD and specifically so in the case of commodities. Market access issues on preferences raised in the agriculture modalities recognise the importance of long-standing preferences and call upon Members to address the issue of erosion of preferences.<sup>40</sup>

In the modalities on NAMA, preferences are highlighted. Preferences constitute one of the elements of the negotiations on which additional negotiations are required to reach agreement on specific details.<sup>41</sup> Further, the negotiating group on market access is instructed to take into consideration the challenges that may be faced by non-reciprocal preference beneficiary members, and those that are highly dependent on tariff revenue, as a result of NAMA negotiations.<sup>42</sup>

Adjustment concerns of developing countries affected by preference erosion remains to be adequately addressed. Improving preferences and enhancing their utilisation would constitute one track of supporting measures. This can be done in the context of negotiations for agriculture and market access for non-agricultural products, *inter alia*, by improving preference regimes and enhancing their utilisation. Another track is to provide preference-receiving countries with adjustment support for competitiveness, and product and market diversification.

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<sup>40</sup> Paragraph 44 of Annex A of the Decision.

<sup>41</sup> Paragraph 1 of Annex B of the Decision.

<sup>42</sup> Paragraph 16 of Annex B of the Decision.



IMF for instance proposed in early 2004 a Trade Integration Mechanism (TIM) to address balance-of-payment problems resulting from preference erosion, but also from post-ATC adjustment and increased farm bills for NFIDCs as a result of agricultural policy reform. However, such support should provide genuine aid for trade, in a manner not affecting the debt situation and other development priorities. An “aid for trade” funding mechanism has been suggested by the Sach Report and the Blair Commission Report which has received some support and efforts are underway among some OECD countries to concretise the initiative.

The specific trade and development concerns of commodity-dependent countries arise from the fact that they continue to remain marginalised in international trade on account of their dependence on commodities, and thus are still vulnerable to external shocks. This is of concern to a large number of African countries, particularly LDCs. The commodity sector continues to be the mainstay of their economies in terms of the generation of income, savings and foreign exchange, as well as employment and livelihood, particularly for the poor. The issue is to address seriously the difficulties faced by commodity dependent developing countries, owing to continuing long term volatility and secular decline of world commodities prices, with a view to assisting such countries to restructure, diversify and strengthen the competitiveness of their commodity sectors. Within WTO, some market access aspects, tariff peaks and tariff escalation, and subsidies can be addressed. Many other important aspects go beyond the mandate of WTO and require the involvement of other international organisations, specifically UNCTAD, and support from international financial institutions and donor community.

Regarding small, vulnerable economies, the Decision calls on Members to address the trade-related issues identified for the fuller integration of these countries into the MTS (without creating a sub-category of Members).<sup>43</sup> The DMD stated that the objective of the work programme on Small Economies is “to frame responses to the trade-related issues identified for the fuller integration

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<sup>43</sup> As stated in paragraph 35 of the DMD.

of small, vulnerable economies into the multilateral trading system”, and mandated the General Council to make recommendations for actions to the 5th MC.

The work of the dedicated session of the Committee on Trade and Development has centered on the proposal by Barbados, Belize, Bolivia, Dominican Republic, Guatemala, Honduras, Mauritius and Sri Lanka.<sup>44</sup> Their proposals pertain to the following areas:

- (a) preferences (liberalisation processes should preserve the existing margin of preferences for products exported by small economies and extended to other small economies)
- (b) regional trade agreements (GATT Article XXIV should provide that small economies shall not be required to give reciprocal treatment in return for the preferential treatment from developed countries, and the small economies should be given necessary policy space on the basis of asymmetry)
- (c) subsidies (small economies should not be subject to the prohibition of export subsidies under the Agreement on Subsidies and Countervailing Measures);
- (d) anti-dumping and countervailing duties;
- (e) safeguards
- (f) SPS/TBT;
- (g) Dispute Settlement Understanding; and
- (h) accession.

Issues arising from negotiations in agriculture, services and TRIPS are being raised by small economies within the context of these negotiation groups.

Small economies, including Small Island Developing States, remain highly vulnerable to external shocks, including natural disasters. Thus, the work programme must find solutions for integration into the MTS of small, vulnerable economies into the multilateral trading system in a manner commensurate with their special circumstances and in support of their efforts towards sustain-

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<sup>44</sup> WTO document COMTD/SEW/3.

able development. As a start, WTO members can endorse the trade-related issues identified since commencement of the work programme and examine ways and means of putting into effect these measures. Since these are non-negotiating issues, there should be no major problem in agreeing on the measures to address some of the trade-related issues of small, vulnerable economies.

This aspect can also be read in conjunction with the provisions under paragraph 1(h) of the Decision on "other elements of the Work Programme". The paragraph reaffirms the high priority Members place on those aspects of the DWP which do not involve negotiations, and emphasises the importance of fulfilling the mandates therein. It specifically instructs the General Council and other relevant bodies to report, in line with the Doha mandates, to the 6th MC. These non-negotiating issues, in addition to small, vulnerable economies which is mentioned in the Decision, relate also to trade, debt and finance,<sup>45</sup> and trade and transfer of technology<sup>46</sup> which are not specifically mentioned in the Decision.

Regarding trade and transfer of technology, the DMD mandated "an examination... of the relationship between trade and transfer of technology, and of any possible recommendation on steps that might be taken ... The General Council shall report to the Fifth Session". Issues brought up in the Working Group include: (a) definition of transfer of technology (b) transfer of technology and the enabling environment (c) transfer of technology and the role of home and host countries (d) transfer of technology and IPRs (e) transfer of technology and FDI (f) transfer of technology and WTO agreements (g) transfer of technology and technical assistance.

Regarding trade, debt and finance, the DMD mandates "an examination ... of the relationship between trade, debt and finance and of any possible recommendations on steps that might be taken ... to enhance the capacity of the multilateral trading system to contribute to a durable solution to the problem of external indebtedness of developing and least developed countries ... and to

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<sup>45</sup> See paragraph 36 of the DMD.

<sup>46</sup> See paragraph 37 of the DMD.



strengthen coherence of international trade and financial policies. The General Council shall report to the Fifth Session". The working group focused on the following issues: trade liberalisation as source of growth; WTO rules and financial stability; the importance of market access and the reduction of other trade barriers in the Doha negotiations; trade and financial markets; trade-financing; better coherence in the design and implementation of trade-related reforms and monitoring; the inter-linkage between external liberalisation and internal reform; external financing, commodity markets and export diversification.

Work on each of the issues should be completed and recommendations agreed upon, and the recommendations should be presented, as mandated, to the 6th MC for adoption and follow-up in the ensuing period. In terms of the relationship between trade, debt and finance, work should lead to finalising recommendations on (a) WTO's contribution to a durable solution the problem of external indebtedness of developing countries and LDCs, and (b) strengthening coherence between international trade and financial policies so as to shield the MTS from financial and monetary instability. In terms of the relationship between trade and transfer of technology, recommendations should be finalised on steps within WTO's competence, to increase flows of technology to developing countries.

#### **4.2(e) Least-developed Countries**

Regarding LDCs, Members reaffirmed their determination to fulfilling commitments made at Doha concerning LDCs. Various commitments have been made in respect of LDCs under the DMD. Indeed, the MTS must be sensitive to the special needs of LDCs.

A key issue in this regard is the provision of duty-free and quota free market access for products originating in LDCs as called for in various international accords (Doha, LDC III, and Millennium Declaration). A recent report by UNCTAD on "A Trade Marshall Plan for LDCs" notes that significant commercial gains would accrue to LDCs from the provision of bound duty free,

quota treatment to all exports of LDCs by developed countries. Such treatment “is likely to bring welfare gains of as much as US\$8 billion and will add up to US\$6.4 billion (10 per cent) per year increase in LDC exports, which currently represent just 0.68 per cent of world trade.”<sup>47</sup>

LDCs have called for duty-free and quota free access for ALL their products and for such treatment to be BOUND under the WTO. For example, the Fourth LDC Trade Ministers’ Meeting in Livingstone (June 2005) called on the 6th WTO MC to agree on “Binding commitment on duty-free and quota-free market access for all products from LDCs to be granted and implemented immediately, on a secure, long-term, and predictable basis, with no restrictive measures introduced.” Both issues remain outstanding in that not all WTO members provide LDCs with fully free trade treatment, apart from EBA and AGOA and some GSP schemes, and all such treatment provided so far are not bound in the WTO. Such treatment is sanctioned by Part IV of GATT and the Enabling Clause. In terms of similar treatment that could be provided by developing countries in a position to do so, some progress is taking place, mostly within the context of South-South regional trade agreements. In terms of legal coverage for South-South preferences, a waiver has been provided.<sup>48</sup>

A related issue is for LDCs to be granted exemptions from tariff and subsidy reduction commitments. Another key issue is TRTA, and programmes like JITAP (as noted previously) are making a difference and deserve full and additional support to deepen the assistance provided and to increase the number of beneficiary countries. Addressing the deeper end of TRTA is also a key concern of LDCs in view of diversifying their production and improving competitiveness in traditional areas as well as emerging areas of comparative and competitive advantage; developing human, institutional, regulatory and R&D capacities and infrastructures; and achieving greater technology-intensity, value-added, value retention and diversification of products and competitiveness

<sup>47</sup> Lakshmi Puri, “Towards a new trade ‘Marshall Plan’ for Least Developed Countries: How to deliver on the Doha development promise and help realise the UN Millennium Development Goals” (UNCTAD/DITC/TAB/POV/2005/1)

<sup>48</sup> “Preferential Tariff Treatment for Least-Developed Countries: Decision on Waiver” adopted on 15 June 1999 (WT/L/304).

# 5

## Conclusion

“Development issues” lie at the heart of the negotiations and any outcomes of the DWP. This arises from the commitment to place the needs and interests of developing countries at the heart of the work programme. A development-oriented outcome will give credibility to the appellation – Doha “Development” Agenda – without which, the appellation will be a name without any real meaning.

Without mainstreaming development, the DWP will lack justification as not responding to the concerns of effective integration of developing countries into the MTS. It would strengthen the hands of those who argue that WTO is anti-development. It would enhance the perception by many that the erosion of development that took place in the Uruguay Round, through limited attention to SDT, is perpetuated.

A round without development can sow the seeds for the eventual damaging of the MTS as it will erode the confidence and commitment of the large majority of the membership of the WTO in such a system. It will make it difficult for developing countries to accept to negotiate another new round, once the Doha negotiations are completed.

Yet development issues have been the most difficult of issues to address in the three years and over since the launching of the DWP. The missed deadlines in addressing them has disturbed the balance of interests attained at the Doha MC in which developing countries basically agreed to the launching of a new round of negotiations as long as their development issues were addressed on a priority



basis before entering into new market access commitments and rules negotiations.

While developing countries have individually and jointly made proposals on a series of development issues, resulting in the proposed 88 SDT agreement-specific issues and over 100 implementation issues, and various attempts at discussing and addressing these issues, very limited progress forward in terms of concrete, substantive outcomes have been achieved. In the meanwhile, as the negotiations proceed, the concerns of developing countries with respect to development have fortified with newer, specific trade and development concerns raised in the market access negotiations.

The July Package attempted to provide new momentum to the treatment of development issues. It enjoined Members to achieve the mandated work on these issues by prioritising them in the post-July period. It provided new deadlines (July 2005) in respect of SDT and implementation issues. It encouraged Members to be more forthcoming in respect of technical cooperation, to complete the work programme on small, vulnerable economies by the 6th MC, to mainstream the specific trade and development concerns of developing countries into the agriculture and NAMA negotiations, which in any event should address SDT as a key principle. Such recommendations, by July 2005, were not provided.

Meeting the July 2004 Package provisions on development issues was and remains a major challenge in view of the past hesitancy with which such issues have been addressed. The July 2005 approximations passed without any tangible progress on the deadlines on SDT and other development issues raised in the July Package.

Thus, the 6th WTO MC and beyond would be seized with concretely, specifically, adequately and expeditiously addressing the development issues. This will be a challenge for developing countries in:

- re-examining the SDT and implementation proposals to ascertain their relevance,
- prioritising them in terms of their commercial and development values, and preserving and enhancing them;
- expediting examination and proposals of measures to address specific needs of small, vulnerable economies and also with the work with other non-negotiating working groups (trade and transfer of technology, and trade and debt and finance);
- mainstreaming into the agriculture and NAMA negotiations the specific trade and development needs of developing countries and in this context, seek both trade and development related solutions to the problems of trade preferences and commodities;
- monitoring implementation of commitments on technical assistance, and
- meeting the specific needs of LDCs including through mobilising increased support for the IF and especially for JITAP.

For their part, developed countries must accept not only in principle and spirit that development matters, but that this principle must find concrete expression in the Doha negotiations and its outcomes. Concrete progress must be achieved on development issues generally and especially in respect of SDT and implementation issues, as well as specifically in the market access negotiations (agriculture, NAMA, services).

Finalisation of the work on small economies and other non-negotiating work is also important to developing countries in terms of addressing their wider development concerns and thus creating an enabling trading environment in which these countries can trade in and develop.

Ultimately, the functioning of the MTS under the auspices of the WTO in an equitable manner that addresses the development needs and concerns of developing countries is in the interest not only of these countries, but also of other countries and the MTS itself. Self-interest and preservation of economies suggest that enlightened development solidarity between all WTO Members is needed in giving a boost to and resolving thoroughly, effectively and adequately the development issues.

Prominent people and reports have taken up this clarion call for the MTS to move beyond a purely trade liberalising approach to one which enables development, job creation, poverty reduction, and wider and affordable access to essential goods and services. In this regard, the development promise of Doha is timely and crucial and it must be fully redeemed.



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However, the journey so far in redeeming the development promise of Doha has been full of broken promises and missed deadlines, including the recent July 2005 approximation deadline. This setback follows on the heels of the important breakthrough in the negotiations attained in the July 2004 package with regard to development issues.

The lack of substantive movement is evident in almost all areas of development matters, including that concerning special and differential treatment, implementation, specific trade-related needs and concerns of developing countries, and, to a lesser extent, technical assistance.

Will mainstreaming development into the WTO and the MTS be a myth or a fact that can be realised to meet the expectations of developing countries? Can the development promise of Doha, which is timely and crucial and deserves to be fully redeemed, be translated into concrete steps in the period leading to the coming 6th WTO Ministerial Conference and beyond? This paper attempts to answer some of these important and pressing questions.

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