

**SEATINI**



**Southern and Eastern African Trade  
Information and Negotiations Institute**

*institute for*



*global dialogue*

PARLIAMENT  
OF KENYA  
LIBRARY

**Framework for Benchmarking  
Development in Hong Kong WTO  
Ministerial Meeting and Beyond**

**Advanced Copy for Roundtable in**

**Arusha, Tanzania**

**21 November 2005**

Prepared by Rashid S. Kaukab for SEATINI and IGD

# **A POSSIBLE FRAMEWORK TO IDENTIFY DEVELOPMENT BENCHMARKS FOR THE WTO DOHA ROUND AND TO OUTLINE ISSUE-SPECIFIC DEVELOPMENT INDICATORS FOR THE WTO HONG KONG MINISTERIAL CONFERENCE IN DECEMBER 2005**

## **INTRODUCTION<sup>1</sup>**

All agree that trade is not an end in itself but rather a means to achieve human development that raises standards of living and ensures full and adequately remunerated employment. This is the objective of the multilateral trading system reflected in the preambles to both the General Agreement on Tariffs and Trade (GATT) 1947<sup>2</sup> and the Marrakesh Agreement Establishing the World Trade Organization 1994<sup>3</sup>. However, the actual negotiations and their results under both the GATT and the WTO have pursued trade liberalization and deregulation in sectors and areas of interest to mainly the developed countries as an end. No wonder then developing countries and their development partners both in the North and the South have viewed these negotiations and their outcomes as often adversely affecting the prospects for the development of developing countries. These often resulted in opening up of the domestic markets of developing countries to unfair competition from developed countries and substantially restricted their policy options to pursue independent trade, industrial, investment promotion and technology development policies suited to their individual conditions. Instead of allowing developing countries to build domestic assets, robust domestic and regional markets and upgradation of domestic productive capacities into value-added activities, the GATT/WTO agreements often bound developing countries into primary production.

This is an unsustainable situation and the failure of the WTO Seattle Ministerial Conference in 1999 brought home a clear message: the sustainability and credibility of the multilateral trading system depended on taking into account the development interests and needs of developing countries. Against this background was launched the Doha Round of negotiations in November 2001. The ministers of all WTO Members agreed at Doha that development should be at the centre of the multilateral trading system as embodied in the WTO agreements and negotiations. This they sought to achieve by placing the needs and interests of developing countries at the

---

<sup>1</sup> This paper has been commissioned to Rashid S. Kaukab of the South Centre by the Southern and East African Trade Information and Negotiations Institute (SEATINI) with funding support from the Institute for Global Dialogue. (Helene Bank of SEATINI also made important substantive contributions to the paper.) An earlier draft of the paper was presented to an African Union Retreat held on 5-6 November 2005 at hotel Beau Rivage, Lausanne, Switzerland. The proposed development assessment framework was well received by African trade negotiators in the Retreat and valuable comments were offered. Present draft has been substantially revised accordingly and will be presented to the Development Assessment Workshop to be organized by SEATINI on 21 November 2005 on the sidelines of the AU Trade Ministers Meeting in Arusha, Tanzania before the formal publication by the sponsors.

<sup>2</sup> Please see paragraph 2 of the preamble to GATT 1947.

<sup>3</sup> Please see the first preambular paragraph of the Marrakesh Agreement Establishing the WTO 1994.

heart of the Doha Work Programme<sup>4</sup> - dubbed as nothing less than “Doha Development Agenda” by Mr. Michael Moore the then Director General of the WTO.<sup>5</sup> It is equally interesting to note that the word “development” has been used as many as fifty times in the three main Ministerial Declarations/Decisions adopted at Doha on 14 November 2001<sup>6</sup>.

Unfortunately, four years after the launch of Doha Round the development dimension has all but disappeared from the negotiations. The rhetoric of “development of developing countries” has not penetrated the reality of “market access for developed countries” that has increasingly occupied the centre stage in the negotiations. Hence a general developmental assessment of the progress thus far in the Doha Round paints a bleak picture. This assessment is shared by all developing countries as well as their development partners in the North and the South. There is an urgent need to bring development as the central pillar of the Doha Round negotiations. The forthcoming 6<sup>th</sup> Ministerial Conference of the WTO to be held in Hong Kong, China from 13 till 18 December 2005 provides an important opportunity for this purpose. Identifying a framework or development benchmarks should facilitate to focus the Hong Kong Ministerial on development dimension so that the achievement of 2/3<sup>rd</sup> mark in the Doha Round - an objective set by Mr. Pascal Lamy the present Director General of the WTO<sup>7</sup> - contributes at least that much to development. Moreover, this specific development framework should be used to guide the negotiations till the end and the final outcome of the Doha Round should clearly demonstrate that development benchmarks have been achieved in each area.

This paper attempts to provide rationale for and elements of such a framework as well as some issue-specific development indicators. The first part of the paper develops a framework based on Doha Ministerial Declaration. This development framework, based on measurable criteria, can serve to guide the negotiations and to assess the development dimension in the final outcomes of the Doha Round. The framework is then applied to some specific issues under negotiations in the second part of the paper. The tabular presentation in the second part should be particularly helpful in identifying the minimum progress needed at Hong Kong in relation to the

---

<sup>4</sup> Please see paragraph 2 of the Doha Ministerial Declaration adopted on 14 November 2001 at Doha, Qatar.

<sup>5</sup> His first statement that labelled the Doha Work Programme as the “Doha Development Agenda” was made in a meeting on 14 December 2001 with the WTO Secretariat staff to discuss the organizational changes to be effected in the Secretariat in order to reflect the work priorities set out in the Doha Ministerial Declaration. In his speech, Moore stated that “The WTO has been given an important new negotiating mandate by Ministers. The Doha Development Agenda calls for a far-reaching set of negotiations that are to be completed within three years ...” See [http://www.wto.org/english/news\\_e/spmm\\_e/spmm74\\_e.htm](http://www.wto.org/english/news_e/spmm_e/spmm74_e.htm).

<sup>6</sup> These include: the Doha Ministerial Declaration, Declaration on the TRIPS Agreement and Public Health, and Decision on Implementation-Related Issues and Concerns.

<sup>7</sup> See the speech of Pascal Lamy to the Annual Conference of the Parliamentary Network of the World Bank on 22 October 2005, at [http://www.wto.org/english/news\\_e/sppl\\_e/sppl11\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl11_e.htm). In a more recent pronouncement – in an interview to the CNN broadcast on 11 November 2005 – Mr. Lamy though acknowledges that achieving the 2/3<sup>rd</sup> mark at Hong Kong will not be possible. Whatever the level of progress in the negotiations is achieved at Hong Kong, the point remains valid that at least a similar level of progress in the development dimension must also be achieved at Hong Kong.

development dimension.<sup>8</sup> It is hoped that this paper will be helpful for developing country negotiators as well as their development partners in the civil society in bringing development to the centre stage of the Doha Round including at Hong Kong.

---

<sup>8</sup> The issue-specific development targets for Hong Kong are generally based on the submissions by African countries to the various negotiating bodies of the WTO. A compilation of these submissions is attached as an Annex to the paper.

## PART I – MAIN ELEMENTS OF A DEVELOPMENT FRAMEWORK

There are clear commitments and pronouncements by the Ministers in the Doha Ministerial Declaration that provide a framework to assess whether the promise of development in the Doha Round is being delivered. However, before identifying and elaborating these pronouncements it is useful to set the context. Following subsection offers three important contextual points.

### **1. Setting the Context – Three General Points**

First, developing countries and particularly African countries must not think that they are asking for charity by demanding development-oriented outcomes. Their demands are justified not only on the basis of the promise of Doha Ministerial Declarations and Decisions but also on any calculus of give and take in the multilateral trade negotiations. Developing countries, particularly African and Least-Developed Countries (LDCs) are not free riders in the multilateral trading system. In fact they have offered more concessions than their developed country partners in the Uruguay Round and the WTO. Their concessions are not limited to binding themselves to stringent multilateral rules in new areas such as trade-related intellectual property rights (Agreement on TRIPS), trade-related investment measures (Agreement on TRIMS) and Services (General Agreement on Trade in Services). Even in the area of market access, their commitments go far beyond those of the developed countries.<sup>9</sup> Hence developing countries should not be on the defensive. They have contributed and continue to contribute to the multilateral trading system, often much more than their capacities and certainly more than their developed country partners.

Second, delivering on the development promise of Doha Round is in the interest of developed countries. Not only that a Development Round has to be viewed in the context of non development-friendly agreements that preceded it, but economic

---

<sup>9</sup> Several studies bring this out. In a World Bank Policy Research Working Paper (No. 2232, November 1999) written by J. Michael Finger and Ludger Schuknecht entitled “*Market Access Advances and Retreats: The Uruguay Round and Beyond*”, they found that “Tariff cuts by developing countries were as broad and at the same time, deeper, than those conceded by the developed economies. ... The major part of what developing economies gave is due now, the major part of what they receive will not be delivered until 2005, or is yet to be negotiated. What they gave (apart from the exchange of tariff cuts) was mainly acceptance of “codes” on major areas of domestic as well as import regulation/institutions (e.g., intellectual property, technical and sanitary standards, customs valuation, import licensing procedures). What they got in return from the developed economies is MFA elimination - not due until 2005 - trade liberalization and reduction of domestic support on agricultural products - yet to be negotiated.” The Human Development Report (HDR) 1997 by the United Nations Development Programme (UNDP) stipulates that in the first six years of the implementation of the Uruguay Round (UR), the LDCs would in fact be worse off by US\$600 million a year and sub-Saharan Africa, by US\$1.2 billion. Projection of gains from proposed liberalization in Doha Round presents a similar picture. The expected benefits from full liberalization of agriculture and non-agricultural goods (e.g. zeroing out of tariffs and elimination of subsidies) will be distributed very unequally: US\$17 per person per day or 5 cents per person per day for developing countries and US\$200 per person per day or 53 cents per person per day for developed countries, with net losses rather than gains for much of Africa and Middle East (based on World Bank, *Agricultural Market Access: the Key to Doha Success*, World Bank Trade Note, 27 June 2005 and Frank Ackerman, *The Shrinking Gains from Trade: A Critical Assessment of Doha Round Projections*, Global Development and Environment Institute Working Paper Number 5, 1 October 2005).

development and prosperity of developing countries is essential for global peace and prosperity. Alleviation of poverty, increased and better employment opportunities, economic growth and sustainable development of these countries will facilitate their integration into the international economy in a way that will benefit all. This will increase economic opportunities for developed countries as well who will be able to trade with richer and stable partners. Hence, developing countries by demanding the right and means to develop are in fact doing a service to all WTO members, developed and developing.

Third, emphasizing the development dimension and the development of a framework for this purpose should be the agenda of all developing countries. Doha Round negotiations and outcomes will have profound impact on all of them and no developing country will have a "Round for Free". This is a myth. Even the LDCs who are being promised no further reduction commitments in agriculture and Non-Agriculture Market Access (NAMA), will be required to pay in several other ways. This will include increasing tariff bindings; offering commitments in services; being impacted in relation to their existing market access through the commitments of other developing and developed countries; and being bound by generally the same rules negotiated in the Doha Round. Moreover, exemptions from tariff reductions in the WTO do not save them from undertaking even greater tariff reductions either through the World Bank/IMF/Regional Bank conditionalities or the regional or bilateral negotiations (e.g., Economic Partnership Agreements) with developed countries. Finally, even a limited and time bound exemption from some new WTO rules for the LDCs is no guarantee that they may continue to benefit from such exemptions in future as well<sup>10</sup>. In fact, they will be subjected to the same set of rules in the next Round and or when they graduate from the LDC status. Hence, all developing countries including the LDCs have a critical stake in the Doha Round negotiations and an agreement on effective development benchmarks is in the interest of all of them. African countries have a special interest and responsibility though. All projections seem to indicate a net and substantial loss for most sub-Saharan countries if the focus of Doha Round is not changed from market access for developed countries to development for developing countries.

## **2. Elements of a Development Assessment Framework**

Doha Ministerial Declaration contains clear elements that can and should be used to identify an overall development assessment framework and then elaborate specific development indicators in each area of the negotiations. There are essentially four pronouncements by the ministers in this regard. First is an acknowledgement that the majority of WTO Members are developing countries and a promise that their needs and interests will be at the heart of the (Doha) Work Programme<sup>11</sup>. This is followed by mentioning the below three main instruments that will be used to achieve the

---

<sup>10</sup> The experience of LDCs regarding extension in the transition periods for the implementation of the TRIPS and TRIMS Agreements should be quite instructive. These genuine requests have not yet been acceded to by the developed countries even though the lack of implementation of these agreements by the LDCs is not expected to have any negative commercial impact on developed countries.

<sup>11</sup> Please see paragraph 2 of Doha Ministerial Declaration adopted on 14 November 2001 at Doha, Qatar.

objective of addressing the needs and interests of developing countries in the Doha Round<sup>12</sup>:

- balanced rules (i.e., establishing the new rules and balancing the old to maintain and expand policy space);
- enhanced market access (in areas of export interest to developing countries); and
- capacity building programmes.

This is the basis of the proposed development assessment framework elaborated in the remainder of this section. The Framework has four elements: first being the fundamental issue of as to who has the right and responsibility to identify the development needs and interests and the remaining three dealing with the issue of as to how to implement the development promise.

### *2.1: Fundamental Basis: Development is defined by the Needs and Interests of Developing Countries*

This is the most important reference for any debate on the development dimension in Doha Round. These are the needs and interests of developing countries as expressed by them that constitute development dimension. The role of identifying development needs has not been assigned to either developed countries or to any other institution be it the WTO Secretariat including its D.G. or the Bretton Woods institutions. Neither the mercantilist interests thinly veiled as friendly advice of the former nor the ideological pedagogy supported by fluctuating estimates of welfare gains<sup>13</sup> of the latter<sup>14</sup> (often accompanied by dangling of some carrots and or brandishing of sticks

<sup>12</sup> Please see the last sentence of paragraph 2 of Doha Ministerial Declaration.

<sup>13</sup> The models used to estimate gains from trade liberalization typically measure these in terms of welfare gains: the reduction or removal of barriers in developing countries reducing existing rents or gains of the protected producers in these countries (producers surplus) through competition from abroad and increasing the gains of consumers (consumers surplus) through resulting reduction in prices. This measurement misses one fundamental element: consumers are workers as well. When domestic producers in developing countries go out of business due to foreign competition, the workers lose their jobs or are paid less and hence have less purchasing power. The result may be less consumption and not more despite lower prices.

<sup>14</sup> See e.g. World Bank-IMF Staff, *Joint Note – Aid for Trade: Competitiveness and Adjustment* (12 April 2005); Kym Anderson and Will Martin, *Agricultural Market Access: The Key to Doha Success* (World Bank Trade Note No. 23, 27 June 2005); Constantine Michalopoulos, *Developing Country Goals and Strategies for the Millennium Round* (World Bank Working Paper No. 2147, 1999); Constantine Michalopoulos, *Developing Countries' Participation in the World Trade Organization* (World Bank Working Paper No. 1906, 1999); Anne Krueger, *Developing Countries and the Next Round of Multilateral Trade Negotiations* (World Bank Working Paper No. 2118, 1999); World Bank, *Development, Trade and the WTO: A Handbook* (2002); Bernard Hoekman, *Economic Development and the World Trade Organization after Doha* (World Bank Working Paper No. 2851, 2002); World Bank, *Global Agricultural Trade and Developing Countries* (2004); Bernard Hoekman, Constantine Michalopoulos, and L. Alan Winters, *More Favorable and Differential Treatment of Developing Countries: Toward a New Approach in the World Trade Organization* (World Bank Working Paper No. 3107, 2003); Thomas W. Hertel and L. Alan Winters, *Poverty Impacts of a WTO Agreement: Synthesis and Overview* (World Bank Working Paper No. 3757, 2005); Bernard Hoekman, Francis Ng and Marcelo Olarreaga, *Reducing Agricultural Tariffs versus Domestic Support: What's More Important for Developing Countries?* (World Bank Working Paper No. 2918, 2002); Aaditya Mattoo, *Services in a Development Round: Three Goals and Three Proposals* (World Bank Working Paper No. 3718, 2005); IMF, *The Path to Reform: Issues and Experiences* (1990); Emanuele Baldacci, Benedict Clements, Sanjeev Gupta, and Carmos Mulas-Granados, *Front-Loaded or Back-Loaded Fiscal*

by both) can substitute for the articulation of real development needs and interests by developing countries. Therefore, any assessment tool or development yardstick has to be based on the proposals and statements of developing countries. And there is no dearth of that. Despite their extremely limited resources, developing countries have elaborated their needs and interests in every area of the negotiations.<sup>15</sup> This is the basis on which the progress under the three instruments of enhanced market access, balanced rules and capacity building programmes has to be judged.

If the development dimension is to be defined in the context of the needs and interests of developing countries, their equal participation in all negotiations is a must. Procedural justice and fairness are pre-requisites for any legitimate, sustainable and broadly acceptable agreement. In the case of Doha Round, a transparent and fully participatory process is also the best means to get the development dimension reflected in the negotiations. A process that does not allow timely flow of information to all members nor recognize the right of developing countries for equal participation can not lead to a fair and development-friendly outcome. No Quad, old or new has the right or the capacity to negotiate on behalf of the rest. Similarly, the chairs of various bodies must not rely on a few – no matter how big or powerful – to craft their so called “compromises”.

The commitment of ministers to a collective responsibility to ensure internal transparency and effective participation of all Members can again be found in the Doha Ministerial Declaration.<sup>16</sup> Hence, developing countries must demand an immediate and fundamental improvement in the process which so far has been dominated by only a few developed and larger developing countries and is often driven by texts prepared by chairs of the negotiating bodies without taking into account the proposals by smaller developing countries. Again African countries have a special role and responsibility. Most of them have been excluded from the non-transparent exclusionary negotiating process. Their fate is being decided by others. They must put a stop to this exclusion and announce that their acceptance of the Doha Round outcome is contingent upon their full and equal participation in the negotiations. Preparatory process for, and the Ministerial Conference at Hong Kong will be the immediate opportunities to present and exercise this resolve.

## *2.2: First Instrument: Balanced Rules – Enhanced Policy Space*

The history of development experience – both of today’s industrialized countries and the emerging economies of the developing world – teach us only one lesson: one-size-does-not-fit-all. Countries at lower levels of development were able to develop through experimentation. They had the flexibility to design combinations of industrial, trade, technological and social policies unique to their situations. This

---

*Adjustments: What Works in Emerging Market Economies?* (IMF Working Paper No. 04/157, 1 August 2004); Michel Camdessus (former IMF Managing Director), *International Financial Institutions: Dealing with New Global Challenges* (Per Jacobsson Foundation Lecture, Washington, 25 September 2005).

<sup>15</sup> For example, African countries alone have submitted either individually, jointly with other countries or as Africa Group as many as 156 proposals in all the areas under negotiations. (Please see the table at Annex for area-wise break up of these negotiating proposals.) The number of their individual and group statements, both in the formal and informal negotiating sessions, is manifold.

<sup>16</sup> Please see paragraphs 10 and 49 of the Doha Ministerial Declaration.



policy space was critical for their development.<sup>17</sup> Unfortunately, many WTO agreements have curtailed this space considerably. Worse still, there are efforts to go even further in the Doha Round, particularly in the area of services. This is contrary to the development promise of Doha Round.

Hence an important development benchmark for Doha Round will be the availability of guaranteed policy space by maintaining and expanding policy options for developing countries to pursue a set of policies that is most conducive to their development.<sup>18</sup> The promise of “balanced rules” in the Doha Round should be judged against this yardstick. Unbalanced rules – including many of the existing WTO rules that have been shown to be unbalanced by developing countries through their proposals under the rubric of Implementation Issues<sup>19</sup> - do impede development efforts and must be balanced during the Doha Round.<sup>20</sup>

Achievement of balanced rules will include several elements. One, this is relevant for both the existing WTO rules that need balancing as well as any new rules that are developed during the Doha Round. Two, rules pertain to all areas of negotiations. Three, and related to the two above, market access commitments too can lead to unbalanced rules by constraining policy space. Market access commitments in NAMA (through tariff reductions) and services (through elimination of particular regulations)<sup>21</sup> are but examples of this.

---

<sup>17</sup> There is substantial research and economic literature on this. Only a few are mentioned here by way of illustration. These include: Ha-Joon Chang, *Kicking Away the Ladder: How the Economic and Intellectual Histories of Capitalism Have Been Re-Written to Justify Neo-Liberal Capitalism*, Post-Autistic Economic Review, Issue Number 15, 4 September 2002; Dani Rodrik, *Growth Strategies*, August 2004; Joseph Stiglitz, *Globalism's Discontents*, The American Prospect, Winter 2002; Robert M. Hemway, *Expanding National Policy Space for Development: Why the Multilateral Trading System Must Change*, South Centre, T.R.A.D.E. Working paper 25, September 2005; and Erik Reinert, *Globalization, Economic Development and Inequality: An Alternative Perspective* (2004), and, *Development and Social Goals: Balancing Aid and Development to Avoid "Welfare Colonialism"* (Paper for the High-Level UN Development Conference on MDGs, 8 March 2005).

<sup>18</sup> “A world trade regime friendly to human development would provide domestic policy space and give developing countries flexibility to make institutional and other innovations”, Kamal Malhotra, *Trade, Growth, Poverty Reduction and Human Development: Some Linkages and Policy Implications*, Study prepared for the Intergovernmental Group of Twenty-Four on International Monetary Affairs and Development, March 2004.

<sup>19</sup> For the purposes of this paper, the phrases “implementation-related issues” or “implementation issues” refer to the issues and concerns raised by developing countries with respect to the implementation of the GATT 1947 and/or the WTO Agreement and its annexed trade agreements and relevant decisions and understandings. These also include those addressed in the 2001 Doha Ministerial Declaration (hereafter DMD), the WTO Ministerial Conference Decision of 14 November 2001 on Implementation-related Issues and Concerns (hereafter Doha Implementation Decision), as well as those issues listed in the 27 October 2001 revision of the Compilation of Outstanding Implementation Issues Raised by Members (hereafter Implementation Issues Compilation). For more discussion on these issues, please see South Centre, *Background Note on Implementation-Related Issues: History, Implementation, and Negotiating Strategy for Developing Countries* (SC/TADP/AN/IRI/1, November 2002); and South Centre, *Implementation-Related Issues and Concerns: The Way Forward After Cancun* (SC/TADP/AN/IRI/2, February 2004).

<sup>20</sup> Please see Joseph Stiglitz and Andrew Charlton, *The Development Round of Trade Negotiations in the Aftermath of Cancun* (Commonwealth Secretariat, June 2004) for a discussion of balanced rules and policy space in the context of the multilateral trading system.

<sup>21</sup> “...debates about liberalization in services do not centre around discussions of lowering the effective barrier...; rather, they centre around particular *measures*, such as privatization, elimination of particular regulations, etc. In each of these cases, the ramifications of the particular measure extend well beyond

Implementation of the commitment to balanced rules, including the balancing of existing rules, that expand the policy space for developing countries, requires certain identifiable indicators. The following indicators are accordingly proposed that can be used to assess whether the rules-related outcomes of Doha Round are balanced and hence in line with the objective of enhanced policy space:

- i. Existing rules and agreements must be examined to affirm, clarify, and increase the policy space options of developing countries. (Proposals by developing countries regarding Implementation Issues must therefore be addressed.)
- ii. There must not be any additional constraints through new or revised rules during the Doha Round on the domestic policy making choices of developing countries. This will require that:
  - a. Development of new rules if any must be limited to trade policy areas.
  - b. Rules, if developed related to new areas, must not be binding on or enforceable against developing countries through the WTO dispute settlement mechanism.
- iii. Flexibility must be provided to developing countries in undertaking market access commitments when these commitments have policy space implications, e.g. in NAMA and services.
- iv. All policy space flexibilities for developing countries in the existing and new rules must be effective and meaningful. This will require that:
  - a. All policy space provisions, including the special and differential treatment provisions, must have legal certainty, i.e. they provide protection from the WTO dispute settlement challenge to developing countries exercising such options.
  - b. The policy space flexibilities for developing countries must be such as that can be used by developing countries within their existing levels of development and domestic capacities, e.g., allowed subsidies by developing countries should be such as can be administered within their limited institutional mechanisms. It also means that the flexibilities available should be linked to the levels of development and not to arbitrary transition periods.

### *2.3: Second Instrument: Enhanced Market Access*

Developing countries are interested in increasing their market access opportunities. This will be important for them so that they can export their way to growth and development by building their domestic capacities and assets. This is also one of the main promises of Doha Round that developing countries will get enhanced market access on a stable and predictable basis. It is implicit in this promise, particularly in

---

the impacts on trade.... Inevitably, then, debates about service sector liberalization devolve into fundamental debates about national economic and social policy.” (emphasis in the original), Id.

view of the impact of the Uruguay Round agreements where developing countries provided more market access than what they gained, that the market access gains of developing countries will be far greater than those of developed countries in the Doha Round. Hence any outcome that differentially hurts developing countries more or benefits developed countries more should be considered failing the Doha development promise of enhanced market access for developing countries.<sup>22</sup>

Several points need careful consideration regarding the issue of relevant enhanced market access for developing countries in the Doha Round. One, developing countries are currently losing substantially by protectionism and subsidies by developed countries.<sup>23</sup> Two, the adjustment costs<sup>24</sup> from liberalization are going to be much higher in developing countries due to their higher unemployment rates<sup>25</sup>, weaker safety nets and poor risk markets. Three, developing countries need real (i.e., in accordance with their supply capacity and free from non-tariff barriers) and not nominal market access. Four, the results of general equilibrium models do not provide correct predictions of gains and hence should not be used to preach the benefits of liberalization to developing countries. These models are based on the assumptions of full employment of resources, perfect competition, perfect information, and well functioning markets. These assumptions hardly ever hold for any country least of all for developing countries. Finally, the enhanced market access should be focused in the products and sectors of interest to developing countries.<sup>26</sup>

Based on the brief discussion above, some indicators are proposed below that can be used to assess whether the promise of enhanced market access is being fulfilled in the Doha Round:

- i. The market access for developing countries in each area (i.e., agriculture, non-agriculture and services) must be in addition to the current market access available to them in developed country markets. This will require that:

---

<sup>22</sup> Measured in terms of net gains as a percentage of Gross Domestic Product (GDP), the projections of welfare gains from liberalization as proposed in the Doha Round fail this test. These projections predict (one-time) 0.24% increase in the GDP of developed countries as opposed to 0.14% for developing countries. See e.g. Frank Ackerman, *supra* note 9.

<sup>23</sup> The loss to developing countries is estimated to be about US\$24 billion annually in lost agricultural and agro-industrial income only – with sub-Saharan Africa losing close to US\$2 billion every year, excluding dynamic effects: Xinshen Diao, Eugenio Diaz-Bonilla and Sherman Robinson, *How Much Does it Hurt? The Impact of Agricultural Trade Policies on Developing Countries*, International Food Policy Research Institute, August 2003.

<sup>24</sup> The term “adjustment cost” has been coined to describe the losses that accrue to domestic economies of developing countries due to trade liberalization, e.g., reduced production and closure of their domestic productive facilities either in agriculture, manufacturing or services, loss of employment and revenue, lower returns, etc. This can occur due to the opening of either their own markets or of their main trading partners or both.

<sup>25</sup> Average unemployment rates reached 14.4% in Africa in 2001 – the highest in the world and still under representing the true level of unemployment due to very high levels of disguised unemployment.

<sup>26</sup> For example, the liberalization of movement of unskilled workers to developed countries will offer the largest gains because it is associated with the largest difference between factor prices on the one hand, and the largest capacity for supply by developing countries measured as number of available and willing unskilled workers.

- a. The size of total market access pie must increase so that all developing countries can individually gain enhanced market access. Robbing Peter to pay Paul will not amount to enhanced market access.
  - b. The market access is not a mere repackaging of the existing opportunities currently available to groups of developing countries outside of the WTO (e.g. under Africa Growth and Opportunity Act of the US or the Everything But Arms of the EU).
- ii. The market access must be stable and predictable, i.e., bound in the WTO schedules of countries.
  - iii. The market access must be real. This will require that:
    - a. The enhanced market access is in the products, sectors and modes of interest to developing countries, including those that offer prospects for value-addition (e.g. through elimination of tariff escalation).
    - b. It must be accompanied by elimination and not increase in the non-tariff barriers (NTBs) including the rules of origin.
    - c. It must match the supply capacity of developing countries and hence should be accompanied by demand-driven capacity building initiatives when needed.
  - iv. The market access must be based on the concept of non-reciprocity or at least substantially less than full reciprocity and hence the net market access gains to developing countries should be substantially more than the gains to developed countries. Moreover, developing countries' access to their own domestic and regional markets must not be eroded.

Before concluding the discussion on the second instrument of enhanced market access, it is useful to add a note on the South-South trade. Admittedly, South-South trade can and should be an important means for developing countries to increase their trading opportunities for development. However, WTO is not the best forum for this for several reasons. Other developing countries will be generally reluctant to view opening up of their markets on most favoured nation (MFN) basis in the WTO (i.e., opening to imports from all countries including developed countries) as promoting South-South trade. Moreover, smaller and weaker developing countries may not even benefit from MFN opening of other developing countries as they may not be able to compete with exports from developed countries to these markets. Furthermore, the Doha promise of enhanced market access had been made by developed countries. They should not be allowed now to make others pay for their promise. Hence the best means to promote South-South trade and improve market access for developing countries in other developing countries will be their own bilateral, sub-regional, regional and global (i.e., Global System of Trade Preferences Among Developing Countries or GSTP) initiatives.

#### *2.4 Third Instrument: Capacity Building Programmes*

A major constraint on developing countries is their lack of capacity in almost all areas related to international trade. This includes lack of capacity (due to small number of mission staff in Geneva and or very limited staff in the relevant ministries in the

capitals etc) to fully analyse the implications of trade agenda and effectively negotiate;<sup>27</sup> to implement the results of these negotiations while fully utilizing the flexibilities<sup>28</sup>; and to take advantage of the potential and or new trading opportunities.<sup>29</sup> This lack of capacity relates to human, financial, technical and institutional resources of developing countries.<sup>30</sup> Given the magnitude of needs in developing countries, particularly among the LDCs and in Africa, massive capacity building resources over a long period of time are required.

This is the context in which the reference to capacity building programmes in paragraph 2 of Doha Ministerial Declaration should be interpreted. This will be appropriate as Doha Ministerial Declaration includes several other references to technical assistance and capacity building.<sup>31</sup>

It is important to note here that there is nothing out of the ordinary about this situation: all countries have required injections of massive resources to build their capacities to profit from closer integration with the world outside their borders. Most recent example is that of the European Union where new members needed external assistance for capacity building at all levels and where such assistance was provided generously. Hence developing countries should not be defensive about their capacity building needs nor should the developed countries view this as a charity. Need-based, adequate and development-supportive capacity building assistance ultimately benefits both the recipient and the provider – again something that can be shown in the experience of EU enlargement.

---

<sup>27</sup> The relative negotiating power of developing countries *vis-à-vis* developed countries is much weaker also as a result of their dependence on aid from developed countries. This makes them vulnerable to pressures in the negotiations.

<sup>28</sup> J. Michael Finger, the former Lead Trade Economist of the World Bank estimated that the implementation of only three UR Agreements (Agreements on TRIPS, Sanitary and Phytosanitary Measures, and Customs Valuation) will cost as much as US\$150 million – an amount that is large than the entire annual development budget of eight out of the 12 developing countries studied. Moreover, this is only the direct implementation cost and does not include other costs, e.g., royalty payments under TRIPS, increased cost of technology and hence reduce opportunities to move into higher value-added activities etc. See J. Michael Finger and Philip Schuler, *Implementation of Uruguay Round Commitments: The Development Challenge*, 23:4 WORLD ECONOMY 511 (2000). See also J. Michael Finger, *The WTO's Special Burden on Less Developed Countries*, 19:3 CATO JOURNAL 425 (Winter 2000).

<sup>29</sup> Implementation costs of the WTO agreements are not static. Even the direct implementation costs are increasing as a result of the expansion in the WTO agenda. For example, the implementation of a potential agreement on Trade Facilitation will be quite costly: the total value of a World Bank loan to Tunisia for the streamlining and modernization of its customs procedures alone was US\$35 million in 1999 and a World Bank loan to Poland for upgrading physical and managerial infrastructure of its port facilities alone amounted to US\$ 38 million.

<sup>30</sup> Issue of adjustment costs is not addressed here for several reasons: i) it is conceptually incorrect to lump the costs of structural adjustment with capacity deficiencies (in such a scenario a developing country is in fact being asked to destroy a capacity often built over the years with great effort and commitment of resources); ii) adjustment costs are dynamic and affect the livelihoods of millions of people in the countries concerned and it is difficult and unfair to put a notional \$ figure on them; and iii) it is not possible to balance the loss of trading opportunities with the payment of monetary adjustment cost.

<sup>31</sup> These references include: paragraph 16 (related to NAMA), paragraph 27 (related to Trade Facilitation), paragraph 33 (related to Trade and Environment), paragraphs 38-41 (related to general technical assistance and capacity building commitments) and paragraph 43 (related to the LDCs).

The views about the relationship between trade and aid (for capacity building) seem to have come a full circle from "aid and trade" to "trade not aid" to the mantra of "aid for trade" today. This is not a question of either and or: developing countries need increased trading opportunities as well as capacity building assistance. Hence the capacity building promise of the Doha Round should be viewed on its own and fulfilled without linking it to market access or rules negotiations or the trade policy positions of developing countries in any way. Trade policy can not and should not be a trade-off for aid.

However, certain conditions must be fulfilled for capacity building programmes to be in line with the development objectives of Doha Round. Following indicators can be used to assess the Doha Round package on capacity building for its compatibility with development needs:

- i. Capacity building commitments must be predictable, secure and long term; e.g., through bindings in the WTO.
- ii. Capacity building commitments must be adequate. This will require that:
  - a. The committed resources must be substantial.
  - b. The commitments must be based on the provision of additional resources and not on the shuffling of the existing assistance portfolios.
- iii. Capacity building commitments must be need-based and demand-driven. This will require that:
  - a. The commitments must be without any conditionalities whether related to trade policy or any other area.
  - b. The commitments must target the relevant human, technical, financial and institutional needs in the most appropriate form. For example, transfer of technology can be more suited to take advantage of a market access opportunity than transfer of financial resources.

### **3. Inter-Relationship of the Three Instruments: Facing the Challenge of Trade-Offs**

The three key instruments to provide and measure development dimension in the Doha Round as mentioned above are equally important. Doha Ministerial Declaration does not envisage any trade-off among the three. Concrete and positive progress in all of them is needed to ensure that Doha Round outcome contributes to development.

Given their past experience, developing countries should be particularly wary of any offers for trade-offs among enhanced market access, policy space through balanced rules and commitments for capacity building programmes. For example, the trade-off between market access and policy space during the Uruguay Round was not beneficial for development.<sup>32</sup> Similar was the case in the UR with capacity building

---

<sup>32</sup> Dani Rodrik has described this as a trade-off where developing countries gave up real policy space (e.g., under TRIPS, TRIMS, etc) in exchange for promises of better market access (e.g., agriculture and

commitments.<sup>33</sup> Hence any trade-off in the Doha Round between commitments on market access and policy space (where many developing countries fear to lose) with promises of capacity building assistance will be harmful for development and must not be accepted.

It is also recognized that LDCs and African countries will be particularly under pressure at Hong Kong to agree to some trade-off. The mantra of "aid for trade" will be used to entice them into accepting deals that encroach upon policy space and erode existing trading opportunities in exchange for "adjustment assistance". These pressures and enticements must be resisted. "Aid for trade" should not become "aid for trade policy". They must not agree to a trade-off that means their paying for the gains of other countries.

To avoid getting into dangerous trade-offs, following questions can be raised under each area to determine whether there are any net gains and hence whether any potential trade-off is worth considering.

i. Policy Space:

- a. What are the additional constraints being proposed on policy space options?
- b. Are there any additional flexibilities being offered?
- c. Is there domestic capacity to utilize the available and additional (if any) policy space options?
- d. What is the net balance (gains or losses) in the area of policy space?

ii. Market access:

- a. Is there any additional market access being offered?
- b. Is there domestic capacity to take advantage of the additional (if any) market access?
- c. Is there any erosion of the existing market access to developed country markets?
- d. Is there any erosion of access to own domestic and regional markets?
- e. What is the net balance (gains or losses) in the area of market access?

iii. Capacity building:

- a. Are there additional commitments for capacity building?
- b. Are these commitments without any implicit or explicit conditionalities?
- c. Are these commitments adequate, bound and long term?
- d. Do these commitments provide needed resources (e.g., technology, capital, skills development, etc.) to actualize potential market access opportunities?

---

textiles) that did not materialize. See Dani Rodrik, *The Global Governance of Trade as if Development Really Mattered* (UNDP, April 2001).

<sup>33</sup> Finger and Schuler note: "the developing countries took bound commitments to implement in exchange for unbound commitments of assistance". *Supra* note 25.

- e. Do these commitments remove domestic constraints on exercising hitherto unutilized policy space options?
- f. What is the net balance (gain if the answer to all the five questions is clearly in the affirmative and loss otherwise) in the area of capacity building?

The final outcome of negotiations will be development-friendly if it provides increased and well paid employment opportunities to the people and leads to a positive balance-of-payments situation for developing countries. This is the objective African countries should aim for through the fulfillment of criteria under the three instruments of Doha development promise.



## **Part II: Application of Development Assessment Framework to Specific Negotiations, and Identification of Subject-Specific Development Benchmarks**

The development assessment framework as outlined in the first part of the paper is now applied to various negotiating areas under the WTO Doha Round.<sup>1</sup> Each table is devoted to one specific area of the negotiations. A brief introduction at the start of each table provides some useful background and contextual points. The tables are divided into four columns. First three columns assess the development dimension under the three instruments of policy space (balanced rules), enhanced market access and capacity building, respectively. This assessment is based on the current status of negotiations and attempts to apply the specific indicators under the three instruments as developed in the first part of this paper. A development balance (positive, negative or mixed) is then indicated at the end of the first three columns. Fourth and last column includes important development benchmarks. These development benchmarks are based on the submissions of developing countries, particularly the African countries, to the various bodies of the WTO, African Union Trade Ministerial Declarations;<sup>2</sup> and the report of the AU Retreat held on 5-6 November 2005 at Lausanne, Switzerland<sup>3</sup>. These subject-specific benchmarks should be used to assess the outcome of Doha Round, the Hong Kong Ministerial Conference of the WTO as well as any other interim decisions/outcomes of the relevant WTO Bodies including the General Council.

---

<sup>1</sup> These include: agriculture, NAMA, services, S&D and Implementation Issues, TRIPS, Trade Facilitation, commodities, and rules related to Regional trade Agreements (RTAs).

<sup>2</sup> These include: The Kigali Declaration on the Doha Work Programme of the 2<sup>nd</sup> ordinary session of the AU Conference of Ministers of Trade (AU/TF/MIN/Decl.1(II), 28 May 2004), and the Cairo Declaration and Road Map on the Doha Work Programme (TI/TMIN/EXP/6-b(III)Rev.4, 9 June 2005), adopted by the 3<sup>rd</sup> ordinary session of the AU Conference of Ministers of Trade.

<sup>3</sup> The Report of the Retreat on «Development Benchmarks for the Hong Kong WTO Ministerial Conference».

## Table II.1 – Agriculture

Agriculture is at the centre of these negotiations for several reasons. One, the existing WTO rules in this area are the most glaring example of double standards as they allow massive subsidization and protection of agriculture in major developed countries while denying the use of similar measures by developing countries. Two, agriculture is the mainstay of the economic and social systems of developing countries. Protection and promotion of agriculture in these countries can guarantee food security, rural development, employment, economic growth, and social stability. Three, development-friendly outcome of agriculture negotiations may assure developing countries of the sincerity of their developed country partners in meeting the development targets of Doha Round and hence facilitate progress in other areas of negotiations.

An important issue in the agriculture negotiations relates to the parallelism in progress under the three pillars of export competition, domestic support and market access. This is a false parallelism given the present state of agriculture protection and subsidization of agriculture in major developed vs. developing countries. Developed countries use measures under all the three pillars to protect and support their agriculture. On the other hand, developing countries mainly use tariffs only. Hence a true parallelism can be established only after the major developed countries have eliminated their export and domestic subsidies which are in any case mostly illegal under the normal WTO disciplines. Developing countries should not be asked to reduce their tariffs in exchange for reduction in (illegal) subsidies by major developed countries.

Not much progress has been achieved in the agriculture negotiations since the adoption of the July Framework by the WTO General Council on 1 August 2004. In fact the most recent proposals by the US and the EU indicate that these two majors are still intent upon preserving the inequitable system for agriculture trade established in the Uruguay Round. Their proposals will allow them to continue with huge subsidies through box shifting (e.g., from Amber to Blue, *De Minimus*, and Green) while tariffs in developing countries are substantially reduced.<sup>4</sup> These proposals must not be accepted. Finally, and unfortunately, the critical issue of NTBs (e.g., rules of origin, anti-dumping, sanitary and technical standards, etc.) related to better market access for agricultural exports of developing countries is not included in the current mandate of agriculture negotiations.<sup>5</sup> This means that nominal market access through some tariff reductions by developed countries will not translate into effective market entry for their agricultural exports to developed countries.

---

<sup>4</sup> The US and the EU proposals are designed to protect their current domestic agriculture policies and so called reforms which are nothing but an attempt to put “old wine in new bottles”. According to OECD (2004), the impact of EU Common Agricultural Policy Reform of 2003 resulted in only 1% reduction in the level of producer support, i.e., from 57% to 56%. Similarly, the US Farm Security and Rural Investment Act of May 2002 has a value of about US\$190 billion, about US\$83 billion more than under previous programmes.

<sup>5</sup> Anti-dumping and subsidies and countervailing measures are being negotiated under the Doha mandate for negotiations on rules. But the US has not allowed these negotiations to proceed very much.

African countries have been very active in the agriculture negotiations and have submitted a total of 24 proposals. These proposals often jointly with other developing countries address many of the issues above mentioned and can be the basis for identifying development benchmarks as in the last column of the table below.

Enhanced Market Access	Policy Space	Capacity Building	Development Benchmarks for Doha Round/Hong Kong Ministerial Conference
<ul style="list-style-type: none"> <li>• hardly any is expected (net losses for many African countries due to preference erosion)</li> <li>• redistribution of access among groups of developing countries</li> </ul> <p>Market Access Offer More Nominal Than Real</p> <ul style="list-style-type: none"> <li>• tariff escalation not addressed</li> <li>• NTBs not addressed</li> <li>• limited tariff reduction on products of interest</li> <li>• supply capacity not taken into account</li> </ul> <p>More Than Full Reciprocity</p>	<p>Reductions in Policy Space</p> <ul style="list-style-type: none"> <li>• State Trading Enterprises (STEs) potentially under threat</li> <li>• <i>De Minimus</i> for developing countries under threat</li> </ul> <p>Uncertain Additional Policy Space</p> <ul style="list-style-type: none"> <li>• SP and SSM accepted but still without legal certainty, clarity and effective implementation modalities</li> </ul> <p>Enhanced Policy Space for Developed Countries</p>	<p>No Certainty and Predictability</p> <ul style="list-style-type: none"> <li>• no WTO commitments</li> </ul> <p>Extremely Inadequate</p> <ul style="list-style-type: none"> <li>• additional resources not guaranteed</li> </ul> <p>No Link with Needs and Demands</p> <ul style="list-style-type: none"> <li>• adjustment cost concept not in harmony with development needs</li> <li>• concerns of LDCs and NFIDCs not addressed</li> </ul> <p>Cotton Fund has not been supported</p>	<p>Market Access</p> <ul style="list-style-type: none"> <li>• less than proportional tariff reductions by developing countries based on their tariff structures</li> <li>• no tariff cut commitments by DC/LDC countries unless subsidies in the US and the EU are eliminated</li> <li>• developed countries to consider potential preference erosion as a criteria for designation of sensitive products</li> </ul> <p>Balanced Rules and Policy Space</p>

<ul style="list-style-type: none"> <li>• tariff reductions by developing countries while developed countries maintain subsidies</li> <li>• import surge in domestic and regional markets from developed countries and large exporters ( losing their own markets) due to imbalanced commitments</li> </ul> <p><b>Development Score: Negative</b></p>	<ul style="list-style-type: none"> <li>• expanded Blue Box</li> <li>• lack of disciplines for Green Box</li> </ul> <p><b>Development Score: Negative</b></p>	<p><b>Development Score: Negative</b></p>	<ul style="list-style-type: none"> <li>• self designation of special products by developing countries and without tariff cuts or TRQ expansion</li> <li>• eligibility of products of interest to Africa for SSM</li> <li>• disciplines to avoid box shifting including through tightening of criteria for green and blue box</li> <li>• no <i>De Minimis</i> reduction by African countries</li> <li>• African STEs to be exempt from the application of any disciplines</li> </ul> <p>Capacity Development and Compensation</p> <ul style="list-style-type: none"> <li>• food aid disciplines must take into account the interests of food aid recipients</li> </ul>
--	--	---	---

			<ul style="list-style-type: none"><li>• implementation of the Marrakech Decision on NFIDCs and LDCs including through clear special and differential treatment in any disciplines to be developed on export credits</li></ul> <p>Cotton</p> <ul style="list-style-type: none"><li>• immediate elimination of export and domestic subsidies</li><li>• elimination of product-specific cotton AMS by industrialized countries</li><li>• establishment of a compensation fund for cotton producing countries</li></ul>
--	--	--	---

## **Table II.2 – Non-Agricultural Market Access (NAMA)**

These negotiations refer to improving market access through tariff and NTB reductions, particularly for developing countries for all products other than agricultural products. Doha Ministerial Declaration (paragraph 16) envisages accomplishing this by reduction or elimination of tariff peaks, tariff escalation, high tariffs and non-tariff barriers, particularly on products of export interest to developing countries. It is also recognized that reduction commitments by developing countries will be based on the concept of less than full reciprocity and take into account their special needs and interests. Finally, there is a clear commitment for capacity building measures and appropriate studies to assist LDCs.

Several points are critical for development dimension in NAMA negotiations. One, tariffs are not only a device for border protection. Tariffs are also an important source of government revenue, and are an important instrument of development of industrial policy and infant industry protection. As has been documented by Ha-Joon Chang and many others, all countries have used tariffs for industrialization and promotion of value-added productive activities in their economies. This was the experience of the developed countries starting from the UK till Japan. The East Asian countries have demonstrated the continued relevance of this instrument for development. Hence negotiations on tariff reductions have important policy space implications for developing countries particularly in Africa.

Two, the concept of “less than full reciprocity” must be implemented in letter and spirit. Developed countries got the major share of benefits from previous trade negotiations and they ought to be willing to accept a smaller share of the benefits from Doha Round. Moreover, developed countries themselves gain from liberalizing their markets because they have highly specialized and high technology and capital backed services industries. They have also the resources to facilitate adjustment and the disturbances expected to be posed to them by developing countries will be minimal. On the other hand developing countries are in a far disadvantageous situation. Opening up of their markets to well resourced, technologically superior and dominant market players of developed country MNCs will be disastrous for their under developed economies and industrial sectors.

Three, some tariff reductions in developed countries will not provide effective market access to developing countries. This is due to the extensive use of NTBs by developed countries. Clear and binding progress on rules (anti-dumping, subsidies) and NTBs (e.g., rules of origin, standards) must therefore precede the tariff reduction exercise. Four, many developing countries are engaged in sub-regional and regional liberalization and integration initiatives with other developing countries. Success in these endeavours will facilitate their development through the strengthening of domestic and regional markets. Deeper multilateral tariff reduction commitments, on the other hand, will adversely affect these initiatives and hence should be resisted.

The progress in the NAMA negotiations thus far is not very different from the progress in agriculture negotiations. Both the US and the EU have proposed aggressive tariff reduction formulas that will bring down developing country tariffs by many hundred percent. At the same time, the demand by developing countries to effectively address the NTBs faced by their exports has gone unheeded. Finally, the issues of preference erosion and impact on tariff revenue – two issues of great interest to many African countries – have not been tackled at all.

African countries have actively participated in NAMA negotiations through 12 negotiating proposals including one as Africa group. In fact Africa group has taken the lead on the issues of less than full reciprocity, NTBs, impact on tariff revenues, treatment of unbound tariffs and preference erosion. These proposals provide a good basis for benchmarks as in the last column of the table below.

<b>Enhanced Market Access</b>	<b>Policy Space</b>	<b>Capacity Building</b>	<b>Development Benchmarks for Doha Round/Hong Kong Ministerial Conference</b>
<p>Additional Market Access</p> <ul style="list-style-type: none"> <li>• hardly any - net losses for many African countries due to preference erosion</li> <li>• redistribution of access among groups of developing countries</li> </ul> <p>Market Access Offer More Nominal Than Real</p> <ul style="list-style-type: none"> <li>• tariff escalation not</li> </ul>	<p>Reductions in Policy Space</p> <ul style="list-style-type: none"> <li>• tariffs are an important instrument of industrial policy</li> <li>• de-industrialization and unemployment due to import surges</li> <li>• revenue loss to government budgets, relative dependence of aid and debt formation</li> <li>• negative effects on</li> </ul>	<p>No Certainty and Predictability</p> <ul style="list-style-type: none"> <li>• no WTO commitments</li> <li>• commitment under paragraph 16 not implemented</li> </ul> <p>Extremely Inadequate</p> <ul style="list-style-type: none"> <li>• additional resources not guaranteed</li> </ul> <p>No Link with Needs and Demands</p>	<p>Market Access</p> <ul style="list-style-type: none"> <li>• tariff reductions with less than full reciprocity in the outcome only if additional market access is available, NTBs addressed, sectoral initiatives excluded, LDCs exempted, tariff reduction formula integrates development criteria and flexibility, and addresses tariff structure of non paragraph 6 countries,</li> </ul>

<sup>6</sup> Please refer to paper by Stephen Karinge et al (2005) on EPAs for UNECA.

<p>addressed</p> <ul style="list-style-type: none"> <li>• NTBs not addressed</li> <li>• supply capacity not taken into account</li> </ul> <p>More Than Full Reciprocity</p> <ul style="list-style-type: none"> <li>• proposed Swiss formulas will lead to much higher percentage reductions by developing countries</li> <li>• loss of domestic and regional markets<sup>6</sup></li> </ul> <p><b>Development Score: Negative</b></p>	<p>regional market formation, domestic asset formation and regional integration</p> <p>No Additional Flexibilities</p> <ul style="list-style-type: none"> <li>• full bindings are being asked of developing countries and the LDCs</li> </ul> <p><b>Development Score: Negative</b></p>	<ul style="list-style-type: none"> <li>• adjustment cost concept not in harmony with development needs</li> </ul> <p><b>Development Score: Negative</b></p>	<p>preference erosion is addressed and supply side capacity building is guaranteed</p> <p>Policy Space</p> <ul style="list-style-type: none"> <li>• flexibilities not to be linked with the level of ambition</li> <li>• DC/LDCs countries to have the flexibility to determine products for reduction to meet the target as well as binding coverage</li> </ul>
---	---	---	--



### Table II.3 – Trade in Services

Services now comprise more than 50% of the GDP of many developing countries. This is the vibrant and growing area of economies that will shape the prospects for development in future. At the same time, however, services sectors of developing countries are much weaker than their counterparts in developed countries. Also developing countries public services are poorly developed disadvantaging remote rural areas and poor citizens with no or limited purchasing power. Neither private, nor public services sectors in most developing countries have benefited from support, subsidization and technological progress like the service industries in the developed world. Currently they concentrate on low technology, low value –added services. Any opening of service sectors of developing countries under the current situation will expose them to unfair competition and will permanently lock them into low value-added segments of the services value chains. This will be similar to specialization in the production of primary commodities with all its negative consequences.

Trade in services was brought into the multilateral trading system at the demand of developed countries and their services industries during the UR. This is still a relatively new and undeveloped area so far as the multilateral disciplines are concerned. This means that current negotiations on market access happens under full uncertainty and unpredictability to what legal framework such market access commitment will eventually operate under. For example, there is still no universally accepted and recognized classification for various services; the disciplines on a safeguard mechanism have yet to be developed<sup>7</sup>; disaggregated data on the production and trade of services is not available in most developing countries; the mandated assessment of the impact of services liberalization on developing countries (under article XIX of the General Agreement on Trade in Services) has not been carried out; there is lack of sufficient common understanding of public services and the need to developed these on non-commercial basis; lack of general knowledge and understanding of GATS by governments and citizens of developing countries; and technological developments are blurring the distinctions between various modes of supply of services.<sup>8</sup> Moreover, services liberalization takes place not through reductions in tariffs but through elimination of domestic regulations. Hence market access in services is intrinsically linked to policy space issues. This state of affairs demand extreme caution in the liberalization of trade in services – something that is recognized in the GATS through built-in flexibility for developing countries under articles IV and XIX.

---

<sup>7</sup> This was part of the services built-in agenda and was supposed to be completed by 1998. However, developed countries have so far thwarted the efforts of developing countries to develop disciplines in this area.

<sup>8</sup> The outcome of two WTO dispute settlement cases – between the US and Mexico (*Mexico – Measures Affecting Telecommunications Services*, WT/DS204/R, 2 April 2004) and between the US and Antigua and Barbuda (*United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/AB/R, 7 April 2005) should be an eye opener in this regard. These disputes have demonstrated that even a highly developed country like the US and a more advanced developing country like Mexico could not anticipate the impact of their liberalization commitments.

But the actual progress in services negotiations has not taken into account the above considerations. The main thrust of developed countries is to achieve comprehensive liberalization of trade in services in this Round without first developing the rules and regulations framework and by curtailing the built-in flexibilities for developing countries. Hence articles IV and XIX, as well as the Guidelines and Procedures for the Negotiations on Trade in Services (S/L/93, 29 March 2001) and the Modalities for the Special Treatment for Least-Developed Country Members in the Negotiations on Trade in Services (TN/S/13, 5 September 2003) have been disregarded. The US, and particularly the EU now want to change the architecture of the GATS by proposing quantitative and qualitative benchmarks through complementary approaches for services negotiations<sup>9</sup>. On the other hand, none of them has made any significant commitment in one area of export interest to developing countries, i.e., movement of unskilled and low skilled labour.

African countries have started paying more attention to services negotiations. They are taking the lead in opposing the proposals for quantitative and qualitative benchmarks. These efforts should continue.

<b>Enhanced Market Access</b>	<b>Policy Space</b>	<b>Capacity Building</b>	<b>Development Benchmarks for Doha Round/Hong Kong Ministerial Conference</b>
<p>Additional Market Access</p> <ul style="list-style-type: none"> <li>no meaningful offer in sectors and modes of interest to developing countries (e.g., in mode 4, particularly for semi-</li> </ul>	<p>Reductions in Policy Space</p> <ul style="list-style-type: none"> <li>market access commitments through reduction and elimination of domestic regulations impinge on policy space</li> </ul>	<p>No Certainty and Predictability</p> <ul style="list-style-type: none"> <li>no WTO commitments</li> </ul> <p>No Additional Commitments</p> <ul style="list-style-type: none"> <li>even the existing</li> </ul>	<p>Market Access</p> <ul style="list-style-type: none"> <li>comprehensive commitments by developed countries in mode 4 (particularly related to semi-skilled and</li> </ul>

<sup>9</sup> This includes not only quantitative and qualitative targets but also plurilateral approaches which will allow interested developed countries to make joint requests in sectors and modes of interest to them to targeted developing countries who will be under the obligation to enter into negotiations with the requesting countries. This will change the basic structure of GATS which is based on flexibilities for developing countries who are allowed to open their service sectors in line with their levels of development and needs. This will also mean that there will be broader and deeper movement in the sectors and modes of interest to developed countries given the current vastly imbalanced state of technical knowledge, services industries and negotiating power between developed and developing countries.

<p>skilled and unskilled labour)</p> <p>Market Access Offers More Nominal Than Real</p> <ul style="list-style-type: none"> <li>• little relation to developing countries supply capacities e.g., in financial and telecommunication services</li> <li>• Economic Needs Tests (ENTs) in mode 4 not eliminated</li> </ul> <p>More Than Full Reciprocity</p> <ul style="list-style-type: none"> <li>• demands in mode 3 and sectors of interest to developed countries (e.g., financial, telecommunications, environmental, etc.) have no relationship to their offers in mode 4</li> </ul> <p><b>Development Score: Negative</b></p>	<ul style="list-style-type: none"> <li>• serious erosion of existing S&amp;D (quantitative and qualitative benchmarking to change the architecture of GATS)</li> <li>• even developmental conditions in existing commitments by developing countries under threat</li> <li>• non-commercial development of public services threatened</li> </ul> <p>No Additional Flexibilities</p> <ul style="list-style-type: none"> <li>• Negation of existing rules and mandates: Articles IV, XIX, Negotiating Guidelines and Modalities for LDCs not being implemented</li> <li>• Lack of needed rules: lack of clarity on classification; no Emergency Safeguard Mechanism (ESM); no disciplines on subsidies</li> </ul> <p><b>Development Score: Negative</b></p>	<p>commitments not implemented (e.g., under article IV)</p> <p>Extremely Inadequate</p> <ul style="list-style-type: none"> <li>• additional resources not guaranteed</li> </ul> <p>No Recognition of Real Needs and Demands</p> <ul style="list-style-type: none"> <li>• real needs are for technology transfer, access to information networks etc.</li> </ul> <p><b>Development Score: Negative</b></p>	<p>unskilled categories)</p> <ul style="list-style-type: none"> <li>• overall balanced commitments in modes 3 and 4</li> <li>• clear classification before market access commitments</li> <li>• appropriate flexibility for developing countries to open up few sectors, by liberalizing few types of transactions, and progressively extending market access in line with their development situations,</li> </ul> <p>Policy Space</p> <ul style="list-style-type: none"> <li>• adoption of user-friendly ESM</li> <li>• no quantitative and or qualitative benchmarking</li> <li>• no plurilateral approaches</li> <li>• implementation of commitments under articles IV, XIX, Negotiating Guidelines and LDC Modalities</li> </ul>
--	---	---	---

			<ul style="list-style-type: none"><li>• due respect to national policy objectives and the level of development of individual Members</li></ul>
--	--	--	--

#### Table II.4 – Special and Differential Treatment (S&D) and Implementation Issues

These two sets of issues (S&D and Implementation Issues<sup>10</sup>) together with the issue of TRIPS and Public Health were called “development issues” immediately after the Doha Ministerial Conference. The reason was straight forward: these were the issues that had been presented by developing countries who had been demanding effective action on these issues at least since the Geneva Ministerial Conference in 1998. For developing countries these issues, and the UR mandated negotiations on agriculture and services should have been the focus of the WTO work programme and they only reluctantly agreed to the launch of the Doha Round that included negotiations/discussions on many other areas as demanded by developed countries particularly the EU. However, developing countries had accepted this enlargement of the agenda only on the condition that the above mentioned three sets of issues (S&D, Implementation Issues and TRIPS and Public Health) of major interest to them will be resolved within the first year of Doha negotiations.<sup>11</sup> Unfortunately, these issues are still outstanding after four years of the launch of the Doha Round.

Implementation issues refer to a comprehensive set of issues related to the implementation difficulties faced by developing countries (e.g., Agreements on Sanitary and Phytosanitary Measures and Technical Barriers to Trade), lack of implementation by developed countries of their commitments (e.g., in agriculture, textiles and clothing and technical assistance) and the imbalances (e.g., under the Agreements on TRIPS

---

<sup>10</sup> For the purposes of this paper, “S&D” refers to the principle of “special and differential treatment” in the WTO, is about creating a different set of multilateral trade rules crafted to meet and be commensurate with the needs of developing countries. These rules would be applicable to developing countries while they are still “developing”, and is based on the fundamental premise of S&D is that countries continue to be at varying levels of economic development, with different economic needs, and therefore should have varying degrees of obligations commensurate to their levels of economic development. For more discussion on S&D issues, please see Hesham Youssef, *Special and Differential Treatment for Developing Countries in the WTO* (South Centre TRADE Working Paper No. 2, June 1999), and South Centre, *Review of the Existing Special and Differential Treatment Provisions: Implementing the Doha Mandate* (SC/TADP/AN/SDT/1, May 2002). The phrases “implementation-related issues” or “implementation issues” refer to the issues and concerns raised by developing countries with respect to the implementation of the GATT 1947 and/or the WTO Agreement and its annexed trade agreements and relevant decisions and understandings. These also include those addressed in the 2001 Doha Ministerial Declaration (hereafter DMD), the WTO Ministerial Conference Decision of 14 November 2001 on Implementation-related Issues and Concerns (hereafter Doha Implementation Decision), as well as those issues listed in the 27 October 2001 revision of the Compilation of Outstanding Implementation Issues Raised by Members (hereafter Implementation Issues Compilation). For more discussion on these issues, please see South Centre, *Background Note on Implementation-Related Issues: History, Implementation, and Negotiating Strategy for Developing Countries* (SC/TADP/AN/IRI/1, November 2002); and South Centre, *Implementation-Related Issues and Concerns: The Way Forward After Cancun* (SC/TADP/AN/IRI/2, February 2004).

<sup>11</sup> The timelines agreed at Doha mandated the resolution of S&D issues by July 2002 (paragraph 12.1 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns), of Implementation Issues by end 2002 (paragraph 12 of the Doha Ministerial Declaration), and of TRIPS and Public Health by the end of 2002 (paragraph 6 of the Ministerial Declaration on the TRIPS Agreement and Public Health).

and Trade-Related Investment Measures) in various UR agreements. Developing countries submitted more than one hundred proposals covering almost all the UR agreements acceptance of which would have solved these problems.<sup>12</sup> Lack of implementation of S&D provisions was also included in these proposals. Discussions on the proposals by developing countries on Implementation Issues were taken up by the WTO General Council after the failure of the Seattle Ministerial Conference in December 1999. These discussions finally led to the adoption of a clear mandate at Doha for the resolution of the Implementation Issues. At that time, and recognizing the central importance of S&D provisions for the development of developing countries, a separate mandate was also agreed to address the S&D issues.

No progress was achieved on the Implementation Issues till the end of 2002. In fact the major developed countries even refused to accept that there was any negotiating mandate on Implementation Issues. This bad faith resulted in a stalemate. The then Director General of the WTO and the *ex-officio* Chairman of the Trade Negotiations Committee announced that he would hold consultations with Members to break the stalemate. Despite the passage of several years these consultations have not broken the stalemate on Implementation Issues. Sadly nobody seems to be aware of the status of these consultations now and the Implementation Issues seem to have disappeared from the Doha agenda.

Almost a similar situation prevails with respect to S&D issues. Developing countries submitted as many as 88 proposals<sup>13</sup> to implement the Doha mandate to strengthen the S&D provisions in various UR agreements and to make them more precise, effective and operational.<sup>14</sup> These proposals were given a cold shoulder by major developed countries who again questioned whether the clear mandate at Doha was about negotiations and instead tried to push the issue of differentiation among developing countries in S&D discussions. This bad faith on the part of major developed countries led to a stalemate by the end of 2002 and hence in early 2003 the then Chairman of the General Council took over the responsibility to deal with S&D proposals. He decided to divide the S&D proposals into three categories: those where action seemed possible at

---

<sup>12</sup> Please see, e.g. WTO, *Secretariat – Compilation of Outstanding Implementation Issues Raised by Members (Revision)*, JOB(01)/152/Rev.1, 27 October 2001; WTO, *Ministerial Conference – Decision on Implementation – Related Issues and Concerns*, WT/MIN(01)/17, 20 November 2001; WTO, *Secretariat – List of Outstanding Implementation Issues under Paragraph 12(b) of the Doha Ministerial Declaration*, JOB(03)/121, 24 June 2003; WTO, *Secretariat – Implementation Issues Referred to WTO Bodies under the Doha Ministerial Decision on Implementation-Related Issues and Concerns*, WT/GC/W/500, 8 July 2003.

<sup>13</sup> The basic listing of S&D issues, based on the proposals that had been submitted to the Committee on Trade and Development in Special Session (COMTDSS), can be found in WTO, *Committee on Trade and Development Special Session – Report to the General Council*, TN/CTD/7, 10 February 2003. The proposals were subsequently abstracted and reflected in then-General Council Chair Carlos Perez del Castillo's letter to heads of delegations dated 5 May 2003, which annexed the *General Council Chairman's Proposal on an Approach for Special & Differential Treatment* (JOB(03)/68, 7 April 2003). Agreement-specific S&D proposals were subsequently listed and raised again by Ambassador Perez del Castillo in his letter to heads of delegations dated 16 July 2003. The latest negotiating formulations, with brackets, of these agreement-specific S&D proposals can be found in WTO Doc. No. JOB(03)/161, 19 August 2003.

<sup>14</sup> This mandate is contained in paragraph 44 of the Doha Ministerial Declaration.

the General Council level, those which should be sent to various subsidiary WTO Bodies for addressing the issues, and those which in his opinion required major revisions before further discussion. Developing countries were not happy with this arbitrary categorization. Worse still however was the progress on the first category where action on 28 proposals was proposed at the time of Cancun Ministerial Conference. This proposed action was quite contrary to what developing countries had proposed and did not add any value in terms of strengthening and operationalizing the S&D provisions. Developing countries rightly refused to accept this package.

More recently out of the total of 88, 5 S&D proposals related to LDCs only have been selected for early harvest. But major developed countries have not agreed to appropriate action on even these 5 proposals in favour of the LDCs – countries that are considered “poorest of the poor” and who pose no commercial or economic threat whatsoever to developed countries. It is expected that these 5 as well as the package of 28 proposals prepared at the time of Cancun will be presented again at Hong Kong as a delivery on the development promise of Doha.

African countries have remained at the forefront of the negotiations on Implementation Issues and S&D. Most of the Implementation Issues proposals were submitted by the Like-Minded Group (LMG) of developing countries that included Egypt, Kenya, Mauritius (observer), Tanzania, Uganda and Zimbabwe from Africa. Africa’s contribution has been even greater in the area of S&D where as many as fifty out of the total of 88 proposals have been submitted by the Africa group. African countries should maintain their interest in Implementation Issues and S&D as central elements of the development dimension in Doha Round but with the clear understanding that the development dimension must be an integral part of all Doha Round negotiations and that only real progress on Implementation and S&D issues will be acceptable to them.

<b>Enhanced Market Access<sup>15</sup></b>	<b>Policy Space<sup>16</sup></b>	<b>Capacity Building<sup>17</sup></b>	<b>Development Benchmarks for Doha Round/Hong Kong Ministerial Conference</b>
No Progress	No Progress	No Progress	• Legally certain and

<sup>15</sup> Many S&D and Implementation Issues proposals by developing countries relate to market access, e.g., in agriculture, services, textiles and clothing, and for bound, duty free, quota free access for all LDC exports to developed country markets.

<sup>16</sup> A number of S&D and Implementation Issues proposals by developing countries focus on balancing the rules under the UR agreements and hence aim to safeguard and strengthen policy space, e.g., in TRIPS, TRIMS, GATT, etc.

<sup>17</sup> Several S&D and Implementation Issues proposals by developing countries demand real and meaningful implementation of technical assistance and capacity building provisions, e.g., under the agreements on SPS, TBT, TRIPS.

<ul style="list-style-type: none"> <li>major developed countries not willing to agree to developing countries' proposals regarding stable, predictable, and commercially meaningful market access</li> </ul> <p><b>Development Score: Negative</b></p>	<ul style="list-style-type: none"> <li>major developed countries refuse to even negotiate in good faith developing countries' proposals that seek legal clarity, certainty, operationalization and strengthening of existing rules provisions for policy space flexibilities</li> </ul> <p><b>Development Score: Negative</b></p>	<ul style="list-style-type: none"> <li>major developed countries have refused to accept developing countries' proposals that seek adequate and mandatory commitments for assistance to build capacity and utilize market access opportunities</li> </ul> <p><b>Development Score: Negative</b></p>	<p>commercially meaningful outcome on at least one third of S&amp;D and Implementation Issues proposals at Hong Kong with agreement to address the remaining in a similar manner in the following six months</p> <ul style="list-style-type: none"> <li>Delivery on S&amp;D and Implementation Issues will not be at the cost of development dimension under other areas of negotiations</li> </ul>
--	---	--	---



## Table II.5 – TRIPS

TRIPS Agreement can be cited as one of the worst examples of the imposition of one-size-fits-all model on all countries irrespective of their needs and levels of development. Many in the North too have questioned whether this Agreement should be part of the WTO.<sup>18</sup> This agreement places the interests of intellectual property holders above those of the users as well as the society at large. In particular, the agreement severely constrains the policy space for developing countries and places enormous implementation burden on them. The situation is made worse by the effort of major developed countries, particularly the US to deny developing countries the use of whatever flexibilities are available within the existing agreement. Therefore, main effort of developing countries has been to clarify and strengthen the TRIPS flexibilities. This is what they have tried to achieve including through the specific negotiating mandates in the Doha Round.

Currently three issues related to the TRIPS negotiations can be considered critical. First, the issue of a permanent amendment to article 31 of the TRIPS agreement to allow the effective use of compulsory licenses to deal with public health situations by countries with little or no manufacturing pharmaceutical capacity must be resolved. This relates to one of the main demands by developing countries at the time of Doha and an early amendment as proposed by the Africa group will provide legal certainty and effective use of an existing flexibility. It will also see the end to a long and valiant effort by the African group and allow the African countries to devote their very limited technical and negotiating resources to other negotiating areas.

Second, the issues related to the mandated review under article 27.3b (protection of plant varieties and the patenting of life forms) and the relationship between the TRIPS agreement and the Convention on Biological Diversity (CBD) need action in the light of mandate under paragraph 19 of the Doha Ministerial Declaration. Proposals by developing countries and the Africa group aim at preventing bio-piracy and misappropriation of genetic resources and traditional knowledge. Third, the current moratorium on non-violation and situation complaints<sup>19</sup>

---

<sup>18</sup> See e.g. Joseph Stiglitz, *Towards a Pro-Development and Balanced Intellectual Property Regime* (Keynote Address to the WIPO Ministerial Conference on Intellectual Property for LDCs, Seoul, Korea, 25 October 2004), at [http://www2.gsb.columbia.edu/faculty/jstiglitz/download/2004\\_TOWARDS\\_A\\_PRO\\_DEVELOPMENT.htm](http://www2.gsb.columbia.edu/faculty/jstiglitz/download/2004_TOWARDS_A_PRO_DEVELOPMENT.htm). Even Prof. Jagdish Bhagwati of Columbia University, in his book *In Defense of Globalization* (2004), has argued against the introduction of the intellectual property rights lobby's agenda into the WTO as a result of the TRIPS Agreement. See also [http://www.globalizationinstitute.org/blog/0508\\_bhagwati\\_and\\_sally\\_on\\_the\\_trip.php](http://www.globalizationinstitute.org/blog/0508_bhagwati_and_sally_on_the_trip.php), and Arvind Panagariya, *TRIPS and the WTO: An Uneasy Marriage* (University of Maryland, 1999), at <http://www.bsos.umd.edu/econ/Panagariya/song/tripswto2.pdf>.

<sup>19</sup> A "non-violation" and a "situation" complaint refer to two (2) of the three (3) kinds of complaints that may be brought by a WTO Member under Article XXIII of the GATT 1994 arising from what the WTO Member considers as a nullification or impairment of its GATT 1994 benefits or as an impedance to the attainment of the GATT 1994's objectives. Pursuant to this provision, a WTO Member may bring another WTO Member to dispute settlement proceedings by arguing that any benefit accruing to it directly or indirectly under the GATT 1994 is being nullified or impaired or that the attainment of any objective of GATT 1994 is being impeded as a result of: (i) the

must be transformed into a permanent exclusion of such complaints under the TRIPS agreement. Most WTO Members, whether developed or developing, agree on the third issue and the US is the only hold out. A combined demand by WTO Members and public pressure is needed to make the US move from its narrow focus on protecting certain strong elements of its domestic lobby at the cost of the rest of the world as well as its own public.

Africa group has been taking the lead on the issue of TRIPS and Public Health and has submitted a comprehensive proposal to amend article 31 of the agreement. Major developed countries must engage sincerely to accept this proposal. Similarly, a lot of work has been done by Africa group and other developing countries regarding review under article 27.3b and the relationship between the TRIPS and the CBD. Their arguments and proposals are on the table awaiting a positive response from developed countries. Some progress is possible on these issues at Hong Kong, paving the way for the resolution of the remaining afterwards as part of Doha Round.

<b>Enhanced Market Access<sup>20</sup></b>	<b>Policy Space</b>	<b>Capacity Building<sup>21</sup></b>	<b>Development Benchmarks for Doha Round/Hong Kong Ministerial Conference</b>
<p>No Progress</p> <ul style="list-style-type: none"> <li>major developed countries, particularly the US have not agreed to developing</li> </ul>	<p>No progress</p> <ul style="list-style-type: none"> <li>major developed countries particularly the US have not responded positively to</li> </ul>	<p>Very Little Progress</p> <ul style="list-style-type: none"> <li>a monitoring mechanism for the implementation of article 66.2 (transfer of</li> </ul>	<ul style="list-style-type: none"> <li>Amendment of Article 31 as proposed by the Africa group</li> <li>Amendment of TRIPS to incorporate mandatory</li> </ul>

application by the other WTO Member of any measure even if such measure does not conflict with the provisions of GATT 1994 – this is a “non-violation” complaint under GATT 1994 Art. XXIII:1(b); or (ii) the existence of any other situation – this is a “situation” complaint under GATT 1994 Art. XXIII:1(c).

<sup>20</sup> Implementation of TRIPS Agreement generally has an adverse impact on market access opportunities for developing countries in at least two indirect ways. One, a strict and immediate implementation of all TRIPS disciplines will consume their scarce resources and hence leave little for investments to strengthen domestic capacity to take advantage of market access opportunities. Two, implementation of TRIPS standards acts as a barrier to develop local enterprises through reverse engineering and technological copying (methods that have been adopted by today’s developed countries at their earlier stages of development) that later makes it possible to export value-added products to developed country markets. The specific adverse impact on market access through bio-piracy, on the other hand, is much more direct and obvious, e.g., patenting of Basmati rice in the US etc. erodes the market share of developing country producers in these products.

<sup>21</sup> There are several provisions regarding capacity building commitments in the TRIPS agreement, e.g., under articles 66 and 67. Developing countries have demanded the implementation of these provisions through their proposals related to Implementation Issues and S&D.

<p>country proposals for mandatory disclosure and benefit sharing requirements regarding genetic resources and traditional knowledge in patent applications as well as regarding flexibilities in the implementation of TRIPS, e.g., LDC request for extension in the implementation period</p> <p><b>Development Score: Negative</b></p>	<p>developing country proposals regarding legal certainty required for existing flexibilities (e.g., permanent amendment of article 31 for public health purposes to replace August 30 Decision, non-applicability of non-violation and situation complaints), and to improve the development balance through review of article 27.3b (patentability of plants and animals and protection of traditional knowledge and folklore)</p> <p><b>Development Score: Negative</b></p>	<p>technology to the LDCs) has been agreed but the notifications to this mechanism by developed countries have not shown any real efforts aimed at providing incentives to enterprises in developed countries to transfer technology to the LDCs</p> <p><b>Development Score: Negative</b></p>	<p>disclosure requirements regarding genetic resources and traditional knowledge in patent applications</p> <ul style="list-style-type: none"> <li>• Completion of reviews under Articles 27.3b and 71.1 in line with the objectives and principles of the agreement in Articles 7 and 8 (strengthening of flexibilities)</li> <li>• Permanent exclusion of non-violation and situation complaints from TRIPS</li> <li>• Extension in the transition period for the implementation of the TRIPS agreement as requested by LDCs</li> </ul>
---	--	--	---

### Table II.6 – Trade Facilitation

Trade Facilitation is one of the four issues included for study and without the commitment to negotiate in the WTO at the time of the 1<sup>st</sup> WTO Ministerial Conference held in Singapore in 1996.<sup>22</sup> Both the EU and the US were the major proponents of Trade Facilitation whereas a vast majority of developing countries was reluctant to expand the WTO work agenda and argued that the World Customs Organization was a more appropriate forum to deal with these issues.

Developed country agenda was not limited to the study of the four Singapore Issues. Their real objective was to get a WTO negotiating mandate and they continued their efforts in this regard till July 2004 when three of the issues (trade and investment, trade and competition policy and transparency in government procurement) were dropped from the WTO work programme. However, developing countries were made to accept the launch of negotiations on Trade Facilitation in accordance with the modalities contained in Annex D of the July Framework.<sup>23</sup> This was a big concession by developing countries to save a complete collapse of the Doha Round as implicitly threatened by major developed countries. Developing countries also insisted on and got included strong special and differential elements into the modalities for Trade Facilitation. These S&D elements are:

- the extent and the timing of entering into commitments will be related to the implementation capacities of developing countries and LDCs;
- developing countries and LDCs would not be obliged to undertake investments in infrastructure projects beyond their means;
- needs and priorities of developing countries for capacity building would be identified for adequate response;
- adequate and sufficient technical assistance and capacity-building during and after the negotiations to developing countries will be provided; and
- the relationship between Trade Facilitation commitments and the WTO Dispute Settlement Mechanism is to be decided.

A number of negotiating proposals have been submitted since the launch of negotiations in July 2004 including 8 involving African countries. Most of the proposals by developed countries, however, do not follow the Negotiating Modalities. For example, these proposals do

---

<sup>22</sup> The other three being relationship between trade and investment, inter-relationship between trade and competition policy, and transparency in government procurement. The four issues are commonly known as “Singapore Issues” as these were introduced into the WTO at the Singapore Ministerial Conference of the WTO.

<sup>23</sup> July Framework refers to the Decision adopted by the WTO General Council on 1 August 2004 that re-launched the Doha Round negotiations after the failure at Cancun in September 2003.

not provide for adequate S&D treatment for developing countries; commit no additional resources for capacity building programmes; and technical assistance components remain of a “best endeavour” nature. Worse still, some of these proposals espouse additional commitments related to Trade Facilitation rules.

Africa group has taken the lead in maintaining the S&D dimension of the negotiations including through two detailed proposals to the Negotiating Group on Trade Facilitation in 2005. This role should continue in the run up to Hong Kong Ministerial Conference and beyond so that the outcome of Trade Facilitation negotiation addresses the relevant problems faced by them (e.g., high transport and communication costs, lack of capacity and automation of customs administrations, lack of integration of African enterprises into international payments and insurance systems) instead of further burdening them with costly and irrelevant commitments.

<b>Enhanced Market Access<sup>24</sup></b>	<b>Policy Space</b>	<b>Capacity Building</b>	<b>Development Benchmarks for Doha Round/Hong Kong Ministerial Conference</b>
<p>Impact Not Clear</p> <ul style="list-style-type: none"> <li>benefits of Trade Facilitation require striking a balance between import and export facilitation which is difficult to assess now</li> </ul> <p><b>Development Score: Not Clear</b></p>	<p>Rule Making in a New Area</p> <ul style="list-style-type: none"> <li>without a clear guarantee that it will not be subject to binding and legally enforceable commitments</li> </ul> <p>Dilution of Flexibilities</p> <ul style="list-style-type: none"> <li>developed countries seek to dilute flexibilities in the negotiating modalities and extend the scope of commitments</li> </ul> <p><b>Development Score: Negative</b></p>	<p>No Certainty and Predictability</p> <ul style="list-style-type: none"> <li>offers are in “best endeavour” language</li> </ul> <p>Extremely Inadequate</p> <ul style="list-style-type: none"> <li>no new resources provided</li> </ul> <p>No Link with Needs and Demands</p> <ul style="list-style-type: none"> <li>needs and prioritization assessments not completed</li> </ul> <p><b>Development Score: Negative</b></p>	<ul style="list-style-type: none"> <li>Capacity building mandate to be made fully operational before starting negotiations on rules elements</li> <li>Flexibility to developing countries to implement the rules commitments in terms of time, manner and extent</li> <li>Rules commitments not to be enforceable through WTO Dispute Settlement</li> </ul>

<sup>24</sup> The market access impact would be positive only if the Trade Facilitation reduces transaction costs while increasing value-added services related to imports and exports.

### Table II.7 – Commodities

More than 50 developing countries depend on three or fewer commodities for more than half of their exports: 37 of these have been categorized as Heavily Indebted poor Countries (HIPCs) by the World Bank and the IMF. On the other hand, prices of primary commodities produced by these countries – both minerals and agricultural – have a long term secular declining trend. For example, between 1980 and 2000 prices of coffee, cocoa, sugar and palm oil declined by 70%, and coconut, copper and vegetable oils by 50%. The combination of heavy dependence on a few commodities and the secular and dramatic decline in their prices has played havoc with the economies and social fabrics of these countries. Their participation in the multilateral trading system will not mean anything unless the system addresses the issues related to primary commodities. Unfortunately, the GATT/WTO has shown a systematic aversion to dealing with the underlying causes of imbalances in primary commodities production and trade.

African countries must be congratulated for making an effort to bring the issue of primary commodities to the WTO. A significant beginning was made in 2003 before the WTO Cancun Ministerial Conference when four African countries (Benin, Chad, Mali and Burkina Faso) presented the historic proposal known as “the cotton initiative”. This proposal has since been merged with the on-going agriculture negotiations through the establishment of a Sub-Committee on Cotton under the Special Session of the Committee on Agriculture. It has been promised that cotton will be dealt with “specifically and expeditiously” in the modalities for agriculture commitments. (Development benchmarks for cotton have been identified in Table II.1 on agriculture in this paper.)

At about the same time another comprehensive proposal on the crisis situation created by the long term trend of declining prices of primary commodities on the trade and development of developing countries was submitted to the Committee on Trade and Development (CTD) by three African countries (Kenya, Tanzania and Uganda). This proposal has been further elaborated and strengthened by African countries in the course of discussions in the CTD since then. The objective of these countries is to get an agreement at Hong Kong Ministerial Conference for the inclusion of primary commodity specific elements in the modalities for both agriculture and NAMA. Their specific proposals include, *inter alia*: reduction of tariffs and elimination of tariff escalation; reduction of domestic and export subsidies; provision of technical assistance and technology transfer for the development of processing and value-added industries; and clarification and improvement of relevant GATT rules regarding supply management as well as export taxes and restrictions.

Developed countries have not responded positively to these proposals. But African countries must press ahead as there will be hardly any developmental benefit of Doha Round without resolving the issues confronting production and trade of primary commodities.

### Commodities

Enhanced Market Access	Policy Space	Capacity Building	Development Benchmarks for Doha Round/Hong Kong Ministerial Conference
<p>Additional Market Access</p> <ul style="list-style-type: none"> <li>• Hardly any as NTBs and tariff escalation not addressed that constrain market access for processed and value-added exports</li> <li>• highly distorted market structure (power of processors and retailers <i>versus</i> primary producers) not on the agenda</li> </ul>	<p>Constrained Policy Space</p> <ul style="list-style-type: none"> <li>• restrictions on the role of the governments (e.g., STEs) while no disciplines on multinational processors and retailers</li> <li>• very limited room for supply management</li> </ul> <p>Additional Flexibilities</p> <ul style="list-style-type: none"> <li>• nothing on the agenda</li> </ul>	<p>No Certainty and Predictability</p> <ul style="list-style-type: none"> <li>• no WTO commitments for capacity building related to primary commodities</li> </ul> <p>No Link with Needs and Demands</p> <ul style="list-style-type: none"> <li>• no provisions to build capacity for domestic processing and value-addition</li> <li>• no provisions for technology transfer</li> </ul>	<ul style="list-style-type: none"> <li>• Clear negotiating mandate at Hong Kong Ministerial Conference on commodity issues (e.g. on tariff escalation, NTBs, predictable and equitable returns, market power, supply management, etc.) as part of Doha Round Single Undertaking (including through agriculture and NAMA modalities)</li> </ul>
<p>Current Market Access More Nominal Than Real</p> <ul style="list-style-type: none"> <li>• unpredictable and declining prices</li> </ul> <p>More Than Full Reciprocity</p> <ul style="list-style-type: none"> <li>• domestic and regional markets of developing</li> </ul>	<p><b>Development Score: Negative</b></p>	<p><b>Development Score: Negative</b></p>	

countries threatened by subsidized exports of developed countries  <b>Development Score: Negative</b>			
---	--	--	--



### Table II.8 – Rules: Regional Trade Agreements<sup>25</sup>

The number of Regional Trade Agreements (RTAs) has increased tremendously in the past ten years.<sup>26</sup> Almost all the countries in the world are members of one or more RTAs and more than half of the total world trade is taking place within actual or prospective RTAs.<sup>27</sup> RTAs are not a substitute for but rather a complement or supplement to the multilateral trading system. This is evidenced by the fact that the large majority of WTO Members are party to RTAs.

WTO Members are required to ensure that their RTAs comply with the relevant WTO rules on RTAs.<sup>28</sup> The problem is that the rules are ambiguous. Members have never agreed on the meaning of some of the most important concepts in the rules. These include the phrases “substantially all trade” (which is instrumental in determining the level of liberalisation that is acceptable for an RTA to be deemed WTO-consistent), “other regulations of commerce”, and “other restrictive regulations of commerce” (which, if properly construed, could allow Members to apply contingency protection measures including safeguards and other non-tariff measures on intra regional trade). For developing countries, the problem is compounded by the lack of special and differential treatment (S&D treatment) in Article XXIV of GATT. The ambiguity in the rules is one of the reasons for the ineffectiveness of the RTA review and examination procedure in the GATT/WTO.<sup>29</sup>

Paragraph 29 of the Doha Ministerial Declaration provides that Members should negotiate to clarify and improve the disciplines and procedures under the existing WTO provisions applying to RTAs. The paragraph requires the negotiations to take into account the developmental aspects of RTAs. The development dimension in these rules includes two key elements. One, the existing flexibilities for RTAs among developing countries (e.g., related to notification and examination of such RTAs) under the Enabling Clause must not be diluted. These flexibilities are granted to developing countries in view of their lower levels of the development and hence in recognition of their needs to develop larger regional markets among themselves at a pace and in a manner most suited to them. Two, S&D to developing countries that are parties to RTAs with developed countries must be provided under Article XXIV of GATT that covers RTAs among WTO Members (except those that involve only developing countries which are covered under the Enabling Clause) for trade in goods. This should be done through less

<sup>25</sup> For convenience, Regional Trade Agreements (RTAs) is used in this paper to denote free trade agreements and customs unions.

<sup>26</sup> Of the 300 RTAs notified to the GATT and WTO up to October 2004, 176 were notified after January 1995: Sutherland, P., et al (2005) “The Future of the WTO – Addressing Institutional Challenges in the New Millennium” at p. 21.

<sup>27</sup> Majluf, L.A., (2004) “Swimming in the Spaghetti Bowl: Challenges for Developing Countries under the New Regionalism” UNCTAD Policy Issues in International Trade and Commodities Study Series No. 27, p.1.

<sup>28</sup> These are Enabling Clause of 1979 (for RTAs among developing countries only), Article XXIV of the GATT 1994 and Article V of the GATS.

<sup>29</sup> Crawford, J., and Fiorentino, R., (2005) “The Changing Landscape of Regional Trade Agreements”, WTO Discussion Papers, No. 8, at p. 8.

than full reciprocity by developing countries involved in such RTAs, for example, through longer implementation periods and lesser liberalization commitments than developed countries in the same RTAs. This makes not only perfect economic sense given the differences between the levels of development of developing and developed countries but is also legally defensible. Article V of the GATS related to RTAs on trade in services already provides for such S&D for developing countries that enter into RTAs with developed countries for trade in services.

Unfortunately, many proposals by developed countries aim at the dilution of S&D, for example by favouring the application of similar rules to RTAs among developing countries that are applied under Article XXIV and hence effectively making the Enabling Clause redundant.

Neither the African Group nor any individual African country has submitted a proposal. However, ACP countries, the majority of whom are African, submitted a very strong proposal in 2004. This calls for the inclusion of S&D treatment for developing countries in Article XXIV of GATT (partly on the premise that the presence of S&D treatment in GATS Article V means there is no a priori reason for its absence in Article XXIV of GATT). Initially, some Members challenged the need for negotiating S&D treatment provisions at this stage of the process<sup>30</sup> and others said that S&D treatment should not be the overriding rule in Article XXIV.<sup>31</sup> But, recent submissions show a willingness to consider S&D treatment provisions in the RTA disciplines.<sup>32</sup>

S&D treatment is a principle that is recognized by the Doha Declaration, and the Doha mandate for clarifying and improving RTAs requires Members to address the developmental aspects of RTAs during the negotiations. There is no reason for Members to defer the discussions on S&D treatment until the so-called 'systemic' issues have been dealt with. African countries, individually, as a group, or as part of the ACP, should stress that the developmental dimension of RTAs must form an integral part of the negotiations and their outcome.<sup>33</sup>

---

<sup>30</sup> Japan - TN/RL/W/165 (24 September 2004).

<sup>31</sup> TN/RL/M/15 (Summary Report of Meeting of NGR – 5 May 2004).

<sup>32</sup> TN/RL/W/180 (13 May 2005) (Australia submission) and TN/RL/W/179 (12 May 2005) (EC submission). See also TN/RL/W/185 (22 July 2005) (China submission).

<sup>33</sup> This is a crucial issue especially for African countries who are part of the ACP because of their Economic Partnership Agreements (EPA) negotiations with the European Communities. For a fuller discussion of the subject, see South Centre *Revisiting EPAs and WTO Compatibility* (SC/TADP/AN/DS/2, July 2005) available at [http://www.southcentre.org/tadp\\_webpage/researchpapers\\_listds\\_webpage.htm](http://www.southcentre.org/tadp_webpage/researchpapers_listds_webpage.htm).

**Rules: RTAs**

<b>Enhanced Market Access</b>	<b>Policy Space</b>	<b>Capacity Building</b>	<b>Development Benchmarks for Doha Round/Hong Kong Ministerial Conference</b>
<p>Possible Adverse Impact</p> <ul style="list-style-type: none"> <li>reciprocity by developing countries in RTAs with developed countries will adversely impact their domestic and regional markets by opening these to developed country exports</li> </ul> <p><b>Development Score: Negative</b></p>	<p>Reduction in Policy Space</p> <ul style="list-style-type: none"> <li>existing flexibilities for developing country RTAs under Enabling Clause are under threat</li> </ul> <p>Need for Additional Flexibilities</p> <ul style="list-style-type: none"> <li>much needed S&amp;D under Article XXIV for developing countries in RTAs with developed countries is not being accepted by developed countries</li> </ul> <p><b>Development Score: Negative</b></p>	<p>Not on the Agenda</p> <ul style="list-style-type: none"> <li>No discussions on capacity building or any technical assistance.</li> <li>No WTO commitments for capacity building.</li> </ul> <p><b>Development Score: Negative</b></p>	<ul style="list-style-type: none"> <li>Special and differential treatment for developing countries in Article XXIV of the GATT as demanded by ACP</li> <li>No dilution of Enabling Clause for RTAs among developing countries.</li> </ul>



## ANNEX

### Compilation of Proposals Submitted by African Countries

Despite their extremely limited resources African countries have prepared and submitted their proposals in all areas of the WTO Doha Round negotiations. These proposals identify the needs and interests of African countries which provide important benchmarks to assess the development dimension in these negotiations. The proposals have been made as Africa Group, as individual or joint proposals with other African countries, jointly with developing countries from other regions, or in the case of Trade Facilitation, with another developed country.<sup>1</sup> This is reflected in table below. A full compilation of all the proposals, arranged in chronological order for each area of negotiations follows.

Negotiating Area	Proposals by Africa Group	Proposals by African Countries Individually or with Other African Countries	Proposals by African Countries with Developing Countries from Other Regions	Proposals By African Countries with Developed Countries	Total Number of Proposals
Agriculture	<b>4</b>	<b>7</b>	<b>13</b>		<b>24</b>
NAMA	<b>1</b>	<b>7</b>	<b>4</b>		<b>12</b>
Services	<b>1</b>	<b>1</b>	<b>8</b>		<b>10</b>
TRIPs	<b>6</b>	<b>1</b>	<b>6</b>		<b>13</b>
S&D	<b>3</b>		<b>3</b>		<b>6</b>
Trade Facilitation	<b>2</b>	<b>1</b>	<b>3</b>	<b>2</b>	<b>8</b>
Commodities		<b>2</b>			<b>2</b>
RTAs			<b>1</b>		<b>1</b>

<sup>1</sup> Uganda has submitted proposals related to Trade Facilitation jointly with the US.

