

Trade-Related Agenda, Development and Equity (T.R.A.D.E.) Analysis Series

SOUTH CENTRE ANALYSIS OF THE HONG KONG MINISTERIAL DECLARATION

SYNOPSIS

The South Centre Analysis of the Hong Kong Ministerial Declaration evaluates the developments in the Doha Work Programme since the launch of the Round, examines the implications of the Hong Kong Ministerial Declaration and identifies some important strategic issues for developing countries that need to be considered in subsequent negotiation.

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I. Introduction

The outcome of the 6th Ministerial Conference of the World Trade Organization (WTO), held in Hong Kong, China has not effectively advanced the development dimension of the Doha Work Programme. Developing countries agreed to this outcome to save the multilateral trading system and the Doha Round from a total collapse. Another failure at Hong Kong, after the failure of the 5th WTO Ministerial Conference in Cancun, Mexico, in 2003 would have put into serious question the validity and relevance of the multilateral trading system.

Developing countries face some major challenges in the post Hong Kong period. The Hong Kong outcome is minimal in terms of progress on some major areas under negotiations, e.g., agriculture, NAMA, Special and Differential Treatment (S&D) and implementation issues, etc. hence indicating the need for intense technical and political work. But not much time is left to undertake this work as the objective now seems to be to complete the Doha Round by late 2006/early 2007, i.e., within the remaining time period of the existing Fast Track Authority granted to the US executive by the US Congress. It is in this context that the Hong Kong Ministerial Declaration should be analysed so that important issues and priorities for developing countries can be identified. This will allow developing countries to employ their limited resources strategically and with a view to achieving development objectives in the Doha Work Programme. Present analysis of the Hong Kong Ministerial Declaration by the South Centre is an effort to do that.

The Hong Kong Ministerial Declaration has the potential, to certain extent, to shape the focus of some of the Doha Work Programme. It did not contribute to advance the agriculture negotiations in any significant manner or provided sufficient operationalisable details in order to move the NAMA negotiations forward but has made significant change in emphasis for negotiations towards increased levels of liberalisation in services sector. Moreover, taking into account the targets of negotiation under Mode 1 and 2 of services, and the NAMA negotiation, the negotiation under e-commerce may result in deeper liberalisation of trade and supply of services supported by information technology. Therefore, the Declaration and particularly Annex C must be salvaged by developing countries to safeguard and promote their development interests in the area of services.

Similarly, developing countries` effort should be that the work programme for trade facilitation should continue on a phase by phase approach, by first addressing the operational mechanisms for the provision of adequate and secure technical assistance and capacity building (TACB) support.

Considering developments on some of the major issues in TRIPS, the developing countries can take advantage of Hong Kong Ministerial Declaration to focus on the relationship between TRIPS and CBD for a substantive outcome. They can also attempt to address important questions of development related to commodities, though within the narrow confines of the agriculture and NAMA negotiations where this critical issue has been located. While the deadlock on S&D has not been broken, perhaps the new deadline of December 2006 offers a better prospect for engaging developed countries on the remaining of 88 S&D proposals. Furthermore, the paragraph on small economies is a useful contribution, albeit one of a legal or procedural nature. However, the extent to which IF, Technical cooperation and Aid for Trade agenda can be secure, adequate, predictable, and demand-driven remain questionable.

In some other areas, developing countries need to closely follow the development of the work programme of the working groups on Trade, Debt and Finance and on Trade and Transfer of Technology so as to bring focus on the main elements of their proposals in subsequent discussions.

A detailed analysis of the Hong Kong Ministerial Declaration and its Annexes follows this short introduction. This analysis is divided into six parts. Part I examines the Hong Kong Ministerial Declaration to identify major implications for developing countries and some of the strategic options for them related to various areas of negotiations. Part III, IV, V, VI and VII are then devoted to a detailed analysis of Annexes A, B, C, D, and E respectively that deal with agriculture, NAMA, services, rules, and trade facilitation negotiations.

It is hoped that this analysis will help developing countries in planning their participation in the intense negotiations in the post Hong Kong period.

II. ANALYSIS OF HONG KONG MINISTERIAL DECLARATION

II.1 Agriculture

Brief Analysis

The Hong Kong Ministerial did not contribute to advance the agriculture negotiations in any significant manner. In fact, other issues such as services and NAMA took prominence during the Ministerial Conference in face of the reluctance from certain members, mainly the EU, to show any disposition to engage in real negotiations in agriculture while wanting to extract concessions from developing members in other areas.

Importantly, no major negotiating ground was lost by developing countries. On the contrary, valuable steps were made clarifying and/or agreeing on aspects of SDT such as the self-designation of SPs; the availability of price and volume triggers for the SSM; the proviso of a “safe box” in food aid to take care of emergency situations; and the exemption of (most) developing countries from the reduction of *de minimis* and overall trade-distorting support.

Developed country members made no concessions or lost negotiating ground in agriculture either. The highly publicised end date for the elimination of export subsidies by the EU was long overdue, extends beyond the 2010 date favoured by the majority of members, and coincides with the internally decided date for the phase out of export subsidies by the EU. Further, the end date will be “confirmed” only if the EU gets satisfaction with parallelism with respect to disciplines in other areas of export competition.

The US continues to oppose to the negotiation of additional disciplines on the blue box, even though they had made such commitment in the Framework. Further, the proposed cuts of support by the US would entail no meaningful cuts to be made by this country. But still, the US insist they “ambitious” proposal is conditional on real market access been achieved, including very specially in developing countries’ markets. This position contributed to stall progress in the negotiations and to the disappointing results of the Ministerial Conference.

Negotiators in Geneva continue to face the significant challenge of translating the general parameters agreed in the Framework 2004 into full fledged modalities that satisfy the Doha mandate and the development, trade and financial needs

of developing country Members. This is to be done within a very tight schedule that will no doubt put additional strains on the limited human and financial resources of small countries and delegations in Geneva.

The importance of process issues can thus be no overstated. The coordination of various developing country groupings should be encouraged continuing with the spirit that brought together the G110 in Hong Kong to counter divide and rule tactics of the developed world. In addition, developing countries should insist on expanding their participation in the green room consultations in reflection of the large membership that any particular coordinator may represent (e.g. ACP or LDCs).

Part II of this Analysis provides detail analysis of the Doha work program on agriculture under the Hong Kong Ministerial Declaration.

Highlights of Options and strategies for Developing Countries

To the extent that the Hong Kong ministerial made no contribution in moving forward the negotiations in agriculture the analyses and policy recommendations of the pre-HK phase continue to be valid. With the caveat, however that the context has changed with members agreeing to provide renewed impetus and negotiating guidelines on services and worrying steps towards an aggressive formula for the reduction of industrial tariffs, issues both of especial interest to developed countries. In this context, developing countries need to assess very carefully the overall balance of the negotiations and factor into their positions in agriculture these developments: are proposed concessions by developed countries in agriculture subsidies worth the price being requested from developing countries in market access in services and NAMA (and agriculture)?

Some of the key issues developing countries may want to put forth in the negotiations on modalities include the following:

- The need for balance in the level of commitments in the three pillars of the agreement;
- Additional disciplines on blue box to put limits on the counter-cyclical payments the US could cover under this category of support;
- Effective cuts on domestic support thus pressing for deeper cuts than those currently proposed by the US and the EU;

- The need for serious review and clarification of the green box to guarantee that direct payments to producers do not distort trade and production;
- The elimination of export subsidies on all products should be front-loaded; this commitment should apply to both volume and budget out-lay commitments;
- The need for meaningful provisions in favour of NFIDCs and LDCs with respect to disciplines on export credits and similar programmes;
- STEs play an important role in developing countries thus the importance of exempting STEs in these countries from additional disciplines on state trading;
- Tariff cuts by developing countries should be consistent with their trade, financial and development needs, and reflect adequate proportionality;
- Developing countries should structure tariff cuts in accordance to a tiered formula with higher thresholds;
- The illustrative list of indicators proposed by the G33 should not be multilaterally negotiated;
- Developing a strategy to counter attempts to define the “appropriate number of tariff lines” of SP in a very restrictive manner;
- Reiterating the proposal of the G33 on the treatment of SPs requiring, if any, no more than minimal reduction in tariffs on some SPs;
- Work within the G33 in the definition of missing elements of the proposal on the SSM (e.g. trigger levels);
- Define a strategy at the G33 level, to counter attempts to restrict the number of products for SSM eligibility;
- Defining concrete modalities for addressing the erosion of preferences

Negotiations are expected to move to a text-based approach. This is considered necessary in order for the Chair to be able to prepare a comprehensive modalities text on time. In this context, developing countries should fairly quickly present written submissions with respect to all aspects of the negotiations of their interest so that these can be taken into account in the intense negotiation process ahead and in drafting the modalities text.

Considering the limited time available for the establishment of modalities, there will be temptations to leave some issues for resolution after. Developing countries must in this sense insist that the elements of SDT of importance to them shall be an integral part of modalities.

II.2 Sectoral Initiative on Cotton

Doha Mandate	July 2004 Framework	Hong Kong Ministerial Declaration	Implications of HKMD
<p>No specific mandate on cotton</p>	<ul style="list-style-type: none"> • Acknowledges complementarity of trade and development aspects of cotton • Trade aspects of cotton. Trade distorting policies affecting the 3 pillars (market access, domestic support and export competition) in this sector to be addressed ambitiously, expeditiously and specifically within the agriculture negotiations. • Development aspects of cotton. Make progress on assistance for the development of economies where cotton has vital importance, through consultations by the Director General with bilateral and multilateral agencies. The progress in this area would be monitored by the General Council 	<ul style="list-style-type: none"> • Trade aspects of cotton. <ul style="list-style-type: none"> ○ <u>Market access</u>: developed countries will give duty and quota free access for cotton exports from least-developed countries (LDCs) from the commencement of the implementation period. ○ <u>Domestic support</u>: trade distorting domestic subsidies for cotton production should be reduced more ambitiously than under whatever general formula is agreed and that this should be implemented over a shorter period of time than the one applicable for the rest of agricultural goods. ○ <u>Export competition</u>: All forms of export subsidies for cotton will be eliminated by developed countries in 2006. • Development aspects of cotton <ul style="list-style-type: none"> ○ Urges the Director General to intensify consultative efforts with bilateral donors and multilateral and regional institutions. ○ Explore, during these consultations the possibility of establishing (with these institutions) a mechanism to deal with income declines in the cotton sector until the end of subsidies ○ Urges development community to further scale up cotton specific assistance and to support the efforts of the Director General ○ Urges members to promote and support 	<ul style="list-style-type: none"> • The HKMD aims at ensuring that an explicit decision on cotton will be agreed (in the context of the final outcome of the agriculture negotiations), in the terms mentioned in the column before. It doesn't mean that this result has been already achieved. • Trade aspects of cotton: <ul style="list-style-type: none"> ○ No guarantee of improved market access for other developing countries (that are not LDCs) ○ Determination of extent and pace of reduction of domestic support will be defined at the last stage of negotiations ○ Export competition: implementation (timing and speed) of the elimination of export subsidies yet to be

		<p>South-South cooperation, including transfer of technology.</p> <ul style="list-style-type: none"> ○ Encourage African cotton producers to deepen reforms efforts to enhance productivity and efficiency ○ Requests the Director General to set up an appropriate follow-up and monitoring mechanism 	<p style="text-align: right;">agreed</p> <ul style="list-style-type: none"> • Compensation package for trade losses suffered until the removal of these distorting measures is completed has not been agreed.
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Brief Analysis and Highlights of Options and strategies for Developing Countries

The HKMD contains best endeavour language in connection to the final outcome of the three pillars of the agriculture negotiations and also with regard to development assistance. It would seem like it doesn't provide a clear sense of direction on how this matter should be addressed "ambitiously, expeditiously and specifically". In this sense it is suggested that proponents of the cotton initiative:

- Are attentive to developments in the agriculture negotiations in order to specify in a proactive manner what these 3 terms mean, in accordance with their expectations for this sector, for each of the pillars. It is suggested to reinforce coalition building with other developing countries that might be interested in supporting this initiative and with the African Group.
- Insist on the arguments presented in their previous submissions to the Subcommittee on Cotton that were encapsulated, to a certain extent, in the Ministerial Decision, as it doesn't constitute an agreed final outcome (yet)
- Are attentive to consultations to be undertaken by the Director General for the design of a monitoring mechanism for development assistance and are proactive in the design of such a mechanism, seeking commitment-type of language from the side of donors. It is suggested to reinforce the political message related to the need for increased development assistance at the regional and bilateral level and also at high level meetings.

II.3 NAMA

Brief Analysis

1. The Declaration adopted in Hong Kong has, as expected, not delivered sufficient operationalisable details in order to move the negotiations forward, leaving the bulk of the negotiating effort to be undertaken in 2006. In fact, several commentators have described the Ministerial Declaration as a minimalist agreement, an effort to simply maintain the current Doha Round alive, or even a declaration without any agreement whatsoever.
2. That assessment can only partially describe the NAMA section of the Ministerial Declaration (paragraphs 13 to 23 and paragraph 24). On the one hand, it is undeniable that the Declaration contains no breakthrough decision and that, when work resume in early 2006, negotiators will confront the many of same difficult questions that they had already faced in the run-up to Hong Kong. On the other hand, it should nonetheless be noted that the Declaration also contains a number of new elements that either consolidate or supplement aspects of the July 2004 NAMA Framework and that impose significant constraints to the delivery of a really pro-development NAMA package.

Part III of this Analysis provides detail analysis of the Doha work program on NAMA under the Hong Kong Ministerial Declaration.

Highlights of Options and strategies for Developing Countries

3. On the substance there are two important issues to be explored in the very short term. First, the use of the plural in “coefficients” for the formal recognition of the Swiss formula with multiple coefficients for tariff reductions. Second, the relationship between the level of ambition in NAMA and in Agriculture.
4. With relation to the former, developing countries will need to articulate more concretely their interests with respect to the formula and the flexibilities.
5. With relation to the latter, a linkage with the domestic subsidies pillar of the Agricultural negotiations could prove more effective both to counter pressure in NAMA and to favour additional efforts in Agriculture.
6. Both options pose the strategic question of whether tariff cuts in NAMA should be protracted until meaningful concessions are obtained in Agriculture, or whether there are significant developmental reasons, intrinsic to NAMA, that would justify a rejection of tariff cuts beyond the level that may be sustained by developing countries’ industries.
7. These objectives will require concerted efforts and solidarity among developing countries delegations and reveal the urgency to strengthen the cohesion and impact of existing alliances (African Group) and new alliances (NAMA 11). The fact that most developing countries are not demandeurs of NAMA should not be seen as an impediment to their more offensive positioning in the negotiations. In fact, developing countries have distinct and specific interests in these negotiations that merit to be articulated in a more offensive, concerted, consistent and systematic manner.

II.4 Paragraph 24 of the HK Ministerial Declaration

Doha Mandate	July 2004 Framework	Hong Kong Ministerial Declaration	Implications of HKMD
- Nothing	- Nothing	<ul style="list-style-type: none"> - Members recognise the importance of market access for D'ing countries both in NAMA and Agriculture. - Negotiators will ensure there is a "comparably high level of ambition in market access for Agriculture and NAMA". 	<ul style="list-style-type: none"> - The linkage between agriculture and NAMA negotiations has been formalised by the HK Declaration. - This linkage intends to lower the level of ambition, particularly that of developed countries in NAMA, to match the level of liberalisation being offered in Agriculture. - It is also likely that developed countries (US) use this paragraph to require a higher level of ambition in both NAMA and Agriculture. Similarly, there is a risk that some developed countries (EC) use this paragraph as a bait to require greater concessions in NAMA as a "price" for minimal movements in Agriculture. - D'ing countries can insist that this paragraph establishes a link not only with the market access pillar of Agriculture negotiations, but with all three pillars (and very importantly the pillar on domestic support). This would make the paragraph more efficient, both in lowering ambitions in NAMA and in creating greater momentum in Agriculture.

II.5 Services negotiations

Brief Analysis

Being at the early stages of the GATS negotiations, the Doha Mandate for the services negotiations was quite general. It reiterated one of the more important objectives for negotiations, which is to promote economic growth of all trading partners and the development of developing and least-developed countries and the right of members to regulate and introduce new regulations, and called on Members to conduct negotiations based on the agreed Guidelines and Procedures for Negotiations. The Mandate also highlighted the need to achieve important developing country objectives found in GATS Articles IV and XIX.

From Doha Mandate in 2001 to the July Framework in 2004, there was a greater emphasis in moving into the second round of offers with recognition that initial offers were not as ambitious as desired by the *demandeurs* in negotiations. Thus, there is the establishment of a deadline for revised offers and the call for strive for high quality offers with effective market access and no a priory exclusion of sectors and modes. On the rules negotiations, there was only a mention of intensifying efforts conclude them in line with their mandates and timelines. A stocktaking of the progress in negotiations was also mandated of the Council of Trade in Services in preparation for the Sixth Ministerial Conference in Hong Kong.

From the July 2004 Framework to the Hong Kong Ministerial Declaration (HKMD) and Annex C, there is a significant change in emphasis for negotiations. The primary focus of the Annex C is to increase levels of liberalisation without any consideration of their development impacts or gains. The introduction of modal objectives, reference to sectoral and modal objectives identified mainly by the *demandeurs* in negotiations and the endorsement of plurilateral negotiations can all be considered as moving away from what was initially laid out in Doha, the Negotiating Guidelines and what was envisaged in the July Framework . The only other area of negotiations that shares a close emphasis is the mandate to develop Article VI: 4 disciplines on domestic regulation by the end of the round.

Despite the existing and well recognised lower level of development of services industries the HKMD does little to address and consider development concerns involving weak regulatory capacity and services capacity; lack of access to technology, distribution channels and information networks; and barriers in mode 4. At the negotiating level, issues of

interest to developing countries, Article IV implementation, review of progress of negotiations and assessment based on the Guidelines and Procedures for Negotiations remain missing.

Part IV of this Analysis provides detail analysis of the Doha work program on services under the Hong Kong Ministerial Declaration.

Highlights of Options and strategies for Developing Countries

The HKMD and particularly Annex C must be salvaged by developing countries to safeguard and promote their development interests where possible. Developing countries must ensure negotiations are accountable to the GATS architecture and development objectives through reference of paragraphs 25 through 27 of the HKMD. In line with development objectives, developing countries must pursue implementation of Article IV on Increasing Participation of Developing Countries in World Trade. By doing so, it can be ensured that developed countries' commitments result in strengthening capacity, efficiency and competitiveness of developing country service suppliers.

Despite the lack of a definite mandate to do so, the HKMD still provides various opportunities for implementing the LDC Modalities. Annex C refers to developing methods for implementing the LDC Modalities and through this agreement, LDCs have the opportunity of furthering proposals for such methods. Given that Members are not required to undertake commitments in the interest of LDC modalities, LDCs may develop mechanisms, by the deadline, with the agreement for commitment at a later and definite date.

With regards to the plurilateral negotiations, developing countries were able to secure a voluntary approach for these negotiations. Therefore, developing countries are not required to enter into plurilateral negotiations but only "shall consider such requests", which does not mandate the entry into negotiations. Further, developing countries were able to ensure that consideration of requests will be conducted in accordance of GATS Article XIX: 2, which allow developing countries to liberalise at a slower pace and in line with their levels of development. Plurilateral requests must be treated in the same way bilateral requests were, whereby if it is not in line with development objectives it does not have to be fulfilled. However, the HKMD on plurilateral negotiations remains quite unclear and ambiguous. For example, it is not clear how the bilateral request-offer process will correspond and not cause undue burdens with the plurilateral process. Further the ambitious timelines for these negotiations may present preclude Members from having enough time to present requests properly and result in an unwieldy and incoherent process. Given the political nature of plurilateral

negotiations, results will be dependent on Members with a common level of ambition and objectives that together make up a strong negotiating group against the requested Members who will be weaker in the case of developing countries, with regards to negotiating power. This means that developing countries that choose to negotiate plurilateral requests may be in danger of facing immense pressure from a group of stronger countries. Developing countries with offensive interests thereby would have to employ the same strategy of submitting a plurilateral request where there are clear common interests and objectives and in numbers that result in strong negotiating power against those requested. The negotiating capital that goes into negotiating plurilaterally is more likely to be higher than bilaterally. Therefore, with the interest in getting more (i.e. market access) where one has to put in more (i.e. negotiating capital), it is more logical for developing countries to submit a plurilateral request as a group of developing countries to a group of developed countries. In services trade, developing countries benefit much more from market access in developed countries, in terms of trading value, than from market access in developing countries. Therefore, where interests lie in furthering South-South trade, developing countries should utilise the lower negotiating capital method of bilateral negotiations outside of the WTO since the most gains for developing countries in the WTO lie in access to developed country markets.

Domestic regulation negotiations will be a key area of negotiations as it has a clear mandate for developing disciplines. Developing country Members must be engaged to ensure disciplines protects their right to regulate and preserves policy space now and into the future. It is unclear whether or not the rules negotiations, particularly for emergency safeguard measures (ESM) and subsidies (which are important for ensuring developing countries are not unduly harmed by GATS liberalisation and can preserve their subsidies for development purposes) will be concluded in 2006. Members must not be forced to undertake commitments without a proper ESM in place. In the unlikely outcome that these negotiations with disciplines for ESM and subsidies do not conclude this year, Members can aim to reach agreement to conclude negotiations beyond this round.

It is fair to conclude that the GATS has not thus far promoted the development of developing and least-developed countries as the benefits for developing countries in GATS have not been realised. The mandates and objectives in favour of development and developing countries, according to GATS Article IV and XIX: 2, rules negotiations, and assessment and review of progress in negotiations according to the Guidelines and Procedures for Negotiations have to be fulfilled – as was called for originally by the Doha Mandate.

II.6 WTO Rules (Anti Dumping, Subsidies, Fisheries and RTAs)

Brief Analysis

All four areas of WTO Rules negotiations, as virtually all other areas of the Doha Work Programme, contain a distinct developmental dimension. Nonetheless, the declaration does not firmly reaffirm that dimension (with maybe the exception of the section of fisheries subsidies) and in that sense is a missed opportunity to establish pro-developmental benchmarks with which to gauge the results of the negotiations in the various areas. For instance, in RTAs the Declaration does not reflect the importance of the developmental aspects of RTAs for developing countries. Similarly, the Declaration does not adopt as a parameter the importance of crafting rules that are simple to both implement and monitor, so that developing countries with limited administrative capacity are not overburdened by the new disciplines.

Furthermore, it is also of concern that, with the exception of a restricted number of delegations, developing countries remain only marginally or sporadically involved in Rules negotiations. An intensification of the negotiations (e.g. by setting deadlines or by requesting members to proceed to text-based proposals) as recommended by the Declaration together with an intensification of negotiations in other areas will most probably translate into even larger difficulties for the active and effective participation of developing countries in these negotiations.

Part V of this Analysis provides detail analysis of the Doha work program on rules negotiations under the Hong Kong Ministerial Declaration

II.7 TRIPS

Doha Mandate	July 2004 Framework	Hong Kong Ministerial Declaration	Implications of HKMD
<ul style="list-style-type: none"> • Public health; • relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD), • the protection of traditional knowledge and folklore, • the tasks envisaged under Article 23.4 of TRIPS, • the extension of GIs protection to products other than wines and spirits, • non-violation and situation complaints, • the work program of TRIPS Council on the review of the Article 27.3b and • implementation of TRIPS under Article 71.1 and S&D and implementation issues. 	<ul style="list-style-type: none"> • Committed to make progress in all of the TRIPS negotiation areas; and established consultative process by the Director-General on all outstanding implementation issues, including on the relationship between TRIPS and CBD, and extension of GIs protection. • The moratorium on the application of non-violation and situation complaint was extended until Sixth Ministerial session. 	<ul style="list-style-type: none"> • Agreed to intensify the negotiations on Article 23.4 of TRIPS for conclusion within the overall time-frame for the conclusion of the Doha negotiation, • Extended the consultative process by the Director-General on implementation issues for appropriate action no latter than July 2006. • Other tasks under paragraph 19 the protection of traditional knowledge and folklore be undertaken for report to the next session and • Extended the moratorium on the application of non-violation and situation complaints pending the examination of the scope and modalities for its application. • It also welcomed the decision on public health and extension of implementation of TRIPS by LDCs. 	<p>-Clarification on time line for concluding the negotiation on Article 23.4 of TRIPS and implementation issues</p> <p>-The relationship between CBD and TRIPS is considered in the general framework of negotiation for outstanding implementation issues and concerns, including the extension of GIs protection to other products.</p> <p>-Reaffirmed that there will be no use of non-violation and situation complaints until there is agreement on the scope and modalities.</p>

Brief Analysis

Some of the major TRIPS negotiations were resolved before the ministerial conference by the Decision of the General Council on the amendment of the TRIPS Agreement for the implementation of paragraph 6 of the August 2003 Decision on TRIPS and Public Health and on the extension of the transition period for the implementation of TRIPS by least-developed countries. The Hong Kong Ministerial Declaration has made clear decision to extend the moratorium on the

application of non-violation and situation complaints until there is agreement on the scope and modalities of such type of complaints under the TRIPS Agreement. It has decided to continue discussion on the complaints and the work under paragraph 19 of the Doha Declaration for report to the next session. The Declaration has maintained the ambition in the July package to address the extension of GIs protection to products other than wines and spirits and to address the relationship between the TRIPS Agreement and the CBD within shorter time frame, i.e. not latter than July 2006. The negotiation for establishment of the multilateral system of notification and registration of GIs is set to be completed within the time frame for conclusion of the round.

Highlights of Options and strategies for Developing Countries

- The decision on amendment of the TRIPS Agreement for the implementation of paragraph 6 of the August 2003 Decision on TRIPS and Public Health and on the extension of the transition period for the implementation of TRIPS by least-developed countries have now passed to the implementation phase. The challenge would be to take appropriate measures for the implementation, which requires coordinated strategies at national and international level.
- Considering developments on public health and extension of the transition period for the implementation of TRIPS for LDCs, the general urgency in the WTO to finalise the negotiation of the Round, and the time frame for tabling working document by July 2006, developing countries have the advantage to focus on the relationship between TRIPS and CBD for substantive outcome. However, the linkage between the negotiation on the extension of GIS to other products (mainly agricultural and food stuff) and amendment of TRIPS to provide mandatory disclosure requirements needs careful analysis.
- With due regards to the negotiation strategies in relation to the CBD issues, there is a need to identify the strategy to deal with paragraph 19 issues considering the low priority given to them under the Ministerial Declaration that stipulates reporting to the next ministerial session.
- Though the moratorium on the use of non-violation and situation complaint is extended until the next session which is conditioned also to the finalisation of the negotiation on scope and the modalities of non-violation and situation complaints, developing countries, however, need to be watchful to any proposal on the issue.

II.8 Trade and Environment

Doha Mandate	July 2004 Framework	Hong Kong Ministerial Declaration	Implications of HKMD
<p>Paragraph 31 launched negotiations in three areas:</p> <ul style="list-style-type: none"> (i) the relationship between specific trade obligations in multilateral environmental agreements (MEAs) and existing WTO rules; (ii) observership status of MEAs in the WTO and information exchange between MEA secretariats and the WTO; and (iii) the elimination or reduction, as appropriate, of tariff and non-tariff barriers to trade in environmental goods and services. <p>Under Paragraph 32, these negotiations were not supposed to result in outcomes that would alter the balance of existing rights and obligations of WTO Members.</p>	<p>Paragraph (f) reaffirmed Members' commitment to progress in the Paragraph 31 DMD negotiations in line with the Doha mandates.</p>	<p>Paragraphs 30 to 32 reaffirmed the Paragraph 31 DMD negotiating mandates and directed Members to intensify their negotiations in these areas.</p>	<p>The trade and environment negotiations continue to remain among the most abstract and conceptual of the various negotiating areas, and are not likely to see much progress other than, perhaps, in the environmental goods and services negotiations.</p>

Brief Analysis

Paragraphs 30 to 32 of the HKMD basically reaffirm the Paragraph 31 DMD negotiating mandate, but without adding a high level of political urgency to concluding these negotiations.

Hence, the MEA-WTO relationship negotiations are likely to continue to focus on concepts and definitions that are relevant to the negotiations.

The MEA observership status negotiations are likely to remain blocked due to the impasse among Members on observerships in general, while the information exchange negotiations have not been focused in detail.

The environmental goods negotiations may see more progress as Members debate how to define or identify environmental goods and then move on to defining modalities for treating environmental goods in the context of the NAMA negotiations. The environmental services negotiations are not yet being given special attention in the overall services negotiations.

Highlights of Options and strategies for Developing Countries

Developing countries will need to identify more pro-actively their areas of interest and concern with respect to the various Paragraph 31 DMD negotiating areas in order to ensure that their interests are also reflected in the outcomes.

In particular, developing countries will need to think about what kind of outcome they would wish to see in the Paragraph 31(i) negotiations and what the substantive content of that outcome should be. Also, with respect to the Paragraph 31(iii) negotiations, developing countries will need to become even more pro-active in clarifying their own definitions of environmental goods and environmental services and putting these forward in the form of concrete proposals (preferably supported by a broad range of developing countries). They should try to see to it that their own definitions of environmental goods and environmental services fit their own development profiles and objectives.

II.9 Trade Facilitation

Brief Analysis

Paragraphs 4 to 7 of Annex E of the HKMD are the operative paragraphs that basically outline the NGTF's work programme for 2006. These MC6-endorsed recommendations in Annex E basically require the NGTF to:

- Intensify negotiations and move these negotiations towards text drafting mode with respect to “all aspects of the mandate”;
- Identify TF needs and priorities of individual Members;
- Identify the cost implications of possible measures;
- Make the provision of TACB during the negotiations fully operational “in a timely manner” – i.e. within such time as to be effective and useful to the recipients in the course of the negotiations – and agree on provisions that would make operational such provision of TACB to the implementation of new commitments after the negotiations;
- Agree on and integrate S&DT proposals and considerations in the TF negotiations. These should be done through provisions that are precise, effective and operational.

The stress laid in Paragraph 4 of Annex E for the NGTF to move into “focussed drafting mode ... so as to allow for a timely conclusion of text-based negotiations on all aspects of the mandate” clearly indicates that the negotiations must be on **all** parts of the mandate – i.e. this would include those parts of the negotiating mandate reflected in Paragraphs 5, 6 and 7 of Annex E as well.

This means that in order for the TF negotiations to proceed in a logical and sequential manner, the mandates reflected in Paragraphs 5 to 7 of Annex E must first be complied with and accomplished before any text-based negotiations on the final text can take place. Paragraphs 5 to 7 of Annex E (with respect to TF needs and priorities and cost implications, TACB, and S&DT) form the premise or foundation for ensuring that a negotiated outcome that reflects the needs and interests of developing countries and LDCs is obtained.

Part V of this Analysis provides detail analysis of the Doha work program on trade facilitation under the Hong Kong Ministerial Declaration.

Highlights of Options and strategies for Developing Countries

Developing countries will need to stress that in implementing the NGTF's 2006 work programme, the logical priority should hence be on first concluding negotiations on the following issues as "Phase I":

- (i) Agreement on operational mechanisms for the provision of adequate and secure TACB support to enable developing countries and LDCs participate effectively during the negotiations. This should be done "in a timely manner" - i.e. within such period as would make such TACB useful to the recipients as the negotiations occur. In short, such operational mechanisms for negotiations support TACB should be in place and the funds should be flowing to developing countries and LDCs as soon as possible, e.g. by the end of March 2006;
- (ii) The identification of TF needs and priorities of Members, especially developing countries and LDCs. This should be done as soon as possible because these will serve as the basis for identifying what proposed TF measures will be needed by these countries;
- (iii) The identification of cost implications of proposed measures. This should also be done as soon as possible in order to clarify the extent of resources - human, financial, technical, administration, regulatory - would be needed for various specific proposed measures;
- (iv) Agreement on operational mechanisms for the provision of adequate, secure, and long-term TACB support for the implementation by developing countries and LDCs of any new commitments; and
- (v) The consideration of S&DT proposals and measures that must be fully reflected in the context of the negotiations.

Once the issues above have been resolved, the NGTF should then focus on the following as "Phase II" of its 2006 work programme:

- (i) Text-based negotiation and agreement on proposed measures or rules that can form part of the final outcome of the negotiations, including S&DT provisions that are precise, effective and operational, whether as part of the rules negotiated above or as stand-alone provisions, and which provide developing countries and LDCs with appropriate flexibilities, consistent with Paragraph 7 of Annex E of the HKMD and Paragraphs 2 to 6 of Annex D of the July 2004 Framework.

These text-based negotiations on the final text should include negotiations on the form of the outcome and the non-application of the DSU to any new commitments.

Phase I should be concluded first prior to Phase II.

In undertaking Phase II, developing and least-developed country Members should assess the developmental suitability of the various proposed measures on the basis of the following qualitative guide questions:

1. Can the proposed measure be done or implemented by developing and least-developed country Members on their own without the need for S&DT provisions? If not, would it be possible for the proposed measure to include S&DT elements?
2. Can the proposed measure be done or implemented by developing and least-developed Members on their own without the need for TACB support? If not, should the implementation of the proposed measure be tied to the provision of adequate, secure, and sustainable TACB support from developed Members for such implementation?
3. Does the proposed measure effectively address, from the perspective of developing and least-developed countries, their identified TF needs and priorities?
4. Does the proposed measure maintain or expand the domestic regulatory policy space and flexibility of developing and least-developed countries in the particular policy area to which the proposed measure pertains?

Developing and least-developed countries might wish to reflect on the extent to which the positive or negative responses to the questions above would determine the acceptability of each proposed measure in the context of the negotiations. For example, if the responses to all of the questions above are in the negative, then the proposed measure would most likely not have any developmental benefit for developing and least-developed countries.

II.10 DSU Negotiations

Doha Mandate	July 2004 Framework	Hong Kong Ministerial Declaration	Implications of HKMD
<p>Paragraph 30 called for negotiations to clarify and improve the DSU.</p> <p>The DSU negotiations are not part of the single undertaking: paragraph 47.</p>	<p>In paragraph (f), the General Council Decision affirmed Members' commitment to progress in the DSU negotiations. It also adopted the DSB Special Session Chairman's recommendation that work should continue without a deadline and that all the proposals would remain under consideration (TN/DS/10).</p>	<p>Paragraph 34 noted the progress made in the negotiations and directed the Special Session to continue to work towards a rapid conclusion of the negotiations.</p>	<p>The Ministerial Declaration has not set a deadline for the completion of the DSU negotiations.</p>

Highlights of Options and strategies for Developing Countries

- The DSU is a very important WTO agreement. The rules agreed upon in the negotiating areas can only be enforced through dispute settlement. Unlike the other covered agreements, the provisions of the DSU are horizontal in nature because they can be invoked to settle disputes arising under any of the covered agreements. It is therefore necessary to accord the DSU negotiations the importance they deserve.
- Despite the absence of a deadline in the Ministerial Declaration, a WTO document (Job(06)/13) states that there should be revised contributions on specific issues by March/April 2006 and a Chairman's draft working document should be presented in July 2006.
- Developing countries should strive to ensure that they participate fully when the negotiations get back on track and should make every effort to have their concerns discussed and addressed in the negotiations. They should refine and revise some of their proposals and should strongly push for acceptance of their proposals on remedies.

II.11 Special and Differential (S&D) Treatment

Elements of Doha Mandate	July 2004 Framework - Elements and Implications	Hong Kong Ministerial Declaration - Elements and Implications
<p>Paragraph 44 of the Doha Ministerial Declaration and paragraph 12.1 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns provide the mandate for S&D negotiations in the Doha Round. This mandate was included at the demand of developing countries and was presented as a key development dimension of the Doha Round. Important aspects of this mandate include:</p> <ol style="list-style-type: none"> 1. Commitment to review all S&D provisions in the WTO agreements “with a view to strengthening them and making them more precise, effective and operational” and to consider the legal and practical implications of converting the S&D 	<p>Parts of paragraph 1.d of the July 2004 Framework addressed the issue of S&D provisions. No new commitment was made in this regard. Following are the important elements of work programme on S&D contained in the July 2004 Framework:</p> <ol style="list-style-type: none"> 1. Ministers’ decision at Doha to review all S&D provisions “with a view to strengthening them and making them more precise, effective and operational” is recalled. However, the Doha mandate regarding conversion of non-binding S&D provisions into mandatory provisions finds no mention in the July 2004 Framework. 2. Two track process established before the Cancun Ministerial Conference in 2003 is recognized, i.e., the Committee on Trade and Development (CTD) in the Special Sessions is primarily tasked to deal with Category I proposals whereas other WTO bodies deal with Category II proposals. A new deadline of July 2005 is set for the completion of this two-track process with direct reports to the General Council by that date. This 	<p>Paragraphs 35-38 and Annex F address S&D issues. Important elements regarding work on S&D issues, as elaborated in paragraphs 35-38 include:</p> <ol style="list-style-type: none"> 1. Renewal of the determination to fulfil the Doha mandate regarding the review of all S&D provisions “with a view to strengthening them and making them more precise, effective and operational” (again without any mention of Doha mandate regarding conversion of non-binding S&D provisions into mandatory provisions); 2. Continuation of the two track process whereby the Committee on Trade and Development (CTD) in the Special Sessions is primarily tasked to deal with Category I proposals whereas other WTO bodies deal with Category II proposals (However, this time CTD Special Session has been asked “to coordinate its efforts with these bodies so as to ensure that this work is completed on time”.) with both required to report to the General Council by December 2006; 3. Instruction to the CTD to resume work on all other outstanding issues, (within the parameters of the Doha mandate) including on the cross-cutting issues, the monitoring mechanism and the incorporation of S&D treatment into the architecture of WTO rules”

<p>provisions that are non-binding in nature into mandatory provisions with a view "to identify those that Members consider should be made mandatory", by July 2002.</p> <p>2. Commitment to consider, in the context of the Doha Work Programme, "how special and differential treatment may be incorporated into the architecture of the WTO", presumably after the commitment at 1 above has been fulfilled as no deadline regarding commitment at 2 was established.</p>	<p>was despite the opposition from many developing countries who wanted the CTD Special Sessions to deal with all agreement-specific proposals.</p> <p>3. CTD was also instructed "to address all other outstanding work, (within the parameters of the Doha mandate) including on the cross-cutting issues, the monitoring mechanism and the incorporation of S&D treatment into the architecture of WTO rules" and to report to the General Council without specifying any deadline in this regard. Again the presumption seemed to be that this work would be undertaken after the agreement-specific proposals have been adequately addressed as demanded by developing countries.</p> <p>4. July 2004 Framework failed to take into account the lack of any meaningful progress on Doha mandate on S&D and the general frustration of developing countries at this failure. It also failed to provide any breakthrough in the deadlock that had prevailed since early 2003.</p>	<p>and to report to the General Council on a regular basis (again without specifying a deadline);</p> <p>4. Recognition that "substantial work still remains to be done" (paragraph 36) and concern "at the lack of progress on the Category II proposals that had been referred to other WTO bodies and negotiating groups" (paragraph 37), but without identifying the reasons for this lack of work or providing clear directions to break the deadlock.</p> <p>Annex F contains decisions on the five proposals that relate to LDCs only. This can be regarded as some achievement but with two important caveats. One, only five out of a total of 88 proposals has been finalized despite the passage of four years. Two, the outcome of even these five proposals is much less than what LDCs had originally requested. For example, LDCs had asked for exemption from TRIMS (agreement on Trade-Related Investment Measures) commitments so long as they remain LDCs - a request quite justified by their levels of economic and industrial development and in view of the fact that many developed countries have been using TRIMS till quite recently - while they have been given an extension for seven years only.</p>
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Possible Options and strategies for Developing Countries

Three issues are critical to consider while considering options and strategies for developing countries in the area of S&D post Hong Kong. One, S&D has been a key element of their development agenda. Their main objective has been two-fold: to strengthen and operationalize the S&D provisions in the existing WTO agreements by making them precise, effective and, in the case of those provisions that are at present non-binding, binding; and to ensure that comprehensive, effective and binding S&D provisions are included in the new agreements that are being negotiated during the Doha Round. Main, though not exclusive, focus of Doha mandate on S&D is with regard to the first but the importance of the second can not be underestimated. Two, the lack of any meaningful progress on S&D mandate has been mainly due to the intransigence of developed countries. Developed countries have rarely engaged in meaningful negotiations on S&D. For example, many valuable months immediately Doha were lost on procedural wrangling when some developed countries even refused to recognize that there was a negotiating mandate on S&D and objected to the document numbering. This was followed by their insistence to address the cross-cutting S&D issues without first delivering on the provision-specific mandate as elaborated at Doha. They also repeatedly raised the issue of differentiation among developing countries. Finally, their reaction to the 88 proposals by developing countries has been quite hostile. They are not willing to offer any meaningful outcome as has been demonstrated by what was on offer before the Cancun Ministerial Conference as well as what has finally been delivered on five LDC-specific proposals at Hong Kong. Three, there is an expectation that Doha Round will be completed in 2006/early 2007. Hence the new deadline of December 2006 for S&D mandate ties the S&D outcome to the outcome of the Doha Round as a whole. This is a major shift as Doha mandate had stipulated resolution of S&D issues (by July 2002) much before the stipulated end of the Doha Round (1 January 2005).

Therefore key questions for developing countries include:

1. How much priority to assign to S&D issues in 2006? This question has strategic (importance that developing countries assign to S&D may very well determine the future and features of S&D in the multilateral trading system); political (S&D has been a political platform for united action by developing countries); and practical (valuable negotiating resources and capital will have to be invested in an year of intense negotiations on a number of issues) dimensions. If developing countries view S&D as a critical strategic and political element of the multilateral trading system, they should be willing to prioritize this and assign adequate negotiating resources.
2. How to meaningfully engage the developed countries in the S&D negotiations? The new deadline of December 2006 perhaps offers a better prospect for engaging developed countries. Developing countries can clearly indicate that any progress in other areas of interest to developed countries will not be possible without meaningful progress on S&D. Developing countries can also expect useful support from their civil society partners. However, there is a downside of creating any explicit or implicit link between progress on S&D on the one hand and other issues on the other. This may require concessions by developing countries in some other areas to obtain positive outcomes in S&D. Developing countries have been rightly reluctant to agree

to such a trade off as they had already paid heavily during the Uruguay Round and strengthening and operationalization of S&D provisions in the existing WTO agreements is, so to say, part of that original deal. Moreover, S&D should be in recognition of their lower level of development and not a concession to be traded off.

3. How to sequence the negotiations on S&D? Developing countries have been demanding that provision-specific S&D proposals should be addressed first. This is justified on the basis of Doha mandate. However, the new deadline established at Hong Kong is not exactly in line with this. Assuming that the Doha Round is completed by end 2006/early 2007, and only provision-specific proposals are addressed within this timeframe, there will be no time left to deal with the issue of how to integrate the S&D into the architecture of the WTO. This may not necessarily be bad, if positive outcome of provision-specific proposals has been achieved; meaningful S&D provisions have been built into the new agreements under negotiations during the Doha Round; and a mandate is secured to continue work on a Framework Agreement on S&D (this element was noted in paragraph 44 of Doha Ministerial Declaration though no concrete work has been undertaken since then).

It is hoped that developing countries will deliberate on these questions to identify their preferred options and strategies to effectively pursue the S&D negotiations in 2006.

II.12 Implementation Issues

Elements of Doha Mandate	July 2004 Framework - Elements and Implications	Hong Kong Ministerial Declaration - Elements and Implications
<p>Paragraph 12 of the Doha Ministerial Declaration (DMD) and the Doha Ministerial Decision on Implementation-Related Issues and Concerns (Doha Implementation Decision) provide the mandate for negotiations on implementation issues in the Doha Round. Important elements of these are as follows:</p> <ol style="list-style-type: none"> 1. Of the 93 turrets in the 1999 draft ministerial text for Seattle Ministerial Conference that can be regarded as a comprehensive listing of implementation issues, thirty-nine (39) were made the subject of immediate action through direct reference in the text of the Doha Implementation Decision, while forty-eight (48) were made subject to negotiations pursuant to Paragraph 13 of the Doha Implementation Decision and Paragraph 12 of the DMD. One (1) turret – on TRIPS and public health – was covered by the 2001 Ministerial Declaration on the TRIPS Agreement and Public Health. However, five (5) of the turrets in the 1999 draft ministerial text were not reflected in the Doha Implementation Decision or in the 	<p>Despite a clear commitment at Doha to find solution to the long standing implementation issues by the end of 2002, no progress could be achieved. It was mainly due to three reasons: i) the implementation issues were scattered among many WTO bodies hence making it almost impossible for developing countries with very limited negotiating capacity to pursue these consistently; ii) the lack of meaningful engagement by major developed countries who employed delaying tactics and did not offer any concessions at all; and iii) the issue of the extension of the protection for geographical indications beyond wines and spirits took the centre stage where ironically the EC became the main demandeur. Therefore, the negotiations were soon deadlocked and the Director General of the WTO took upon himself the task of consultations with Members with a view to finding a way forward on implementation issues. This was the context and situation when the July 2004 Framework was adopted.</p> <p>Implementation issues are addressed under paragraph 1 (d) of the July 2004 Framework that deals with development issues. Main elements of this short paragraph include:</p> <ol style="list-style-type: none"> 1. Reaffirmation of Doha mandate on implementation issues and the direction to the Trade Negotiations Committee (TNC), 	<p>Paragraph 39 of the Hong Kong Ministerial Declaration deals with implementation issues. It is essentially a repetition of what was in the July 2004 Framework on implementation issues with only the following as new elements:</p> <ol style="list-style-type: none"> 1. Specific mention of another implementation issue, i.e., the relationship between the TRIPS Agreement and the Convention on Biological Diversity; 2. Request to the Director General of the WTO to hold dedicated consultations if need be and to report to each regular meeting of the TNC; and 3. Establishment of a new deadline of 31 July 2006 to complete this

<p>referenced Implementation Issues Compilation. These are tires that relate to textiles and clothing, services, SPS measures, and TBTs (paragraphs 21(e) and (i), and 22(d) and (e), of the 19 October 1999 draft ministerial declaration text, WTO Doc. Ref. Job(99)/5868/Rev.1.)</p> <p>2. Negotiating mandate in paragraph 12 of DMD makes these negotiations subject to paragraph 47 of the DMD and hence part of the Doha Round Single Undertaking. However, outcome of the negotiations on implementation issues was to be treated as “early harvest” as this part of Doha work programme was to be completed by the end of 2002.</p> <p>3. Finally, paragraph 14 of the Doha Implementation Decision also requested the WTO Director General “to ensure that WTO technical assistance focuses, on a priority basis, on assisting developing countries to implement existing WTO obligations as well as on increasing their capacity to participate more effectively in future multilateral trade negotiations.</p>	<p>negotiating bodies and other WTO bodies concerned to redouble their efforts to find appropriate solutions as a priority;</p> <p>2. Request to the Director General of the WTO to continue with his consultative process on all outstanding implementation issues under paragraph 12(b) of the Doha Ministerial Declaration, including on issues related to the extension of the protection of geographical indications; and</p> <p>3. Establishment of a new deadline of July 2005 to find solution to the implementation issues.</p> <p>Unfortunately, the July 2004 Framework failed to recognize the underlying cause of the delay in addressing the implementation issues, namely, scattering of these issues among too many WTO bodies and the lack of interest of major developed countries in finding a solution to these issues. In fact it further shifted the emphasis towards the interests of some developed countries by specifically mentioning only one issue (extension in the protection of geographical indications) that was mainly the demand of the EC. It is no surprise therefore that the stalemate on the implementation issues continued after the adoption of the July 2004 Framework.</p>	<p>work.</p> <p>This is only a minor improvement over the July 2004 Framework as the underlying causes of the stalemate on implementation issues are still not acknowledged. Still, this minor improvement can be used by developing countries to push for the resolution of at least some implementation issues.</p>
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Possible Options and strategies for Developing Countries

Implementation issues were first raised by developing countries in the run up to the 1st WTO Ministerial Conference held in Singapore in December 1996. Ten years have passed and the issues remain unresolved. What is worse, they seem to have fallen off the main agenda of the WTO. Most telling is the fact that soon after a comprehensive and firm commitment at Doha in 2001, these

issues were relegated to a backseat and absolutely no movement has been witnessed in the last four years. Given this dismal record on the one hand, and the expectation of Doha Round coming to a conclusion in the next year or so on the other, the question for developing countries is whether and what should they aim to achieve under the implementation issues? At least three possible courses of action can be identified:

One, developing countries can consider all their efforts related to implementation issues since 1996 as “sunk cost” and instead concentrate their limited resources in the negotiations on other key areas of the Doha Round, e.g., agriculture, NAMA, services, etc. This will not be the best approach. It will prove to the developed countries that they can always get away with false promises and get what they want without delivering their part of the bargain. It will also leave unresolved important development issues related to the existing WTO agreements.

Two, developing countries can continue to insist, at a political level, on the resolution of all the implementation issues without diligently pursuing them in the actual negotiations. This has been their approach in the past few years that has not yielded concrete results. It is difficult to imagine this being of much use in future as well except in terms of allowing developing countries to take a moral high ground. Hence, this approach should also be discarded.

Three, groups of developing countries can examine all the remaining implementation issues; identify those that are most important for them in terms of offering better market access and allowing development policy space; and pool their resources to forcefully negotiate these issues. They can use the new elements in the Hong Kong Ministerial Declaration identified above to pursue this strategy. For once, the timing can favour them. If Doha Round is to conclude successfully in the next year or so, developing countries have every right to demand a solution to the implementation issues of most importance to them by end July 2006. This will also allow them to deflate some of the pressure that they are facing from developed countries in areas such as NAMA and services. Therefore, this strategy should be the preferred option for developing countries.

II.13 Small Economies

Doha Mandate	July 2004 Framework	Hong Kong Ministerial Declaration	Implications of HKMD
<ul style="list-style-type: none"> ▪ (§ 35): Establishes a work programme to examine trade-related difficulties faced by small economies with a view to framing concrete responses for the better integration of these economies into the multilateral trading system. ▪ No new category of WTO Members should result from this work programme. 	<ul style="list-style-type: none"> ▪ (“d. development”, other development issues): the trade-related issues identified for the fuller integration of small, vulnerable economies into the multilateral trading system, should also be addressed, (particularly in market access negotiations). 	<ul style="list-style-type: none"> ▪ (§ 41) Specific and separate section on Small Economies. ▪ Decides to pursue negotiations both in the dedicated sessions of the CTD and in the relevant negotiating and other bodies. ▪ The CTD shall maintain overall responsibility over these discussions. ▪ Concrete responses to the trade-related problems faced by small economies must be framed by 31 December 2006. ▪ Specific mention in paragraph 21 (NAMA).¹ ▪ Also cited in Annex C (services) at paragraph 8.² 	<ul style="list-style-type: none"> ▪ Paragraph 41 confirms the recommendation of the Chairman of the Committee on Trade and Development in Dedicated Sessions³ according to which, the pursuance of the work programme on small economies should continue in the CTD-DS and, in addition, be carried out in the relevant negotiating or other bodies of the WTO. ▪ Specific responses to the trade-related problems of small economies can come from the consideration of their specific concerns in the various negotiating bodies. In fact, proposals have already been submitted to the various groups for consideration and action (e.g. NAMA, Services, Agriculture, WTO Rules, Fisheries). ▪ In fact, according to the discussions held at the CTD-DS, it is the cumulative effects of a number of characteristics and problems of small economies that explain the fragility and vulnerability of these economies. Hence, efficient solutions to these problems require a multiplicity of measures that can be best pursued in the specialised groups.

¹ Please refer to the NAMA Section of these Comments for further detailed analysis.

² Please refer to the Services Section of these Comments for further detailed analysis.

³ WT/COMTD/SE/4

Brief Analysis

The main contribution of paragraph 41 is to adopt the recommendations of the Committee on Trade and Development in Dedicated Sessions and thus to confirm the double track approach: negotiations will continue in the CTD-DS but will also be increasingly held in the various negotiating groups, where specific responses to the problems of small economies may be crafted. The paragraph also confirms that no new category of WTO members should result from the work programme on small economies.

Highlights of Options and strategies for Developing Countries

The paragraph on small economies is a valuable contribution, albeit one of a legal or procedural nature. However, the efficient discharge of the mandate of paragraph 35 of the Doha Declaration will require concrete, positive trade measures that may both contribute to the reduction of the vulnerabilities that affect small economies as well as to their better and fuller integration into the global economy. These measures rely largely on the sympathetic consideration of the concerns expressed by the small economies with respect to the work programme of the various negotiating bodies of the WTO.

II.14 Trade, Debt and Finance and Coherence

Doha Mandate	Hong Kong Ministerial Declaration	Implications of HKMD
<p>Established a mandate to examine, in a Working Group under the auspices of the General Council, the relationship between trade, debt and finance, and come up with possible recommendations on steps that might be taken within the mandate and competence of the WTO:</p> <ul style="list-style-type: none"> • to enhance the capacity of the multilateral trading system to contribute to a durable solution to the problem of external indebtedness of developing and least-developed countries, and • to strengthen the coherence of international trade and financial policies, with a view to safeguarding the multilateral trading system from the effects of financial and monetary instability. 	<p>Agree to continue the work on the relationship between trade, debt and finance for further report to the next Session;</p> <p>Invite the Director-General's to work closely with the General Council on coherence in the context of the WTO's Marrakesh mandate.</p> <p>Agree to continue building on the experience of the General Council meetings with the participation of the heads of the IMF and the World Bank and expand the debate on international trade and development policymaking and inter-agency cooperation with the participation of relevant UN agencies.</p> <p>Look forward for any possible recommendation of the Working Group on Trade, Debt and Finance on steps to be taken, <i>inter alia</i>, the issue of Coherence.</p>	<p>The Doha mandate is renewed, but with an increased focus on coherence issues. This is likely to make the WGTDF focus its work programme on coherence issues – i.e. the extent to which WTO rules and the outcomes of the WTO negotiations and IMF and World Bank trade-related activities would be supportive of and complementary to each other.</p> <p>Interest in the possible linkage between the mandate under Doha Declaration and the mandate under the Marrakesh mandate, though there objective is different.</p>

Brief Analysis and Highlights of Options and strategies for Developing Countries

There is a need to target the work program of the Working Group on Trade, debt and finance so that it can be structured in a way to that enable the discussion of many of the important proposals and interventions made by developing countries. The work in relation to coherence and its possible linkage with other initiatives need to be closed followed up to prevent policy coherence that foster liberalisation and de-regulation, or to advance development-oriented positive coherence on trade and finance policies. Developing

countries need to be more pro-active and build on existing proposals with respect to the work programme of the Working Group that sought to focus such programme on those issues of interest to them.

II.15 Technology Transfer

Doha Mandate	Hong Kong Ministerial Declaration	Implications of HKMD
To examine, in a Working Group under the auspices of the General Council, of the relationship between trade and transfer of technology, and of any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries. The General Council shall report to the Fifth Session of the Ministerial Conference on progress in the examination.	Recognizing the relevance of the relationship between trade and transfer of technology to the development dimension of the Doha Work Programme and building on the work carried out to date, this work shall continue on the basis of the mandate contained in paragraph 37 of the Doha Ministerial Declaration. We instruct the General Council to report further to our next Session.	Low-priority to result-oriented discussion on technology transfer-, since the developed country can still easily obstruct any binding outcome from the Working Group

Brief Analysis

The establishment of the Working Group on the relationship between trade and transfer of technology was one of the agendas for high expectations of development oriented result of trade negotiation. The Working Group has very limited mandate, and the proposals from developing countries for concrete discussion on the issue of technology transfer remain sidelined.

Highlights of Options and strategies for Developing Countries

The developing countries need to closely follow the development of the work programme of the developing countries so as to bring focus on the main elements of their proposals as opposed to the usually list of issues that did not help to achieve anything yet..

II.16 Electronic Commerce

Doha Mandate	Hong Kong Ministerial Declaration	Implications of HKMD
To consider the most appropriate institutional arrangements for handling the Work Programme on E-commerce.	To reinvigorate the Work Programme, including the development-related issues and discussions on the trade treatment, <i>inter alia</i> , of electronically delivered software.	The Declaration has reinvigorated the discussion, determined the focus to development related issues and discussion on the trade treatment.

Brief Analysis

The Hong Kong Ministerial Declaration aimed at focused discussion on the development-related issues and the trade treatment of e-commerce, within the existing institutional arrangement. Considering the negotiations under services, especially the targets of negotiation under Mode 1 and 2, and the NAMA negotiation, the negotiation under e-commerce may result in deeper liberalisation of trade and supply of services supported by information technology. The Ministers also declared to maintain current practice of not imposing customs duties on electronic transmissions until the next Session, despite the fact that no substantive examination is made requiring the extension. The practice of extending moratorium on imposition of customs duties might also tend to create a *de facto* free e-commerce.

Highlights of Options and strategies for Developing Countries

The ambition should not undermine the examination of outstanding questions of development concerns, definition of electronics transactions and several aspects of e-commerce (as trade in goods and services involving use of technology and protection of proprietary knowledge). Since the implications of electronic commerce for monitoring and tracing of goods and services are significant, the negotiating ambition should be seriously considered. The focus on trade treatment may lead to advancing the strategy to restrict the applicability of any rules to Electronically Delivered software (EDS) and to bind a status-quo which is favourable to market access than development. As the work in e-commerce is reinvigorated developing countries should also consider raising the development related concerns, especially, the disadvantage to developing country firms, the monitoring of the practices of subsidiaries, affiliates and parent companies, illicit transactions, impact on custom revenue, etc.

II.17 LDC Agreement - specific Proposals

36) Decision on Measures in Favour of Least-Developed Countries (duty-free and quota-free market access)

Doha Mandate	July 2004 Framework	Hong Kong Ministerial Declaration	Implications of HKMD
<p>In paragraph 42, Members committed themselves to the objective of duty-free and quota-free market access for products originating from LDCs.</p> <p>They also committed themselves to consider additional measures for progressive improvements in market access for LDCs.</p>	<p>Reaffirmed Doha commitments and renewed its determination to fulfil them. (Paragraph (d)).</p> <p>Called on developed countries and developing countries in a position to do so to provide duty-free and quota-free market access for products from LDCs (paragraph 45 of Annex A (on Agriculture)).</p>	<p>Annex F:</p> <p>(a)(i) Requires developed countries, and developing countries declaring themselves in a position to do so, to provide duty free and quota free market access on a lasting basis for all products from LDCs by 2008 in a secure, stable and predictable manner.</p> <p>(a)(ii) Requires Members facing difficulties in meeting (a)(i) above to provide duty-free and quota-free market access for at least 97% of LDCs' products by 2008.</p> <p>In addition, these Members must incrementally build on initial list of covered products with a view to reaching 100% product coverage while taking into account the impact on other developing countries at similar levels of development.</p>	<p>Paragraph (a)(i) prescribes a binding obligation to provide duty-free and quota free market access for all products from LDCs on a lasting basis. "Lasting" is synonymous with "permanent". But, there is no obligation to bind the commitments in Members' schedules as had been requested earlier by LDCs.</p> <p>The real effect of the Decision is that there is only an obligation to provide duty-free and quota-free market access to 97% of products. Paragraph (a)(ii) significantly dilutes the obligation imposed by (a)(i):</p> <ul style="list-style-type: none"> • The 3% margin is large enough to exclude important products from LDCs or to exclude an entire LDC's products. • There is no date by

		<p>(a)(iii) Allows developing countries to phase in their commitments and to enjoy appropriate flexibility in coverage.</p> <p>(b) Calls for preferential rules of origin applicable to imports from LDCs to be transparent, simple and able to contribute to facilitating market access.</p> <p>Instructs Members to notify annually implementation of schemes to the CTD.</p> <p>Instructs CTD to annually review steps taken to provide duty-free and quota-free market access and report to General Council for appropriate action.</p> <p>Urges donors and international institutions to increase financial and technical support, provide additional assistance through appropriate delivery mechanisms, and assist in managing adjustment processes.</p>	<p>which Members have to meet the 100% product coverage in paragraph (a)(ii).</p> <ul style="list-style-type: none"> • It is not clear how the impact on other developing countries on similar levels of development will be taken into account. • There is no reiteration of the language on stability, security, and predictability.
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Brief Analysis

- Annual reviews by the CTD would be useful for LDCs. Reviews would expose Members' failure to comply with their obligation to provide duty free and quota free market access to products from LDCs.
- However, the relationship between the review mandate of the CTD (and the mandate of the General Council) and the dispute settlement system is unclear. Since there is no principle of institutional balance in the WTO, the competence of the CTD and the General Council cannot imply that Members would not have recourse to the DSU. To do so would restrict Members' procedural right to invoke the DSU.

Highlights of Options and strategies for Least-Developed Countries

- The Chairman of the Ministerial Conference said that paragraph (a)(ii) is a "framework". This was due to concerns raised by some LDCs at the informal Heads of Delegations meeting. LDCs should ensure that any additional work will not make the paragraph less favourable than it already is. They should also strive to clarify some of the unclear issues, like the question of taking into account the impact on other developing countries on similar levels of development. Further, LDCs should try to propose products that must be covered in the initial 97%. This would ensure that their main products of exports interest are not left out in the initial list.
- LDCs and other Members must ensure that the CTD review is limited to the steps taken to provide the market access. It should not be used as an opportunity to re-write the Decision.
- According to a WTO Job document on timelines⁴, developed countries are supposed to notify the means by which they will implement the decision by September 2006. Developing country members declaring themselves in a position to do so should notify the means by which they will implement the decision by December 2006. The first CTD annual review is scheduled for November 2006. LDCs should keep track of these deadlines and check if the preferential rules of origin in the schemes are transparent, simple and designed to contribute to facilitating market access.

⁴ Job (06)/13, 30 January 2006.

II.18 Integrated Framework/ Technical Cooperation/ Aid for Trade

Doha Mandate	July 2004 Framework	Hong Kong Ministerial Declaration	Implications of HKMD
<p>Principal paragraphs: 38-41; other relevant paragraphs 16, 21, 24, 26, 27, 33, 42 and 43.</p> <ul style="list-style-type: none"> ▪ Delivery of WTO technical assistance, in coordination with bilateral and multilateral donor agencies, to LDCs and low-income countries for enhanced negotiating capacity; policy analysis; adjusting to WTO rules and disciplines; implementing obligations; and to diversify their economies. ▪ “Urges” for the enhancement of the Integrated Framework for Trade-Related Technical Assistance to Least Developed Countries (IF) to address supply-side 	<p>Principal provision for Technical Assistance is the “Development” section in Para. 1(d). Other relevant paragraphs Para. 15 of Annex B (NAMA), Para (f) of Annex C and various paragraphs in Annex D.</p> <ul style="list-style-type: none"> ▪ The provisions reiterate the mandates set out in Doha. 	<ul style="list-style-type: none"> ▪ The Integrated Framework (IF) and Technical cooperation are separately treated; and “aid for trade” is included as a separate issue. <p><i>Integrated Framework (paragraphs 48-51)</i></p> <ul style="list-style-type: none"> ▪ Shall enter into force no later than 31 December 2006. ▪ The Task Force on IF shall make recommendation on how the implementation of the IF can be improved by considering ways for: <ul style="list-style-type: none"> - increased, predictable and addition funding; - Improving IF decision making and management structure ▪ Urge for increased contribution to the IF Trust Fund. <p><i>Technical Cooperation (Paragraphs 52-54)</i></p> <p>The paragraphs are full of exhortations to increase funding and “good will” statements.</p> <ul style="list-style-type: none"> ▪ Paragraph 54 reaffirms the commitment to ensure secure and adequate levels of funding for trade 	<p>The Doha Declaration, in various paragraphs, affirmed that enhanced and well-targeted technical assistance and capacity building are core elements of the development agenda of the round. The same message was reaffirmed by the July Framework and the HKMD. However, the HKMD has added little to that reiterated by the Doha Declaration and the July Framework.</p> <p>The major achievement of HDMD with regards to the technical assistance and capacity building concerns of developing countries are the setting of a deadline for implementation of the enhanced IF and the setting of a mandate to the Task Force on IF to make recommendations for improving the IF decision making and management structure. However, neither the implementation of the enhanced IF nor the mandate given to the Task Force to make recommendations for improving the IF decision making and management necessarily ensure to the fulfilment of the Doha mandate of achieving a well</p>

<p>constraints of LDCs and the extension of the scheme to all LDCs.</p>		<p>related capacity building.</p> <p style="text-align: center;"><i>Aid for Trade (Para. 57)</i></p> <ul style="list-style-type: none"> ▪ “Should” aim to build the supply-side capacity and trade-related infrastructure. ▪ “Cannot” be a substitute to a successful completion of the DDA, but a complement. ▪ DG “invited” to create a Task Force that “shall provide recommendations on how to operationalize Aid for Trade”; the Task Force will provide recommendation to the General Council by July 2006 on how Aid for Trade contribute most effectively to the development dimension of the DDA. ▪ DG to consult with Members, IMF, World Bank and other IOs and regional banks to secure additional financial resources for Aid for Trade. 	<p>targeted, enhanced and adequate technical and capacity building assistance.</p> <p>In addition, the inclusion of Aid for Trade may not necessarily address developing countries adjustment cost and supply side capacity constraint. In fact, most developing countries are sceptical of the real objective of the “Aid for Trade” programme. The “Aid for Trade” programme could be beneficiary to developing countries if only it is made unconditional upon developing countries negotiating position and policy space, demand-driven, secure, predictable and long term and is based on additional resources. The specific details of the Aid for Trade and its specific objectives, resources and management could only be known after the Task Force is established and convene its meeting.</p>
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Brief Analysis

The separation of IF, Technical cooperation and Aid for Trade could be confusing since no coordination mechanism is developed to address overlapping objectives under the three separate programmes. In addition, the three schemes are not binding. Hence, the extent to which they can be secure, adequate, predictable and demand-driven and beneficiary-owned is questionable.

II.19 Commodities

Doha Mandate	July 2004 Framework	Hong Kong Ministerial Declaration	Implications of HKMD
<ul style="list-style-type: none"> ▪ No mandate to negotiate on commodities or to address the commodities problem in whatsoever means. ▪ The term “commodity” or “commodities” does not exist in the Doha Declaration. In addition, the term economic diversification was mentioned only once (in paragraph 42); and was in relation to technical assistance, capacity building and market access opportunities for effective integration of LDCs. 	<ul style="list-style-type: none"> ▪ No mandate to negotiate on commodities. ▪ Paragraph 1(d), under the paragraph in “Other Development Issues”, states that “special attention” shall be given to the specific trade and development concerns of developing countries. “Commodities” is listed as one of these concerns. However, apart from “special attention”, no clear mandate was given to address to specifically negotiate or address the commodities problem. 	<p>Para. 55 of HDMD:</p> <ul style="list-style-type: none"> ▪ Gave a negotiating mandate on the trade-related problems of commodities in the course of the agriculture and NAMA negotiations; ▪ Instructed the Committee on Trade and Development (CTD), in collaboration with other relevant organizations, to intensify work on commodities within its mandate. 	<p>The negotiating mandate on commodities could set a suitable opportunity and a platform to put the trade-related problems that commodity dependent developing countries face high on the agenda of international trade.</p>

Brief Analysis

Although the inclusion of a separate paragraph could be regarded as a step forward to address one of the major trade and development-related concerns of developing countries, the incarceration of the negotiation on commodities to the parameter of the agriculture and NAMA negotiations could undermine the negotiation on commodities. For example, while the objective of the NAMA negotiation is to liberalize trade in non-agricultural products, addressing the problem of commodities could entail diversification into higher value added products (vertical diversification) thorough industrialization. Hence, the conflict between these two objectives is obvious; and it is not clear how this would be dealt in the negotiations. Given this potential conflict between the negotiation in commodities and agriculture and NAMA, developing countries should make strong cases whereby they can use the commodities problem in their offensive (such as in elimination of tariff escalation and tariff peaks in developed countries) and defensive agenda (deindustrialization and policy space loss).

III. DETAILED ANALYSIS OF THE DOHA WORK PROGRAM ON AGRICULTURE UNDER THE HONG KONG MINISTERIAL DECLARATION

Doha Mandate	July 2004 Framework	Hong Kong Ministerial Declaration	Implications of HKMD
<p>DOMESTIC SUPPORT</p> <ul style="list-style-type: none"> - Substantial reductions in trade-distorting domestic support. - Non-trade concerns to be taken into account in the negotiations. 	<p>DOMESTIC SUPPORT</p> <ul style="list-style-type: none"> - Harmonisation among developed country members through deeper cuts on higher levels of permitted trade-distorting support. <p>Overall trade distorting support</p> <ul style="list-style-type: none"> - Overall trade-distorting support will be reduced through a tiered approach. - Deeper cuts will apply to higher levels of support. - The base overall trade-distorting support will be measured as follows: FBT AMS plus permitted <i>de minimis</i> and the higher of existing blue box payments over a recent representative period 	<p>DOMESTIC SUPPORT</p> <p>Overall trade distorting support</p> <ul style="list-style-type: none"> - Three bands for the reduction of overall trade-distorting support. - Higher linear cuts will apply to higher bands. - The member with the highest level of support will be in the highest band; those with the second and third largest levels of support will be in the middle band; all other members will be in the bottom –lowest-band, including all D’ing countries. - Members note there has been some convergence in relation to the cuts in overall-trade distorting support. 	<p>DOMESTIC SUPPORT</p> <p>Overall trade distorting support</p> <ul style="list-style-type: none"> - Members need yet to decide of the thresholds of the bands for the reduction of overall trade-distorting support. - The Chair’s report indicates there is a “strongly convergent working hypothesis” of the bands been defined as: 0-10/10-60/ and >60 US\$ billion. - The EU will be in the top band; the US and Japan in the middle band. All other D’ed and D’ing countries in the bottom band. - Renewed emphasis on the importance of cuts in the overall trade-

	<p>and the 5 per cent of total value of agricultural production over an historical period.</p> <ul style="list-style-type: none"> - In the first year, and throughout the implementation period the overall trade-distorting support shall not exceed 80% of the Final Bound Total AMS, permitted <i>de minimis</i> and capped blue box payments. <p>Final Bound Total (FBT) AMS</p> <ul style="list-style-type: none"> - FBT AMS will be reduced through a tiered approach. - Deeper cuts will apply to higher levels of AMS. - Product-specific AMS will be capped at average levels according to methodology to be agreed. - Reductions in FBT AMS will result in reduction of some product-specific AMS. - Greater than formula 	<ul style="list-style-type: none"> - Disciplines will be developed to achieve effective cuts in trade-distorting domestic support. - The overall reduction in trade-distorting support will still be made even if the sum of the reductions in FBTAMS, <i>de minimis</i> and Blue Box would otherwise be less than that overall reduction. <p>Final Bound Total (FBT) AMS</p> <ul style="list-style-type: none"> - Three bands for the reduction of FBT AMS. - Higher linear cuts will apply to higher bands - The member with the highest level of FBT AMS will be in the highest band; those with the second and third largest levels of support will be in the middle band; all other members will be in the bottom -lowest- band, including all D'ing countries. - D'ed members in the 	<p>distorting support which would avoid that reduction commitments are met by reshuffling of subsidies among its various components, is positive development.</p> <ul style="list-style-type: none"> - Pressing for higher cuts in overall trade-distorting support than those so far proposed, is very important. - Effective disciplines should include provisions for enhanced monitoring and surveillance as envisaged in the Framework. <p>Final Bound Total (FBT) AMS</p> <ul style="list-style-type: none"> - Members need yet to decide on the threshold of the bands on which there is still divergence. - The placing of Japan and the US in the tiers has been solved. Both will be in the middle band -the EU in the top tier-, but Japan will undertake additional reductions considering
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	<p>cuts if needed to meet the required cuts of overall trade-distorting support.</p> <p><i>De minimis</i></p> <ul style="list-style-type: none"> - Reductions in <i>de minimis</i> to be negotiated, taking into account SDT. - Greater than envisaged cuts in FBT AMS if needed to meet the required cuts of overall trade-distorting support. <p>Blue Box</p> <ul style="list-style-type: none"> - Criteria to cover direct payments under production-limiting programmes and those that do not require production, meeting certain conditions therein specified. - Additional criteria to be negotiated. - Blue box payments capped at 5 per cent of the total value of agricultural production over an historical period to be 	<p>lower bands with high relative levels of FBT AMS will make an additional effort in AMS reduction.</p> <ul style="list-style-type: none"> - Members note there has been some convergence in relation to the cuts in FBT AMS. - Disciplines will be developed to achieve effective cuts in trade-distorting domestic support. <p><i>De minimis</i></p> <ul style="list-style-type: none"> - Members note there has been some convergence in relation to the cuts in product-specific and non product-specific <i>de minimis</i>. - Disciplines will be developed to achieve effective cuts in trade-distorting domestic support. <p>Blue Box</p> <ul style="list-style-type: none"> - Disciplines will be developed to achieve effective cuts in trade- 	<p>its relative high levels of AMS vis-à-vis the value of its agricultural production.</p> <ul style="list-style-type: none"> - The same approach will apply to other developed countries such as Norway and Switzerland placed in the lowest tier. - Main issue to decide now is the actual level of cuts. Possible convergence on the levels so far proposed is a matter of concern. - Members may want to insist of more ambitious outcomes in this area. - Definition of reference period for the capping of product-specific AMS pending. <p><i>De minimis</i></p> <ul style="list-style-type: none"> - The situation remains as pre-HK: Members need to decide the actual level of cuts. - The “zone of engagement” for possible cuts in <i>de minimis</i> for D’ed
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	<p>determined.</p> <ul style="list-style-type: none"> - The ceiling applies to all members from the beginning of the implementation period. <p>Green Box</p> <ul style="list-style-type: none"> - Green box to be reviewed and clarified in order to guarantee that measures have no or minimal effects on trade and production. 	<p>distorting domestic support.</p> <p>Green Box</p> <ul style="list-style-type: none"> - The green box will be reviewed in line with para. 16 of the Framework. 	<p>countries is within 50% and 80%.</p> <p>Blue Box</p> <ul style="list-style-type: none"> - Results very disappointing. Only a vague reference to disciplines to be developed with respect to overall trade-distorting support without specific reference to the blue box. - The US still reluctant to negotiate constraining rules on the counter-cyclical payments which seem to have been accepted as part of the expanded blue box. - Proposals by the US, on reducing the ceiling of the blue box in exchange for avoiding the negotiation of additional criteria would fail to bring effective cuts in support. - A combination of new disciplines and reduction of the 5%
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			<p>ceiling on blue box would be necessary.</p> <ul style="list-style-type: none"> - The definition of the historical reference period for the ceiling of blue box and the "recent representative period" to be used for calculating the base for overall trade-distorting support are pending. <p>Green Box</p> <ul style="list-style-type: none"> - No progress to report on the green box. Useful reference to SDT provisions (see below). - Tighter disciplines on the green box are fundamental to achieve substantial effective reduction in support in agriculture. - Flexibilities to developing countries should not be seen as a deal to allow D'ed countries freedom to subsidise.
<p>Special and Differential Treatment (SDT)</p>			

<ul style="list-style-type: none"> - SDT to be integral part of all elements of the negotiations and be operationally effective. 	<ul style="list-style-type: none"> - Longer implementation periods and lower reduction coefficients for all types of trade-distorting domestic support. - Continued access to Art. 6.2. - D'ing countries that allocate almost all <i>de minimis</i> to subsistence and resource poor farmers will be exempt from reduction commitments in <i>de minimis</i>. 	<ul style="list-style-type: none"> - Members note the existing consensus on several SDT elements in the Framework, under each pillar of the agreement. - D'ing country members with no AMS commitments will be exempt from <i>de minimis</i> reduction and cuts in overall trade-distorting support. - The review of the green box will ensure that programmes of developing countries with no more than minimal trade-distorting effects will be covered. 	<ul style="list-style-type: none"> - The option of a fourth – lower- band exclusively for developing countries both with respect to overall trade-distorting support and FBT AMS has been forgone. - Members need to clarify the proportion of cuts to be implemented by D'ing countries (less than 2/3 of those made by D'ed countries?). - D'ing country members with AMS commitments will undertake reduction of <i>de minimis</i> and overall trade-distorting support. - These countries may be exempt from <i>de minimis</i> cuts on the basis of providing such support to subsistence and resource poor countries. The onus will be in the developing country concerned to show it falls under the scope of this exemption. - Work ahead to propose criteria for the green
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			<p>box to cover programmes of developing countries.</p> <ul style="list-style-type: none"> - Developing countries may push for a relaxed interpretation of programmes causing "not more than minimal distortions".
<p>EXPORT COMPETITION</p> <ul style="list-style-type: none"> - Reductions of, with a view to phasing out, all forms of export subsidies. - Non-trade concerns to be taken into account in the negotiations. 	<p>EXPORT COMPETITION</p> <ul style="list-style-type: none"> - Parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect by a credible end date. - Commitments will be implemented in annual instalments. - Effective transparency provisions will be established. <p>Export subsidies</p> <ul style="list-style-type: none"> - Elimination of export subsidies as scheduled by an end date to be negotiated. <p>Export credits, credit</p>	<p>EXPORT COMPETITION</p> <ul style="list-style-type: none"> - Completion of the parallel elimination of all forms of export subsidies and disciplines on export measures with equivalent effect by 2013. - This will be achieved in a progressive manner; a substantial part of the elimination is to be realized by the end of the first half of the implementation period. - The date for the elimination of all forms of export subsidies as well as parallelism and progressivity, will be confirmed only upon completion of 	<p>EXPORT COMPETITION</p> <ul style="list-style-type: none"> - The end date for the elimination of export subsidies is a positive development. However, the date of 2013 is disappointing as most members had demanded 2010. - The EU may take hostage of the process by refusing to confirm the end date for the elimination of export subsidies if disciplines in other areas are considered not satisfactory. <p>Export subsidies</p> <ul style="list-style-type: none"> - There is no concession on the part of the EU in

	<p>guarantees or insurance programmes</p> <ul style="list-style-type: none"> - Elimination of such programmes with repayment period beyond 180 days, by an end date to be negotiated. - Elimination by the same date of programmes with repayment period of, or less than 180 days not in conformity with disciplines to be agreed. - Disciplines will cover, <i>inter alia</i>, payment of interest, minimum interest rates, minimum premium requirements, and other elements which can constitute subsidies or otherwise distort trade. <p>Exporting STEs</p> <ul style="list-style-type: none"> - Elimination of trade distorting practices of such enterprises, including export subsidies provided to or by them, government financing, and the 	<p>modalities.</p> <p>Export subsidies</p> <ul style="list-style-type: none"> - Elimination of export subsidies as scheduled by 2013. <p>Export credits, credit guarantees or insurance programmes</p> <ul style="list-style-type: none"> - Programmes with repayment period beyond 180 days to be eliminated by 2013. - Members note convergence on some elements of disciplines on programmes with repayment period of, or less than 180 days. - Members agree those programmes should be self-financing, reflecting market consistency, and the period sufficiently short to avoid circumvention of commercially-oriented disciplines. - Disciplines to be ready by 30 April 2006 as part 	<p>agreeing on the end date of 2013, as export subsidies were scheduled for complete phased out that date on the basis of internal policy imperatives.</p> <ul style="list-style-type: none"> - Progressivity or frontloading of commitments needs to be enforced both with respect to volume commitments as well as budgetary outlays. <p>Export credits, credit guarantees or insurance programmes</p> <ul style="list-style-type: none"> - Text-based negotiations already advanced in this area will continue. - The Declaration does not specify whether there will be flexibilities for export credit programmes granted to importing D'ing countries which has been an important point of divergent. This point would have to be clarified in the coming months.
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	<p>underwriting of losses, by an end date to be negotiated.</p> <ul style="list-style-type: none"> - The future use of monopoly status by such enterprises remains under negotiation. <p>Food Aid</p> <ul style="list-style-type: none"> - Elimination of food aid transactions not in conformity with disciplines to be agreed, by an end date to be determined. - The role of international organisations and the question of providing food aid in fully grant form, to be addressed. 	<p>of modalities.</p> <p>Exporting STEs</p> <ul style="list-style-type: none"> - Disciplines on exporting STEs will extend to the monopoly status of such enterprises to avoid this is used to circumvent disciplines on export subsidies, government financing and underwriting of losses. - Disciplines to be ready by 30 April 2006 as part of modalities. <p>Food Aid</p> <ul style="list-style-type: none"> - Members recommit to maintain an adequate level and take into account the interests of food aid recipients - A safe box for bona fide food aid will be created to avoid unintended impediments in dealing with emergency situations. - Members will ensure the elimination of commercial 	<ul style="list-style-type: none"> - Members to insist that all elements of programmes highlighted in the Framework for negotiation are covered by the agreed disciplines. <p>Exporting STEs</p> <ul style="list-style-type: none"> - Members to define disciplines which may include the abolition, of the monopoly powers of STEs. - The far bigger issue of market power and distortions created by private enterprises remains out of the negotiations. <p>Food Aid</p> <ul style="list-style-type: none"> - Some developments in this area intended to assuage concerns of recipients of food aid. - Main task in near future is to define the contours of the safe box for food aid to address emergency situations.
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		<p>displacement through among others, effective disciplines on in-kind food aid, monetization and re-exports.</p> <ul style="list-style-type: none"> - Disciplines to be ready by 30 April 2006 as part of modalities. 	<ul style="list-style-type: none"> - An important issue to insist on in the negotiations is on targeting of food aid so as to guarantee it reaches those in need. This is fundamental to avoid displacement both of third country exports and local production.
<p>Special and Differential Treatment (SDT)</p> <ul style="list-style-type: none"> - SDT to be integral part of all elements of the negotiations and be operationally effective. 	<p>Special and Differential Treatment (SDT)</p> <ul style="list-style-type: none"> - Longer implementation period for the phasing out of all forms of export subsidies. - Continued access to flexibilities under Art. 9.4 of the AoA for a reasonable period to be negotiated, after the phasing out of all forms of export subsidies and implementation of disciplines on measures of equivalent effect. - Appropriate SDT for NFIDCs and LDCs a part of disciplines on export credits and similar programmes 	<p>Special and Differential Treatment (SDT)</p> <ul style="list-style-type: none"> - Members note the existing consensus on several SDT elements in the Framework, under each pillar of the agreement. - D'ing countries will continue to have access to Art. 9.4 of the AoA for a period of five years after the end date for the elimination of all forms of export subsidies (i.e. until 2018). - Disciplines on export credits and similar programmes will include appropriate 	<p>Special and Differential Treatment (SDT)</p> <ul style="list-style-type: none"> - No progress on the controversial issue of whether there will be flexibility with respect to export credit programmes when covering exports to developing countries. - No guidance provided by the Declaration with respect to the nature of flexibilities for NFIDCs and LDCs in the context of export credit programmes.

	<p>without undermining commitments with respect to the phasing out of export subsidies.</p> <ul style="list-style-type: none"> - STEs in D'ing countries will receive special consideration for maintaining monopoly status. - Special circumstances (ref. para 26 of Framework) to be addressed through ad hoc temporary financing arrangements related to exports to developing countries. 	<p>provisions in favour of NFIDCs and LDCs.</p>	
<p>MARKET ACCESS</p> <ul style="list-style-type: none"> - Substantial improvements in market access. - Non-trade concerns to be taken into account in the negotiations. 	<p>MARKET ACCESS</p> <p>Formula for tariff reductions</p> <ul style="list-style-type: none"> - Tariff reductions will be made through a tiered formula that takes into account different tariff structures. - Tariff reductions will be made from bound rates. - Higher tariffs will be subject to deeper cuts with flexibility for sensitive products. - Substantial 	<p>MARKET ACCESS</p> <p>Formula for tariff reductions</p> <ul style="list-style-type: none"> - Members note progress made on non - <i>ad valorem</i> equivalents. - Tariff reductions will be structured in four bands. - Thresholds for the bands remain pending, including those applicable to developing countries. 	<p>MARKET ACCESS</p> <p>Formula for tariff reductions</p> <ul style="list-style-type: none"> - Methodology for the calculation of <i>ad valorem</i> equivalent of non-<i>ad valorem</i> tariff for sugar is pending. - D'ing countries to insist on the adoption of higher thresholds for the bands than those applicable to D'ed countries. - Members need yet to

	<p>improvement in market access will be achieved for all products.</p> <ul style="list-style-type: none"> - The role of a tariff cap will be further evaluated. <p>Sensitive products</p> <ul style="list-style-type: none"> - Members may designate an appropriate number, to be negotiated, of tariff lines to be treated as sensitive taking account of existing commitments in such products. - Substantial improvement in market access applies to each product. - Improvements in market access to be achieved through a combination of tariff reductions and TRQ commitments. - Some MFN tariff quota expansion is required for all such products. - A base for the expansion of tariff quotas will be 	<p>Sensitive products</p> <ul style="list-style-type: none"> - Members recognise the need to agree on the treatment of sensitive products. 	<p>agree on the structure of the formula. Options on the table include progressive approach by the US as well as the pivot approach by the EU. Many members have supported a linear approach.</p> <p>Sensitive products</p> <ul style="list-style-type: none"> - No movement at all on sensitive products achieved in HK. Basic aspects still quite controversial. - Wide divergences regarding the number of products and the treatment. - The base for the expansion of quota tariffs still to be solved: whether domestic consumption, current import levels or current commitments. <p>Other elements</p> <ul style="list-style-type: none"> - The Declaration makes no reference to the issue of SSG and tariff
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	<p>established.</p> <ul style="list-style-type: none"> - Specific rules will be adopted for the MFN-based quota expansion, taking into account deviations from the tiered formula. <p>Other elements</p> <ul style="list-style-type: none"> - The flexibility required for achieving a balanced outcome include: reduction or elimination of in-quota tariffs; improvements in administration of existing TRQs. - Tariff escalation to be addressed through a formula to be agreed. - The question of tariff simplification remains under negotiation. - The issue of the SSG remains under negotiation. 		<p>simplification. Both remain very controversial.</p> <ul style="list-style-type: none"> - Members (i.e. EU) have given signs of willingness to negotiate the scope of products of the SSG, in the context of a continuation of this measure. - This will increase the pressure on D'ing countries to negotiate a limited product coverage for the SSM.
<p>Special and Differential Treatment (SDT)</p> <ul style="list-style-type: none"> - SDT to be integral part of all elements of the negotiations and be 	<p>Special and Differential Treatment (SDT)</p> <ul style="list-style-type: none"> - SDT will be an integral part of all elements of the negotiations, 	<p>Special and Differential Treatment (SDT)</p> <ul style="list-style-type: none"> - Members note the existing consensus on several SDT elements in 	<p>Special and Differential Treatment (SDT)</p> <p>Special products (SP)</p> <ul style="list-style-type: none"> - Members agree on self-

<p>operationally effective.</p>	<p>including the tariff reduction formula, the number and treatment of sensitive products, expansion of tariff rate quotas, and implementation period.</p> <ul style="list-style-type: none"> - D'ing countries will be required lesser tariff cuts and quota expansion commitments (proportionality). <p>Special products (SP)</p> <ul style="list-style-type: none"> - D'ing country members to designate an appropriate number of SPs based on criteria of food security, livelihood security and rural development needs. - SPs will be eligible for more flexible treatment - The criteria and treatment of such products to be further specified. - The criteria and treatment to be agreed need to recognise the fundamental importance of these 	<p>the Framework, under each pillar of the agreement.</p> <p>Special products (SP)</p> <ul style="list-style-type: none"> - D'ing country members will have the flexibility to self-designate an appropriate number of tariff lines as SP guided by indicators based on the criteria of food security, livelihood security and rural development. <p>Special Safeguard Mechanism (SSM)</p> <ul style="list-style-type: none"> - D'ing country members will have the right to have recourse to a SSM based on import quantity and price triggers, with precise arrangements to be further defined. <p>Tropical products</p> <ul style="list-style-type: none"> - Nothing in the Declaration affects the agreements reflected in 	<p>designation of SP by each D'ing country.</p> <ul style="list-style-type: none"> - Meaning of phrase "guided by indicators..." very important. D'ing countries to insist that indicators are thus not prescriptive but to be used just as a reference by each individual member in the internal process of identifying the SPs. - Members to decide on the indicators to guide the designation of SPs. G33 to insist on the endorsement by the membership of its own list of indicators: these indicators need not be multilaterally agreed. - Pressure expected to mount on the definition of "an appropriate number of tariff lines" for a restricted number to be agreed. <p>Special Safeguard Mechanism (SSM)</p> <ul style="list-style-type: none"> - Positive movement
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	<p>products for Developing country members.</p> <p>Special Safeguard Mechanism (SSM)</p> <ul style="list-style-type: none"> - A SSM will be established for us by developing country members. <p>Tropical products</p> <ul style="list-style-type: none"> - The commitment to achieve the fullest liberalisation of trade in tropical products and products of particular importance to the diversification of production from the growing of illicit narcotic crops will be effectively addressed in the market access negotiations. <p>Preference erosion</p> <ul style="list-style-type: none"> - The issue of preference erosion will be addressed. - Paragraph 16 and other relevant provisions of 	<p>the Framework with respect to trade in tropical products and products of particular importance to the diversification of production from the growing of illicit narcotic crops.</p> <p>Preference erosion</p> <ul style="list-style-type: none"> - Nothing in the Declaration affects the agreements reflected in the Framework with respect to long-standing preferences and preference erosion. 	<p>reflected in agreement on incorporating both price and volume triggers in the SSM.</p> <ul style="list-style-type: none"> - Important technical work pending with respect to trigger levels for volume-SSM, the level of depreciation of the local currency to warrant special provisions under the price trigger; the level of additional duty to be allowed under the mechanism. - Pressure may mount in favour of very tight triggers and remedy measures, particularly as the price trigger has been adopted. <p>Tropical products and Preference erosion</p> <ul style="list-style-type: none"> - No movement with respect to both this issues in Hong Kong; just a reiteration of the Framework provisions. - Differences on this issue exacerbated in the run up to HK. No
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	<p>TN/AG/W/1/Rev.1 will be used as a reference for further consideration of this issue.</p>		<p>discussion of concrete solutions has been possible.</p>
	<p>LEAST DEVELOPED COUNTRIES (LDCs)</p> <ul style="list-style-type: none"> - LDCs will have access to all SDT provisions. - LDCs will not undertake reduction commitments - D'ed members, and d'ing members in a position to do so, should provide duty-free and quota-free market access for products originating from LDCs 	<p>LEAST DEVELOPED COUNTRIES (LDCs)</p> <ul style="list-style-type: none"> - D'ed members and D'ing members declaring in a position to do so, will provide duty and quota-free market access to all products originating from LDCs by no later than 2008 or the start of the implementation period. - Members facing difficulties to do this, will provide duty and quota-free market access for at least 97% of all products originating in LDCs by the same date and strive to full compliance. <p>(For more details, see Annex F of the Declaration related to LDC Agreement-Specific Decisions)</p>	<p>LEAST DEVELOPED COUNTRIES (LDCs)</p> <ul style="list-style-type: none"> - Main products of export interest to LDCs can be excluded from the duty and quota-free commitment. - The 3% exception may be used with respect to agricultural products <p>(For more details see comments to Annex F of the HK Declaration, in this report).</p>

	<p>RECENTLY ACCEDING MEMBERS</p> <ul style="list-style-type: none"> - The concerns of these countries will be addressed through specific flexibility provisions 	<p>RECENTLY ACCEDING MEMBERS</p> <ul style="list-style-type: none"> - No reference 	<p>RECENTLY ACCEDING MEMBERS</p> <ul style="list-style-type: none"> - Discussions on this issue have taken place but there is no progress towards convergence to be reported.
	<p>MONITORIGN AND SURVEILLANCE MECHANISM</p> <ul style="list-style-type: none"> - Art. 18 of the AoA will be amended to enhancing monitoring of commitments in the three pillars of the agreement. - The concerns of D'ing countries will be addressed 	<p>MONITORIGN AND SURVEILLANCE MECHANISM</p> <ul style="list-style-type: none"> - No specific reference. 	<p>MONITORIGN AND SURVEILLANCE MECHANISM</p> <ul style="list-style-type: none"> - Proposals have been made but no thorough discussions have taken place.
	<p>OTHER ISSUES</p> <ul style="list-style-type: none"> - Issues of interest but not agreed: sectoral initiatives, differential export taxes and GIs. - Disciplines on export prohibition and restrictions will be strengthened. 	<p>OTHER ISSUES</p> <ul style="list-style-type: none"> - No reference 	<p>OTHER ISSUES</p> <ul style="list-style-type: none"> - Highly divisive issues among the membership. - The EU has recently increased pressure on the issue of GIs protection.
		<p>TIMELINES</p> <ul style="list-style-type: none"> - Members resolve to adopt modalities no 	<p>TIMELINES</p> <ul style="list-style-type: none"> - The proposed timelines leaves very little time

		<p>later than 30 April 2006 and submit comprehensive draft Schedules no later than 31 July 2006.</p>	<p>for the negotiation of modalities as well as for the drafting of Schedules based on those modalities.</p> <ul style="list-style-type: none"> - It is likely that “modalities” will be limited to key elements necessary for the drafting of Schedules with other aspects left for resolution towards the end of the negotiations. - Move to a text-based approach in all areas of the negotiations is being proposed.
		<p>BALANCE BETWEEN AGRICULTURE AND NAMA</p> <ul style="list-style-type: none"> - Members to ensure there is a comparably high level of ambition in market access for agriculture and NAMA. - This will be achieved in a balance and proportionate manner in line with the principle of SDT. 	<p>BALANCE BETWEEN AGRICULTURE AND NAMA</p> <ul style="list-style-type: none"> - The linkage between agriculture and NAMA negotiations has been formalised by the HK Declaration. - The linkage should be made considering developments in agriculture negotiation in all three pillars, avoiding a partial and inadequate market

			<p>access focus.</p> <ul style="list-style-type: none">- The fundamental issue remains however, that the commitments to be made by every D'ing member both in agriculture and NAMA should be consistent with its development, trade and financial needs.
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IV. DETAILED ANALYSIS OF THE DOHA WORK PROGRAM ON NAMA UNDER THE HONG KONG MINISTERIAL DECLARATION

Doha Mandate ⁵	July 2004 Framework ⁶	Hong Kong Ministerial Declaration	Implications of HKMD
<ul style="list-style-type: none"> ▪ Negotiations shall aim at reducing or as appropriate eliminating tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, in particular on products of export interest to developing countries. 	<ul style="list-style-type: none"> ▪ Formula approach ▪ The Negotiating Group shall continue its work on a non-linear formula applied on a line-by-line basis. 	<ul style="list-style-type: none"> ▪ (§ 14) Adopts a Swiss Formula... ▪ Instructs the Negotiating Group to finalize its structure and details as soon as possible. 	<ul style="list-style-type: none"> ▪ The use of the plural unequivocally excludes the use of only one coefficient (US and EC) and opens the door for a formula with multiple coefficients (such as those contained in the ABI and Caribbean proposals). ▪ However, the paragraph excludes many other options which would have delivered much greater flexibility for developing countries (e.g. a tiered reduction approach, a linear reduction with caps, or the Uruguay Round approach with minimum commitments on a line by line basis). ▪ It places developing countries on a defensive position in the negotiation of the formula coefficients. ▪ The plural language does not exclude a Simple Swiss formula with two coefficients. Hence negotiations in 2006 will have to

⁵ Paragraph 16.

⁶ Annex B.

			<p>continue to determine the final structure of the formula.</p>
		<ul style="list-style-type: none"> ▪ (§ 14)...with coefficients at levels which shall <i>inter alia</i>: <ul style="list-style-type: none"> – Reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs and tariff escalation [...]; and – Take fully into account the special needs and interests of developing countries, including through less than full reciprocity in reduction commitments. 	<ul style="list-style-type: none"> ▪ As a guideline for the determination of the levels of the coefficients, the Declaration includes two parameters (which were in reality already contained in the Doha Declaration). ▪ However, the parameters are quite difficult to operationalise in negotiating terms, as negotiations prior to Hong Kong had revealed. They provide sufficient leeway both for advocates of steep tariff cuts (first indent) and for those requesting sufficient flexibilities (second indent). ▪ The paragraph suggests that other parameters could be used to determine the levels of the coefficients ("<i>inter alia</i>"). Hence, the objectives of some developed countries, e.g. "cuts into applied rates", "harmonization", and "real new market access" are not entirely excluded from the negotiations.

<p>The negotiations shall take fully into account the special needs and interests of developing and least-developed country participants, including through less than full reciprocity in reduction commitments, in accordance with the relevant provisions of Article XXVIII bis of GATT 1994 and the provisions cited in paragraph 50 below.</p>	<ul style="list-style-type: none"> ▪ Conditional flexibility to apply less than formula cuts to up to 10% of developing countries' tariff lines or to keep up to 5% of lines unbound. ▪ Exemption from making tariff reductions for countries whose binding coverage is below 35% (§ 6) and LDCs (§ 9) 	<ul style="list-style-type: none"> ▪ (§ 15): Reaffirm the importance of special and differential treatment and less than full reciprocity in reduction commitments, including paragraph 8 of the NAMA Framework, as integral parts of the modalities. ▪ Instructs the Negotiating Group to finalize its details as soon as possible. 	<ul style="list-style-type: none"> ▪ The paragraph does not contain operational language for the effective delivery of S&D provisions. ▪ It does not clarify how the principle of less than full reciprocity should be operationalised (i.e. by considering the relative effort made by individual members as reflected in the percentage tariff cuts). Neither does it untangle the flexibilities from a linkage with the coefficient used in the formula. Consequently, the controversies surrounding the flexibilities, particularly paragraph 8, remain and will remain. ▪ The paragraph does not reassert other items of flexibilities in favour of developing countries, such as the exemption from making formula cuts for countries under paragraphs 6 and 9. It is plausible to assume, however, that these flexibilities will continue to be available.
	<ul style="list-style-type: none"> ▪ Credit for autonomous liberalisation. 	<ul style="list-style-type: none"> ▪ Nothing 	<ul style="list-style-type: none"> ▪ Will have to be discussed in 2006

	<ul style="list-style-type: none"> ▪ (§ 7): a sectorial tariff component is another key element to achieving the objectives of the Doha Declaration with regard to the reduction or elimination of tariffs ▪ Participation by all countries will be important to that effect. ▪ Define product coverage, participation, and adequate provisions of flexibility for developing-country participants. 	<ul style="list-style-type: none"> ▪ (§ 16): Recognize that Members are pursuing sectoral initiatives. ▪ Instructs the Negotiating Group to review proposals with a view to identifying those which could garner sufficient participation to be realized. ▪ Participation should be on a non-mandatory basis. 	<ul style="list-style-type: none"> ▪ Confirms that sectoral tariff reduction initiatives will be part of NAMA modalities (and takes stock of discussions underway) in spite of opposition from several developing countries. The paragraph leaves scope for considerable debate in 2006. ▪ First, the paragraph asserts that only proposals that could muster sufficient support will be pursued, without, however, defining what the minimum level of support for each initiative should be. ▪ Second, the paragraph does reiterate that participation to the initiatives should be “<i>non-mandatory</i>”, raising the question of whether or not non-mandatory is tantamount to a strictly voluntary participation. ▪ Proponents of the sectoral approach will likely continue to argue for some type of critical mass, however defined or phrased, which could lead to considerable arm-twisting of recalcitrant developing countries. ▪ Nothing is said about the multilateralisation of the benefits among non-participating countries.
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	<ul style="list-style-type: none"> ▪ Pending agreement on core modalities for tariffs, the possibilities of supplementary modalities such as zero-for-zero sector elimination, sectorial harmonization, and request & offer, should be kept open. 	<ul style="list-style-type: none"> ▪ Nothing 	<ul style="list-style-type: none"> ▪ The formalisation of sectorals and agreement on the formula could justify the interpretation that these supplementary modalities have now been excluded from the modalities.
	<ul style="list-style-type: none"> ▪ Elimination of low duties 	<ul style="list-style-type: none"> ▪ Nothing 	<ul style="list-style-type: none"> ▪ Will continue to be discussed in 2006 (there have been submissions proposed to that end).
	<ul style="list-style-type: none"> ▪ Least-developed country participants shall not be required to apply the formula nor participate in the sectorial approach. ▪ To enhance the integration of least-developed countries into the multilateral trading system and support the diversification of their production and export base, calls upon developed-country participants and other participants who so decide, to grant on an autonomous basis duty-free and quota-free market access for non-agricultural products originating from least-developed countries by the year [...]. 	<ul style="list-style-type: none"> ▪ Modalities have been laid down outside the NAMA section of the Declaration, in paragraph 47 and in Annex F. ▪ Developed countries, and developing countries in a position to do so, have agreed to grant duty-free and quota-free market access for at least 97% of all products originating in LDCs by 2008. 	<ul style="list-style-type: none"> ▪ The benefits of this decision will depend, among other things, on whether the products actually exported by LDCs are included or not in the tariff lines where the concessions will be granted. In fact, the exclusion of three percent tariff lines from the concessions would suffice to cover the bulk of products exported by LDCs.

	<ul style="list-style-type: none"> ▪ Tariff reductions shall commence from the bound rates after full implementation of current concessions. ▪ However, for unbound tariff lines, the basis for commencing the tariff reductions shall be [two] times the MFN applied rate in the base year. 	<ul style="list-style-type: none"> ▪ (§ 17): Adopts a non-linear mark-up approach to establish base rates for commencing tariff reductions. ▪ Instructs the Negotiating Group to finalize its details as soon as possible. 	<ul style="list-style-type: none"> ▪ Unbound duties will be simultaneously bound and reduced during this Round of negotiations despite the burden that this approach will place upon developing countries. ▪ Developing countries whose level of binding coverage is comprised between 35% and 95%⁷ will have to bind the totality of their tariff lines. ▪ Developing countries will have no discretion as to the level at which to bind these tariffs: the new bound tariff rates will be the result of the application of cuts to marked-up base rates. ▪ Unbound lines may conceal sensitive products. ▪ A number of elements will require work in 2006, the most critical of which is the formula that will be used to reduce newly bound duties. ▪ If the same tariff reduction formula being negotiated (for bound lines) also applies to newly bound duties, then the most
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⁷ Paragraph 6 exempt developing countries with a binding coverage level below 35% from making tariff reductions and the flexibilities of paragraph 8 apply to countries binding new tariff lines. Hence, paragraph 8 (b) would allow developing countries to maintain a maximum of 5% of their tariff lines unbound. Furthermore, paragraph 9 also exempts LDCs from making tariff reductions.

			important element in the treatment of unbound duties becomes the structure and coefficients of the formula, and not the mark-up approach.
	<ul style="list-style-type: none"> ▪ all non-<i>ad valorem</i> duties shall be converted to <i>ad valorem</i> equivalents on the basis of a methodology to be determined and bound in <i>ad valorem</i> terms; ▪ product coverage shall be comprehensive without <i>a priori</i> exclusions; 	<ul style="list-style-type: none"> ▪ (§ 18): Takes note of the progress made to convert non <i>ad valorem</i> duties to <i>ad valorem</i> equivalents. ▪ (§ 19): Takes note of the level of common understanding reached on the issue of product coverage and directs the Negotiating Group to resolve differences on the limited issues that remain as quickly as possible. 	<ul style="list-style-type: none"> ▪ While the mechanism to convert non <i>ad valorem</i> duties into <i>ad valorem</i> equivalents has already been the subject of guidelines adopted in September 2005⁸, the issue of product coverage still requires further work but is close to being settled between the 15 countries or so whose schedules contain divergences in product denomination and classification.
	<ul style="list-style-type: none"> ▪ (§ 16) Recognizes the challenges that may be faced by non-reciprocal preference beneficiary Members. ▪ Recognizes the challenges that may be faced by those Members that are at present highly dependent on tariff revenue. ▪ Instructs the Negotiating Group to take into consideration, in the course of its work, the particular needs that 	<ul style="list-style-type: none"> ▪ (§ 20): Instructs the Group to intensify work on the assessment of the scope of the problem with a view to finding possible solutions. ▪ Nothing on Members that rely on tariff collection for their revenue. 	<ul style="list-style-type: none"> ▪ Radically polarised views among WTO members have prevented the inclusion of more operational language in the text. ▪ The paragraph does not enumerate detailed options to assist the developing countries that will be affected by the erosion of their trade preferences as a result of NAMA. ▪ It recommends an intensification

⁸ JOB(05)/166/Rev.1

	<p>may arise for the Members concerned.</p>		<p>of work to better understand the actual scope of the problems resulting from the erosion of preferences, implying that the Group should now move from general discussions concerning the nature of the problem to more concrete discussions about the quantification of the problem, and possible solutions.</p>
	<ul style="list-style-type: none"> ▪ Nothing 	<ul style="list-style-type: none"> ▪ (§ 21): Notes the concerns raised by small, vulnerable economies ▪ Instructs the Group to establish ways to provide flexibilities for these Members without creating a sub-category of WTO Members. 	<ul style="list-style-type: none"> ▪ Formally introduces a new element into the work programme of the Negotiating Group, in line with the results of the work undertaken in the Special Sessions of the CTD-SS, where the problems affecting small economies have been discussed (§35 of the Doha Declaration). ▪ After the recognition of the specificity of the problems of small economies by the CTD-SS, it has been decided that more concrete solutions to their problems would be sought and crafted under the various negotiating groups. ▪ The scope of the paragraph is broad and will require work in 2006 for the definition of detailed modalities for the treatment of small economies.

<p>Negotiations which shall aim to reduce or as appropriate eliminate non-tariff barriers</p>	<ul style="list-style-type: none"> ▪ NTBs 	<ul style="list-style-type: none"> ▪ (§ 22) Notes progress made in the identification, categorization and examination of notified NTBs. ▪ Notes that Members are developing bilateral, vertical and horizontal approaches to the NTB negotiations, and that some of the NTBs are being addressed in other fora including other Negotiating Groups. ▪ Calls for specific negotiating proposals to be submitted as quickly as possible. 	<ul style="list-style-type: none"> ▪ Non-tariff barriers continue to be one of the most challenging areas of the work programme under NAMA, particularly for developing countries, as is reflected in this paragraph. ▪ The paragraph seems to suggest that the first stage of the negotiating process of NTBs (<i>“identification, categorisation and examination”</i>) is over, and that negotiations should now move towards more concrete solutions for the barriers already identified. In addition, the paragraph mentions that solutions could also be crafted in other negotiating bodies (e.g. Trade Facilitation and WTO Rules). The paragraph seems to suggest that a combination of both tracks would suffice to discharge the mandate on NTBs. ▪ Developing countries should continue to see the mandate on NTBs as an open opportunity to discuss barriers that impede their trade. ▪ The approaches confirmed by the paragraph - <i>“bilateral, vertical and horizontal”</i> - have worked to the detriment of delegations lacking the capacity to identify barriers
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			that hinder their exports or those lacking the political leverage to negotiate the barriers of their interest. For instance, there have been no discussions or submissions yet on how to remove barriers related to the SPS and to the TBT Agreements.
To this end, the modalities to be agreed will include appropriate studies and capacity-building measures to assist least-developed countries to participate effectively in the negotiations.	<ul style="list-style-type: none"> ▪ Appropriate studies and capacity building measures shall be an integral part of the modalities to be agreed. ▪ We also recognize the work that has already been undertaken in these areas and ask participants to continue to identify such issues to improve participation in the negotiations. 	<ul style="list-style-type: none"> ▪ Nothing 	<ul style="list-style-type: none"> ▪ There have never been significant efforts to include assessment or serious studies in the negotiations.
	<ul style="list-style-type: none"> ▪ No deadline or timeframe provided. 	<ul style="list-style-type: none"> ▪ (§ 23) Objective to establish modalities no later than 30 April 2006. ▪ Objective to submit comprehensive draft Schedules based on these modalities no later than 31 July 2006. 	<ul style="list-style-type: none"> ▪ Both dates constitute an optimistic, if not daunting, objective. The former, because of the number of divergences opposing WTO Members. The latter, because of the complexity of the exercise, particularly for developing country delegations. ▪ While an acceleration of the negotiations seems to be a sine qua non condition for the timely completion of the Round, there is little doubt that sped up negotiations would work against

			<p>the interests of developing countries.</p> <ul style="list-style-type: none"> ▪ The first meetings of the Group will provide greater clarity on how the work programme of the Group will have to be adjusted to meet these deadlines and on whether those deadlines can be met at all.
	<ul style="list-style-type: none"> ▪ Nothing 	<ul style="list-style-type: none"> ▪ (§ 24) Instruct negotiators to ensure that there is a comparably high level of ambition in market access for Agriculture and NAMA. ▪ This ambition is to be achieved in a balanced and proportionate manner consistent with the principle of special and differential treatment. 	<ul style="list-style-type: none"> ▪ The new paragraph transforms the NAMA-Agriculture link into a formal obligation of parallelism. ▪ It is positive because it intends to lower the level of ambition – particularly that of developed countries – in NAMA, to match the level of liberalisation being offered in Agriculture. ▪ Nevertheless, it is also likely that developed countries (US) will use this paragraph to require a higher level of ambition in both NAMA and Agriculture. Similarly, there is also a risk that some developed countries (EC) use this paragraph as a bait to require greater concessions in NAMA as a “price” for minimal movements in Agriculture. ▪ Developing countries must make sure that the intention of Paragraph 24 is not distorted and

			<p>emptied from its promises as was the case with other principles, such as less than full reciprocity.</p> <ul style="list-style-type: none">▪ Developing countries can insist that this paragraph establishes a link not only with the market access pillar of Agriculture negotiations, but with all three pillars (and very importantly the pillar on domestic support). This would make the paragraph more efficient, both in lowering ambitions in NAMA and in creating greater momentum in Agriculture.
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V. DETAILED ANALYSIS OF THE DOHA WORK PROGRAM ON SERVICES UNDER THE HONG KONG MINISTERIAL DECLARATION

Doha Mandate	July 2004 Framework	Hong Kong Ministerial Declaration	Implications of HKMD
<p>Objectives/Principles: The Doha Mandate provides for the services negotiations to be conducted with a view to promoting economic growth of all trading partners and the development of developing and least-developed countries.</p> <p>Approaches: It reaffirmed the Guidelines and Procedures for the Negotiations as the basis for negotiations. Negotiations are to be conducted with a view to achieving the objectives of the General Agreement on Trade in Services Preamble, Article IV and Article XIX.</p> <p>Market access: More specifically, it established dates for the</p>	<p>In the July 2004 Framework the General Council adopted a set of recommendations by the Council for Trade in Services Special Session in Annex C, as the basis for further negotiations:</p> <p>Market access:</p> <p>(a) submitting outstanding initial offers as soon as possible;</p> <p>(b) submission of revised offers by May 2005;</p> <p>(c) strive for high quality offers that provides effective market access, <i>particularly in sectors and modes of supply of export interest to developing countries, with special attention to least-developed countries;</i></p>	<p>Objectives/Principles: Paragraph 25 reiterated the Doha Mandate for negotiations to conclude economic growth of all trading partners and the development of developing and least-developed countries. It added that this should occur with respect for Members to regulate. It reaffirms the objectives and principles of the GATS, Doha Mandate, Guidelines and Procedures for Negotiations, Modalities for the Special Treatment for LDCs (LDC Modalities) and the July 2004 Framework Annex C on services.</p> <p>Paragraph 26 urges active participation in negotiations to achieve a progressively higher level of liberalisation with provision of Article XIX</p>	<p>Objectives/Principles: Paragraphs 25 to 27 of the Hong Kong Ministerial Declaration provide the context for negotiations. They uphold the various development objectives for developing countries and can ensure that the outcome of negotiations – which is to be intensified in accordance with Annex C – is consistent with these objectives.</p> <p>In general, Annex C is overly focused on market access and does not aim to fulfil or consider development objectives in negotiations.</p> <p>The key aims and requirements of Annex C and their implications on developing countries are the following:</p>

<p>submission of initial requests (30 June 2002) and initial offers (31 March 2003).</p> <p>The Doha Mandate also reaffirmed the right of members to regulate and to introduce new regulations on the supply of services.</p> <p>It should be noted that under Trade and Environment, the Doha Declaration agreed to negotiations on reducing or eliminating tariff and non-tariff barriers to environmental services.</p>	<p>(d) aim to achieve progressively higher levels of liberalization with no a priori exclusion of any sectors or modes of supply and give <i>special attention to sectors and modes of supply of export interest to developing countries</i>. Interest in Mode 4 was noted;</p> <p>Rules:</p> <p>(e) intensify efforts to conclude negotiations on rule-making under Articles VI:4, X, XIII and XV in line with their mandates and deadlines;</p> <p>Technical assistance:</p> <p>(f) provide technical assistance to enable developing countries to participate effectively in negotiations; and</p> <p>Review Progress of Negotiations:</p> <p>(g) for the Sixth Ministerial meeting, the Council for Trade in Services Special</p>	<p>flexibility for developing countries. Negotiations are to recognise the size of economies. Least developed countries are not expected to undertake new commitments.</p> <p>Paragraph 27 agrees to intensifying negotiations in accordance to Annex C of the Hong Kong Ministerial Declaration. Particular <i>attention to be given to the sectors and modes of supply of export interest to developing countries</i>.</p> <p><u>Annex C</u> of the Hong Kong Ministerial Conference outlines the objectives, approaches, timelines and review of progress for negotiations:</p> <p>Objectives:</p> <p>Paragraph 1 outlines objectives that should guide new and improved commitments to the maximum extent possible,</p>	<p>The following are objectives that Members are to follow in negotiations:</p> <ul style="list-style-type: none"> • Modal objectives for commitments, to be followed on a best endeavour basis by Members, that are too prescriptive and infringes on GATS flexibilities for developing countries and that focus on liberalisation without development considerations. • MFN exemptions objectives, to be followed on a best endeavour basis by Members, that do not consider the development considerations of developing countries' MFN exemptions and attempts to discipline MFN exemptions outside the CTS Review process. • Objectives for scheduling of commitments, to be
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	<p>Session is to review progress in negotiations and provide a report with recommendations to the Trade Negotiations Committee.</p>	<p>with flexibility for developing countries, for each mode of supply, MFN exemptions, and the scheduling of commitments.</p> <p>Paragraph 2 establishes that Members may refer to sectoral and modal objectives as contained in the Chair Report TN/S/23 in the request-offer negotiations.</p> <p>Paragraph 3 mandates implementation of the LDC Modalities.</p> <p>From paragraph 4 Members are to conclude the rule-making negotiations according to their mandates and timelines. Guidelines are provided for each rules area.</p> <p>Paragraph 5 mandates to conclude GATS Article VI: 4 negotiations on disciplines for domestic regulation with consideration of proposals</p>	<p>followed on a best endeavour basis by Members, which now provides the possibility for Members to utilise scheduling guidelines that are not internationally recognised and agreed classifications, such as model schedules and non-consensus based revised classifications proposed by certain Members.</p> <ul style="list-style-type: none"> • Allows for the use of a non-consensus document, particularly by developing countries, outlining market access objectives (Chair Report TN/S/23) in requests and offers. However this is not mandatory. • Implementation of the LDC Modalities is an agreed objective among all Members. However, it does not commit
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		<p>and the Chair Report JOB(05)/280 prior to the end of the round.</p> <p>Approaches (market access): Paragraph 6 agrees to intensify and expedite the request-offer negotiations, which remains the main method of negotiations.</p> <p>Paragraph 7 agrees to plurilateral request-offer negotiations in addition to bilateral negotiations. It provides guidelines for how such negotiations would be organised and is voluntary.</p> <p>Small Economies: Paragraph 8 agrees to consider proposals of small economies in negotiations.</p> <p>LDC Modalities: Paragraph 9 mandates developing methods to implement the LDC Modalities and outlines specific ways to do so.</p>	<p>Members to conclude implementation before the end of this round.</p> <ul style="list-style-type: none"> • Intensifying efforts to conclude the rules “negotiations” according to their mandates and timelines puts the conclusion of rules as less of a priority for this round of negotiations than market access which could go beyond the single undertaking. The mandate is silent on whether the conclusion of negotiations includes the adoption of disciplines for the different rules areas. • Developing Article VI: 4 disciplines on domestic regulation before the end of this round and therefore within the single undertaking. <p>Approaches: The following are</p>
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		<p>the Council for Trade in Services to review progress in negotiations and monitor the implementation of Annex C.</p>	<p>services trade. However, it is not clear how such proposals will be taken into account.</p> <p>LDC Modalities:</p> <ul style="list-style-type: none"> • Developing methods for implementation of the LDC Modalities with reiteration of various paragraphs of the Modalities. Activities mandated in these paragraphs include Members' assistance to LDCs in identifying their sectors and modes of export interest. However, the Ministerial Declaration weakens the LDC Modalities by agreeing that paragraph 6 (which requires Members to give special priority in market access in sectors and modes of supply of export interest to LDCs) on a best endeavour basis. Further, there is no strict deadline for implementing the LDC
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			<p>Modalities by the end of this round. The Ministerial Declaration merely calls on Members to “strive to complete” to do so before 31 July 2006.</p> <ul style="list-style-type: none">• Developing a reporting mechanism for reviewing the implementation of the LDC Modalities in the Council for Trade in Services Special Session. <p>Technical Assistance:</p> <ul style="list-style-type: none">• The provision of technical assistance’s main objective is to increase participation in negotiations with objectives focused on liberalisation without consideration of development objectives. However, Members are not prevented from incorporating development objectives in the various technical assistance activities.
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			<p>Timelines: The highly ambitious timelines for the 2006 negotiations aim to complete a round of plurilateral negotiations with the submission of final schedules by 31 October 2006.</p> <p>Review of Progress: The final section of Annex C on the review of progress of negotiations does not refer to paragraph 15 of the Guidelines and Procedures for the Negotiations which includes important criteria based on development objectives found in GATS Articles IV and XIX: 2.</p>
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VI. DETAILED ANALYSIS OF THE DOHA WORK PROGRAM ON WTO RULES UNDER THE HONG KONG MINISTERIAL DECLARATION

Doha Mandate	July 2004 Framework	Hong Kong Ministerial Declaration	Implications of HKMD
<p>▪ (§ 28) Mandates negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 and on Subsidies and Countervailing Measures, while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives, and taking into account the needs of developing and least-developed participants.</p> <p>In the initial phase of the negotiations, participants will indicate the provisions, including disciplines on trade distorting practices, that they seek to clarify and improve in the subsequent phase.</p>	<p>▪ (“f. Other negotiating bodies”): the General Council takes note of the reports to the TNC by the Negotiating Group on Rules. The Council reaffirms Members' commitment to progress in WTO Rules negotiations..</p>	<p>▪ (§ 28 and Annex D) Acknowledges that amendments to the AD Agreement are necessary to achieve the objectives of the Doha Declaration and calls upon members to submit text-based proposals.</p> <p>▪ Aims at improving, in particular, the transparency, predictability and clarity of the Agreement, to the benefit of all Members, including developing countries.</p> <p>▪ Identifies two (“<i>inter alia</i>”) parameters for the amendments: (a) the need to avoid the unwarranted use of anti-dumping measures; and</p> <p>the desirability of limiting the costs and complexity of proceedings for interested parties and the investigating authorities alike..</p>	<p>▪ Members, either individually or in groups, have continued throughout 2005 to present a large number of submissions enumerating the provisions in the AD Agreement for which improvements are needed and describing reasons why that is so.</p> <p>▪ From an extremely large number of problems identified, members must now move to the discussion about possible concrete solutions (e.g. amendments).</p> <p>▪ This would require members to decide which provisions are worth clarifying first and how. Since there is several proposals on the table (covering virtually all provisions of the AD Agreement) the order of priority may influence the final negotiating outcome. Not surprisingly, Members place different emphasis on the issues identified.</p> <p>The HK Declaration sets out parameters for the establishment of such priorities (improvements</p>

			<p>should aim at enhancing the clarity, transparency and predictability of the AD regime). It also mentions that the improvements must benefit all members, including developing countries. Finally, the Declaration also includes parameters (a) and (b) as possible objectives for any change made to the agreement</p>
		<ul style="list-style-type: none"> ▪ Gives priority to (“<i>inter alia</i>”): (a) determinations of dumping, injury and causation, and the application of measures; (b) procedures governing the initiation, conduct and completion of antidumping investigations <p>the level, scope and duration of measures, including duty assessment, interim and new shipper reviews, sunset, and anti-circumvention proceedings.</p>	<ul style="list-style-type: none"> ▪ The establishment of a list of items to be negotiated constitutes one the most contentious issues in the Group now because the precise contents of the list and the priority accorded to items in it may determine the quality final outcome. The technical nature of the elements being negotiated also implies very detailed and time-consuming discussions for the finalisation of each individual element. ▪ The language and items (a), (b), and (c) of this paragraph constitute a compromise while at the same time being broad enough to capture virtually any proposal submitted so far. <p>It is, however, worth mentioning that S&D treatment for developing countries (art. 15) was not explicitly enumerated in this list, but it is fair to assume that development and S&DT are implicit in the</p>

			discussions, permeating all elements being negotiated (elements of S&D have in fact been included in some proposals regarding specific aspects of the agreement).
		<ul style="list-style-type: none"> ▪ Takes note of issues discussed in the Group and affirms that additional proposals for improvements in new areas may still be submitted. 	<ul style="list-style-type: none"> ▪ This paragraph confirms that the list and parameters set in the paragraphs above should not be deemed to be exhaustive. Hence, members reserve their right to build upon proposals already submitted or to present new issues to be discussed.
		<ul style="list-style-type: none"> ▪ Affirms the need to make the same improvements to both the Anti-Dumping and the Subsidies Agreements where applicable. 	<ul style="list-style-type: none"> ▪ Parallelism in the treatment of both AD and Subsidies is desirable to ensure that new disciplines are compatible among themselves, simple and least burdensome for all parties involved. This approach also will also save the time of negotiators.
		<ul style="list-style-type: none"> ▪ Directs the Chairman of the Group to consolidate proposed textual suggestions to form the basis of an amended agreement. 	<ul style="list-style-type: none"> ▪ Subject to progress in other areas of the Single Undertaking, the Declaration asks the Chairman of the Negotiating Group to consolidate textual proposals and draft an initial agreement. While this will save the Group's time, developing countries will, of course, need to ensure that the resulting base text is well balanced.
<ul style="list-style-type: none"> ▪ (§ 28) Mandates negotiations aimed at clarifying and improving disciplines under the 		<ul style="list-style-type: none"> ▪ (Annex D) Acknowledges that amendments will be necessary to the Subsidies Agreement in order 	<ul style="list-style-type: none"> ▪ This paragraph requires improvements discussed in AD to be replicated in Subsidies where

<p>Agreements on Subsidies and Countervailing Measures, while preserving the basic concepts, principles and effectiveness of this Agreement and its instruments and objectives, and taking into account the needs of developing and least-developed participants.</p>		<p>to achieve the objectives of the Doha Mandate.</p> <ul style="list-style-type: none"> ▪ Takes stock of proposals for amendments on the definition of a subsidy, specificity, prohibited subsidies, serious prejudice, export credits and guarantees, and the allocation of benefit. ▪ Affirms the need to make the same improvements to both the Anti-Dumping and the Subsidies Agreements where applicable. ▪ Directs the Chairman of the Group to consolidate proposed textual suggestions to form the basis for final negotiations of an amended agreement. 	<p>applicable, maintaining the parallelism between AD and Subsidies negotiations. It also recognises, as for AD, that amendments to the Subsidies Agreement are desirable. Finally, it directs the chairman of the Group to consolidate proposals and produce an initial text for further negotiations.</p>
<ul style="list-style-type: none"> ▪ (§ 28) In the context of these negotiations, participants shall also aim to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries. We note that fisheries subsidies are also referred to in paragraph 31. 		<ul style="list-style-type: none"> ▪ Acknowledges that there is broad agreement that the Group should strengthen disciplines on subsidies in the fisheries sector, including through the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and over-fishing. 	<ul style="list-style-type: none"> ▪ The Declaration takes stock of the fact that the Negotiating Group now widely accept the casual linkage between subsidies and overcapacity (a link that had been rejected by some members for some time). Consequently, the paragraph formally enables the negotiation of specific disciplines for the better control of fisheries subsidies. This is a very positive development for poor countries because the new disciplines could contribute to a significant reduction of the total amount of fisheries subsidies. ▪ It is hoped that such a reduction would in turn have positive

			<p>environmental effects (a reduction of overall capacity would generally benefit stocks, including stocks located in the waters of developing countries having signed access agreements with developed nations), as well as positive market access effects (the phase-out of subsidies could lead to higher fish prices and an increase of the volume of fish imported by developed countries).</p>
		<ul style="list-style-type: none"> ▪ Asks members to establish the nature and extent of disciplines, including transparency and enforceability. ▪ Requires special and differential treatment for developing countries to be an integral part of the negotiations, taking into account the importance of this sector to development priorities, poverty reduction, and livelihood and food security concerns; 	<ul style="list-style-type: none"> ▪ The paragraph also requests members to now proceed to the negotiation of the concrete disciplines. This will require members to agree to the nature and extent of the disciplines; i.e. whether a total or partial elimination is desirable, whether to opt for an overall prohibition with selected exceptions (top-down approach) or whether to opt for a list of prohibited subsidies with the remaining subsidies being authorised (bottom-up), etc. ▪ The paragraph also requires new disciplines to incorporate S&D treatment in favour of developing countries. The explicit recognition of the importance of fisheries for developing countries is salutary because new disciplines will need to

			respect the use of subsidies in developing countries for the implementation of legitimate developmental policies (in so far as these subsidies do not endanger the viability of fishing and fish stocks).
<ul style="list-style-type: none"> ▪ (§ 29) Mandates negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements. The negotiations shall take into account the developmental aspects of regional trade agreements. 		<ul style="list-style-type: none"> ▪ Recalls the need for greater transparency in RTAs as well as for disciplines that ensure the complementarity of RTAs with the WTO. 	<ul style="list-style-type: none"> ▪ The Hong Kong Declaration on RTA follows the structure work of the Negotiating Group. In fact, the Group has now been following a double, parallel negotiating track.
<ul style="list-style-type: none"> ▪ 		<ul style="list-style-type: none"> ▪ Instructs the Group to define elements for a transparency mechanism for RTAs, aimed, in particular, at improving existing WTO procedures for gathering factual information on RTAs by 30 April 2006. ▪ Instructs the Group to improve WTO disciplines governing RTAs, including <i>inter alia</i> on the "substantially all the trade" requirement, the length of RTA transition periods and RTA developmental aspects and to reach an outcome by end 2006. 	<ul style="list-style-type: none"> ▪ The Declaration confirms the double track approach and seeks an intensification of negotiations by setting a deadline for the completion of work under both tracks. ▪ By devoting an entire paragraph to, and prescribing an earlier deadline for, transparency, the Declaration suggests that transparency is the most important issue in the RTA negotiations.

VII. DETAILED ANALYSIS OF THE DOHA WORK PROGRAM ON TRADE FACILITATION UNDER THE HONG KONG MINISTERIAL DECLARATION

Doha Mandate	July 2004 Framework	Hong Kong Ministerial Declaration	Implications of HKMD
<p>Paragraph 27 stated that negotiations on Trade Facilitation (TF) would take place after the 5th meeting of the WTO Ministerial Conference (at Cancun in 2003) on the basis of an explicit consensus decision on the negotiating modalities.</p> <p>Prior to the commencement of negotiations, the CTG (through the Working Group on Trade Facilitation) was supposed to review GATT Articles V, VIII and X and identify Members' (especially developing and least-developed countries) TF needs and priorities. Members also committed themselves to ensuring that there is adequate technical assistance and capacity-</p>	<p>Paragraph (g), stating that the decision was by explicit consensus, launched the TF negotiations on the basis of the modalities set out in Annex D of the General Council Decision of 1 August 2004.</p> <p>Annex D states that the TF negotiations will have three (3) objectives:</p> <p>(i) clarification and improvement of relevant aspects of GATT Articles V, VIII and X in order to further expedite the movement, release and clearance of goods;</p> <p>(ii) enhancing technical assistance and support for capacity-building in TF;</p>	<p>Paragraph 33 reaffirmed the TF negotiating modalities of the July 2004 Framework, and endorsed the recommendations of the NGTF contained in paragraphs 3 to 7 of its report (TN/TF/M/11) contained in Annex E.</p> <p>Paragraph 4 of Annex E recommended the intensification of negotiations building on Members' previous and upcoming proposals; made reference to a list of proposed measures contained in various proposals; and reminded Members of the overall deadline for finishing the negotiations and thus the need for the TF negotiations to move into text-based</p>	<p>Paragraphs 4 to 7 of Annex E of the HKMD are the operative paragraphs that basically outline the NGTF's work programme for 2006.</p> <p>These MC6-endorsed recommendations in Annex E basically require the NGTF to:</p> <ul style="list-style-type: none"> • Intensify negotiations and move these negotiations towards text drafting mode; • Identify TF needs and priorities of individual Members; • Identify the cost implications of possible measures; • Make the provision of

<p>building in this area.</p>	<p>(iii) coming up with provisions to ensure effective cooperation between customs authorities regarding TF and customs compliance.</p> <p>In achieving those objectives, Annex D requires that the TF negotiations:</p> <p>(i) take account of S&DT for developing and least-developed countries, including relating the extent and timing of commitments to these countries' implementation capacities; and that such countries would not be required to undertake investments in infrastructure projects beyond their means;</p> <p>(ii) will have LDCs make commitments only to the extent consistent with their individual development, financial</p>	<p>drafting negotiations on "all aspects of the mandate" after the Hong Kong Ministerial Conference.</p> <p>Paragraph 5 requires the NGTF as well as Members to continue the process of "identifying individual Members' trade facilitation needs and priorities, and the cost implications of possible measures."</p> <p>Paragraph 6 recommended that the technical assistance and capacity-building (TACB) commitments contained in Annex D of the July 2004 Framework be "made operational in a timely manner." To this end, "special attention" needs be paid to providing TACB support "that is precise, effective and operational, and reflects the trade facilitation needs and priorities of developing countries and LDCs" to enable these countries to</p>	<p>TACB during the negotiations fully operational "in a timely manner" - i.e. within such time as to be effective and useful to the recipients in the course of the negotiations - and agree on provisions that would make operational such provision of TACB to the implementation of new commitments after the negotiations;</p> <ul style="list-style-type: none"> • Agree on and integrate S&DT proposals and considerations in the TF negotiations. These should be done through provisions that are precise, effective and operational.
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	<p>and trade needs or their administrative and institutional capabilities;</p> <p>(iii) shall identify Members' trade facilitation needs and priorities, particularly those of developing and least-developed countries; and</p> <p>(iv) shall address the concerns of developing and least-developed countries related to cost implications of proposed measures.</p> <p>The provision of technical assistance and support for capacity-building is deemed to be a vital part of the TF negotiations, both in order to enable developing and least-developed countries "to fully participate in and benefit from the negotiations." Hence, using best endeavour language, developed Members committed themselves to "adequately ensure such</p>	<p>effectively participate in the negotiations and to be able to implement any new commitments thereafter.</p> <p>Paragraph 7 recommends that negotiations on S&DT issues in the TF negotiations be intensified, in order to arrive at "S&DT provisions that are precise, effective and operational and that allow for necessary flexibility in implementing the results of the negotiations." These negotiations on S&DT would build on proposals made by Members with respect to GATT Articles V, VIII, and X and those proposals with a "cross-cutting nature."</p>	
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	<p>support and assistance during the negotiations” and to “make every effort to ensure support and assistance directly related to the nature and scope of the commitments in order to allow implementation.” Annex D stresses that “support and assistance should also be provided to help developing and least-developed countries implement the commitments resulting from the negotiations, in accordance with their nature and scope.”</p> <p>Annex D recognized that the TF negotiations could lead to certain commitments whose implementation would require support for infrastructure development on the part of some Members. In these cases, Annex D states that “where required support and assistance for such infrastructure is not</p>		
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	<p>forthcoming, and where a developing or least-developed Member continues to lack the necessary capacity, implementation will not be required.”</p> <p>Annex D also created the Negotiating Group on Trade Facilitation (NGTF) to handle the negotiations.</p>		
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