Background

The Fourth Ministerial in Doha in November 2001 made a breakthrough in the WTO talks with the launch of DDA under a new round of multilateral trade negotiations. Four years later, talks on concluding the Doha Round remain tenuous and are the priority of the Hong Kong Ministerial. The Fifth Ministerial in Cancún was supposed to provide a platform for a mid-term review of the progress made in DDA. However, not only a sharp division complicated talks over the agricultural and Singapore issues but multiple groupings with entrenched positions were formed. Though the Cancún Ministerial failed amidst these irreconcilable differences, a Ministerial Statement was issued, making it clear that in those areas where a high level of convergence was reached, members would continue to work for an acceptable overall outcome.

July Package

In the Ministerial Statement at Cancún, it was agreed to resume negotiations in Geneva by 15 December 2003. They resumed only in April 2004 and culminated in the adoption of the IAUGCD Decision (WT/L/579) on a tiered formula, classifying tariffs into various bands for subsequent reduction from bound rates, with higher tariffs being cut more than lower ones. The actual modalities of negotiations on agriculture, NAMA, services, trade facilitation and development dimension are still subject to negotiations.

Introduction

Multilateral trade negotiations under Doha Development Agenda (DDA), which resumed after the collapse of the Fifth Ministerial of the World Trade Organisation (WTO) in Cancún in September 2003, culminated in the General Council (GC) meeting in July 2004 that adopted ‘July Package’ (JP). Subsequent meetings have met with little success as far as reaching agreements on various issues under DDA is concerned. JP has set end July 2005 as the deadline to arrive at ‘first approximations’, i.e., broad consensus on five issues: agriculture, non-agricultural market access (NAMA), services, trade facilitation and development dimension. The success of the Sixth WTO Ministerial in Hong Kong to be held from 13-18 December 2005 depends on successful talks among members. Developing countries, including those in South Asia, have a high stake in the successful completion of the Ministerial.

This briefing paper analyses the issues being negotiated under JP and other issues under DDA with a view to identifying South Asian priorities for the Hong Kong Ministerial. It also deals with the concerns that these countries have in relation to further negotiations on such issues and suggests the governments to take a proactive and unified stance during future negotiations.
which must lead to ‘substantial improvement’ in market access for all products.\(^3\) Annex A also addresses the issues of tariff rate quota, tariff escalation, and tariff simplification and exceptions on them are given in Box 1.

U pon initiatives by ‘five interested parties’, viz., Australia, Brazil, the European Union (EU), India and the United States (US), key WTO members agreed on the modalities of agricultural tariffs during the Paris mini-ministerial in May 2005. They reached a preliminary compromise on how to convert specific agricultural tariffs based on quantities imported into ad valorem equivalents, i.e., tariffs mentioned in percentage ad valorem equivalents, tariffs mentioned in percentage and based on the price of the product. Members had been caught up in disagreement over the conversion process for months; settling the matter was essential for agricultural negotiations to proceed. However, the tariffication modality still needs to be agreed to by the WTO’s full membership.

**Domestic Support**

JP included targets for the reduction of domestic support and specified that bound levels of export subsidy increases will be capped. In the first year of implementing the Agreement on Agriculture (AoA), it is required for members to reduce their overall trade-distorting support by 20 percent, comprising the final bound total aggregate measure of support (AMS), the permitted de minimis levels, and the bound domestic support. The reduction will be made under a tiered formula that cuts subsidies progressively: higher levels of trade-distorting domestic support are subject to greater reduction.

The Annex also specifies that flexibilities for developing countries and LDCs in Africa have bound less than 1 percent of their industrial tariffs. While binding coverage for developed countries and developing countries either maintain very high bound tariffs or have not bound a significant portion of their industrial tariffs, the Annex also caps product-specific AMS at average levels. Members had been caught up in disagreement over the conversion process for months; settling the matter was essential for agricultural negotiations to proceed. However, the tariffication modality still needs to be agreed to by the WTO’s full membership.

**Non-Agricultural Market Access**

NAMA negotiations are being conducted under the backdrop of high overall tariffs prevailing in developing countries on industrial products and high tariffs on developing country exports in developed countries. The NAMA framework sets the stage for the pursuit of tariff cuts according to a non-linear formula and the reduction or elimination of non-tariff barriers (NTBs) below a certain percentage of tariff lines, or keeping “as an exception” tariff lines unbound, or not applying formula cuts for up to 5 percent of tariff lines provided they do not exceed 5 percent of the total value of a member’s imports.\(^5\) The framework contains the initial elements for future work on modalities’ reduction of industrial tariffs, the flexibility for developing country participants, the issue of participation in the sectoral tariff component and the preferences for future negotiations. It has also addressed the issues of NTBs and requested members to make commitments by 31 October 2004.\(^6\)

It is stipulated that the non-ad valorem duty should be converted into ad valorem ones. This is expected to make tariff protection transparent for exporting countries, which face higher levels of protection when their exports fall. In most developing countries, tariffs on industrial tariffs are still subject to substantial portion of their industrial tariffs, and they are expected to bind substantial portion of their tariff lines. A nnex B also appears to suggest that newly acceded countries may not be required to undertake any major or tariff cuts as they have already made extensive market opening commitments.

Similar to the agricultural text (though not mentioned in the agricultural section), duty-free and quota-free market access to least developed country (LDC) products have been left at the discretion of the developed country participants and ‘other’ participants, without any agreed deadline. Developed countries maintain around an average of 38 percent tariff on manufactured products and developing countries either maintain very high bound tariffs or have not bound a significant portion of their tariff lines at all. For example, some developing countries and LDCs in Asia have bound less than 1 percent of their industrial tariffs. While binding coverage for
industrial products in Cameroon and Tanzania is 0.1 percent, while the corresponding figures for Mozambique and Togo are 0.5 percent and 0.9 percent respectively. Among South Asian countries, Bangladesh has bound only 3 percent of its industrial tariff lines. Sri Lanka has bound 28.3 percent and the corresponding figure for Pakistan is 37 percent.

Services
When the general agreement on trade in services (GATS) was prepared during the Uruguay Round (UR), members of the general agreement on trade in services (GATS) were allowed to choose sectors for liberalisation. They also agreed that there would be further liberalisation in this sector in a progressive manner, like in agriculture. In the run-up to the Doha Ministerial, the notion of reciprocal commitments emerged. While developed countries wanted to see hitherto protected sectors in the developing countries liberalised, the latter wanted to see hitherto protected mode of service delivery liberalised.

Accordingly, DDA mandated negotiations on trade in services with a view to promoting the economic growth in all trading partner countries. Offering liberalisation, the focus of services negotiations has been on bilateral request-offers. J P, too, supports this mandate and aims to achieve progressively higher levels of liberalisation with no a priori exclusion of any services or mode of supply. Since the offers submitted, so far, had not been up to the expectations of the members, J P set the deadline to submit revised offers as May 2005, which passed without members making satisfactory offers.

Trade Facilitation
Despite the potential benefits, developing countries are un-able to independently undertake trade facilitation measures that could help them over come supply side bottlenecks and enhance efficiency. The inclusion of this issue for negotiations in DDA, “subject to explicit consensus on the modalities of negotiations”, had created a sharp division between the North and the South in their run-up to Cancun Ministerial. Within J P, it is the only Singapore issue in which members reached an agreement to conclude negotiations as a part of Single Undertaking under DDA. A new D of J P states that negotiations “shall strive to ensure” (existing text) which is not mandatory and “shall ensure” which would have been mandatory. A similar approach, as services are concerned, members, as per the text, “note the interest of developing countries as well as other members on Mode 4, i.e. movement of natural persons”. However, noting the interest and actually making a commitment to liberalise the same are two entirely different things.

Implementation related problems in relation to the WTO agreements and S&D treatment have been discussed ever since DDA was launched. Box 2 highlights some development dimension issues as set forth by the Doha Declaration and the importance of addressing these issues in the run-up to Cancun Ministerial. The notion of reciprocal commitments emerged. While developed countries wanted to see hitherto protected sectors in the developing countries liberalised, the latter wanted to see hitherto protected mode of service delivery liberalised.

Development Dimension
Implementation related problems in relation to the WTO agreements and S&D treatment have been discussed ever since DDA was launched. Box 2 highlights some development dimension issues as set forth by the Doha Declaration. However, there has not been significant progress in most issues. J P calls for a review of all outstanding agreement specific proposals and reporting to the G C for clear recommendations on decisions. The Committee on Trade and Development was instructed to report to the G C “as appropriate” on all other outstanding works, such as a mechanism to monitor the implementation of S&D obligations and the incorporation of S&D treatment into the architecture of WTO rules.

A mong the issues agreed for negotiations by J P, trade facilitation is the only issue that provides a leeway to developing countries not to implement their part of commitments in the absence of technical assistance. On agriculture, S&D provisions are mostly related to higher transition period and lower level of reduction coefficients. The language on S&D provisions is non-binding and depicts best endeavour nature. Moreover, though the LDCs are not required to participate in any reduction commitment, the non-binding language relating to duty free and quota free access has further weakened their bargaining position in their efforts to obtain such facility from the developed countries. A according to a annex C of J P titled “Recommendations of the Special Session of the Council for Trade in Services” LDCs shall strive to ensure a high quality of offers, particularly in sectors and modes of supply of export interest to developing countries, with special attention to begin with LDCs. This language is meaningless to the developing and least developed countries as there is a vast difference between an “shall strive to ensure” (existing text) which is not mandatory and “shall ensure” which would have been mandatory. A similar approach, as services are concerned, members, as per the text, “note the interest of developing countries as well as other members on Mode 4, i.e. movement of natural persons”. However, noting the interest and actually making a commitment to liberalise the same are two entirely different things.

Other Issues
The exclusion of some other issues by J P does not negate their importance. Therefore, these issues are briefly dealt with in the following paragraphs.

TRIPS Agreement
The issue as to whether countries with trade related aspects of Intellectual Property Rights (TRIPS) Act are WTO compliant is a matter of some debate. The TRIPS Agreement has been mandatory ever since the Agreement was concluded in 1994. The TRIPS Agreement is a framework for the development of Intellectual Property Rights (IPRs), which are covered by the Agreement. The Agreement has been signed by over 140 countries, including all of the World Trade Organization (WTO) members. The Agreement sets out a number of obligations for countries that have acceded to it, including obligations relating to the protection and enforcement of IPRs, as well as obligations relating to the development of domestic laws and regulations. The TRIPS Agreement has been subject to a number of criticisms, including concerns over the impact of its provisions on the ability of countries to protect their own IPRs and concerns over the potential costs of implementing the Agreement. Despite these criticisms, the TRIPS Agreement has been widely seen as an important step in the development of international intellectual property law.
A nither vital issue is the possibility of initiation of trade dispute even if there has been no violation of the TRIPS Agreement. The dispute settlement procedure under the WTO allows such disputes to be settled in accordance with the panel's recommendations. However, developing countries have limited resources to engage in such disputes, and their ability to do so is often hampered by the complexity of the issues involved. Therefore, these countries demanded that the issue of technical assistance and capacity building be included in the Doha mandate to the Sixth Ministerial Conference.

Dispute Settlement

The rules governing dispute settlement were agreed upon at the Doha Ministerial Conference. The Dispute Settlement Understanding (DSU) was adopted to provide a framework for resolving disputes between members in order to ensure the effective implementation of WTO agreements. The DSU contains provisions on dispute settlement procedures, the role of panels and appellate bodies, and remedies that may be imposed.

Problems encountered in relation to timetables to settle disputes and implementation of remedies proposed by the Dispute Settlement Body (DSB) included issues of staffing and funding. The DSB was established in 1999 to facilitate the settlement of disputes between members. However, the lack of staff and resources has limited its ability to handle disputes effectively.

Trade and Technology Transfer

The Doha Declaration stipulated that the issues of technology transfer and the TRIPS Agreement should be addressed in a Working Group under the auspices of the General Council. However, despite the commitment to address this issue, few practical steps have been taken. Developing countries have sought to negotiate mandatory provisions for the disclosure of knowledge and the granting of compulsory licenses in the TRIPS Agreement.

Trade and Environment

The mandates to the Sixth Ministerial Conference included discussions on the relationship between trade and environmental goods. However, the negotiations have been limited to a few developing countries and have not progressed significantly.

Technical Assistance and Capacity Building

Developing countries have expressed concern about the limited resources available to them to implement WTO obligations. The WTO has made some efforts to provide technical assistance and capacity building, but these efforts have been limited. Developing countries have demanded that the issue of technical assistance and capacity building be included in the Doha mandate to the Sixth Ministerial Conference.
...overarching objective of sustainable development and poverty alleviation. All of them thus have a high stake in the successful completion of DDA. Therefore, it is necessary for them to forge an alliance for the achievement of their common goals.

However, impediments are hindering the prospects of cooperation among South Asian countries to form a common position prior to the Hong Kong Ministerial. First, while larger economies like India and Pakistan are in a position to make reciprocal commitments, LDCs like Bangladesh, the Maldive Islands and Nepal are likely to lose because of increased food import bills. Tariff and subsidy reduction in India would result in the entire South Asia region making gains. It might thus be in the regional interest to have a common position on the elimination of subsidies in developed countries but maintaining the most favoured nation tariff protection. They could then liberalise tariffs on agricultural products among themselves under South Asia free trade area negotiations.

Similarly, South Asian countries need to develop a common position on reducing tariffs and Designing sensitive products' SPs and preparing the modalities for SSM through consultations when submitting proposal in alliances with other groups. A meeting of South Asian Association for Regional Cooperation (SAARC) trade and commerce ministers in August 2001 in New Delhi had also emphasised closer collaboration and consultation amongst the SAARC policy makers and ambassadors to the WTO Secretariat. They were also asked to keep each other abreast of country positions, and interact and discuss pertinent issues.

On November 15, India and Pakistan both of which maintain high industrial tariffs will have to undertake higher tariff cuts due to non-linear formula for tariff reduction proposed under the SPS protocol. India and Pakistan may have some impact on Bangladesh despite their LDC status because they will be asked to bind more than 90 percent of their industrial tariffs. Then negotiations may not be relevant for Nepal as it is an LDC and has also bound 99.3 percent of its industrial tariffs at the time of WTO accession. Despite the differences in country positions, South Asian countries should collectively demand for actualisation of “less than full reciprocity principle’.

A liberal services regime along with sufficient infrastructure needs to be complemented by facilitation and a favourable access to market, technology, information network and distribution channels and market information. South Asian countries need to raise the issue under TRIPS in the negotiation on rules. Given the role of remittances, tremendous gains could accrue to all these countries from the liberalisation of Movement of GATS. Similarly, they should also press for the liberalisation of outsourcing services, covered under Mode 4 (cross-border supply of services using information and communication technology) of GATS.

On trade facilitation negotiations, Nepal may be the only South Asian WTO member with a different approach. Given its landlocked status, the negotiation on transit freedom is crucial to secure transit rights. All South Asian countries should be careful to ensure that they need sufficient and targeted technical assistance from their development partners to implement the measures to be agreed. At the domestic level, it is worth the while for them to conduct studies to map out their technical assistance requirements.

On negotiations relating to implementation related issues and SPS treatment, South Asian countries should have a common position to ensure that these issues are expeditiously settled otherwise they should join hands with other countries to block negotiations on other issues. After all, DDA is a single undertaking and nothing can be considered as agreed unless there is an agreement on everything, including development related issues.

South Asian countries should make a sincere effort for common positions on other issues as well. On TRIPS, they should first aim at clarifying the spirit of the Doha Declaration so that countries with limited manufacturing capacity on pharmaceutical products are free to import generic medicines from other countries in order to address their public health concerns. Second, they should develop a position that prevents piracy of their genetic resources and associated traditional knowledge by emphasising on the disclosure, prior informed consent and benefit sharing as pre-conditions for patenting of invention based on genetic resources and/or traditional knowledge. Third, they should insist on extending the moratorium on non-violation complaints under the TRIPS Agreement.

On trade and environment, priority should be given to ensure that environmental standards are not legitimised within the WTO framework as this could be used for protectionist purposes by developed countries. On trade, development and finance, South Asian countries may not have major interest because of their relatively sound macroeconomic fundamentals. Trade and technology transfer is a major issue for South Asian countries as they are net importers of technologies. Therefore, they should make informed intervention at the WTO, GTTT such that their concerns are reflected in the working group’s submission to the Hong Kong Ministerial.

DSU review might not be a current priority for South Asian countries because of the limited number of disputes these countries are involved in. Technical assistance and capacity building are major issues and they should collectively bargain for binding commitment to particularly help the LDCs in the region. In this regard, the twin priorities are investment in upgrading infrastructure and customs administration.
CONCLUSION

The success of the Hong Kong Ministerial is vital to complete current multilateral trade negotiations under DDA, in which developing countries have a high stake. Despite the failure of the Cancún Ministerial, the agreement reached among members on the phasing out of agriculture subsidies in agriculture has raised hope. The successful completion of DDA, in which developing countries have a high stake, is bound to be a tenuous process. South Asian countries have divergent interests on some issues but that does not preclude the possibility of arriving at common positions on others. Given the limited negotiating resources, there is a need to prioritise issues on the basis of their importance so as to create better opportunities for people, especially the poor of South Asia. It is also necessary for all the countries to be proactively engaged in the WTO discussions so as to ensure that issues that have not received much prominence in JP, but can affect them, be addressed.

Endnotes

7 Ibid.
13 The actual language is as follows: “Developed Members, and developing country Members in a position to do so, should provide duty-free and quota-free market access for products originating from least-developed countries.” See paragraph 45 of Annex A of July Package.
20 Ibid.
24 Ibid.
28 Ibid.
29 Ibid.
34 Ibid.
37 Ibid.
38 Ibid.
41 Ibid.
45 Ibid.
49 Ibid.
50 Ibid.
55 Ibid.
58 Ibid.
59 For example, the S&D treatment text on export competition mentions: “S&D treatment will be granted to developing countries, and disciplines on export support will be developed with consideration of the impacts on least-developed and net-food-importing developing countries.”
60 The actual language is as follows: “Developed Members, and developing country Members in a position to do so, should provide duty-free and quota-free market access for products originating from least-developed countries.” See paragraph 45 of Annex A of July Package.