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Proposed Changes to WTO Special and Differential Treatment Provisions: An Analysis from the Perspective of Asian LDCs

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ACRONYMS

AB	-	Appellate Body
AFTA	-	ASEAN Free Trade Area
AGOA	-	African Growth and Opportunity Act
AMS	-	Aggregate Measure of Support
AoA	-	Agreement on Agriculture
ADD	-	Anti-Dumping Duty
BIMST-EC	-	Bay of Bengal Initiative for Multisectoral Technical and Economic Cooperation
BFTAs	-	Bilateral Free Trade Agreements
BoP	-	Balance of Payment
CB	-	Capacity Building
CBI	-	Caribbean Basin Initiative
CTD	-	Committee on Trade and Development
CTD-SS	-	Committee on Trade and Development – Special Session
DDR	-	Doha Development Round
DF-QF	-	Duty Free-Quota Free
DMEs	-	Developed Market Economies
D-8	-	Developing 8 Countries
DG	-	Director General
DSB	-	Dispute Settlement Body
DSM	-	Dispute Settlement Mechanism
DSU	-	Dispute Settlement Understanding
DTIS	-	Diagnostic Trade Integration Studies
EU-EBA	-	European Union – Everything But Arms
FA	-	Financial Assistance
FDI	-	Foreign Direct Investment
GATS	-	General Agreement on Trade in Services
GATT	-	General Agreement on Tariffs and Trade
GC	-	General Council
GSP	-	Generalized System of Preferences
GSTP	-	Global System of Trade Preferences
IF	-	Integrated Framework
IMF	-	International Monetary Fund
IOR	-	Indian Ocean Rim Initiative
IPRs	-	Intellectual Property Rights
JITAP	-	Joint Integrated Trade Assistance Programme
LDCs	-	Least Developed Countries
MFN	-	Most Favoured Nation
NAMA	-	Non-Agricultural Market Access
NTBs	-	Non-Trade Barriers
PSI	-	Pre-Shipment Inspection
PTN	-	Protocol Relating to Trade Negotiations among Developing Countries
RoO	-	Rules of Origin
RTAs	-	Regional Trade Agreements
S&D	-	Special and Differential Treatment
SAFTA	-	South Asian Free Trade Area
SAGQ	-	South Asian Growth Quadrangle
SAPTA	-	SAARC Preferential Trading Arrangement
TA	-	Technical Assistance

TCB	-	Trade Capacity Building
TRCB	-	Trade Related Capacity Building
TRIMs	-	Trade Related Investment Measures
TRIPS	-	Trade Related Aspects of Intellectual Property Rights
TRTA	-	Trade Related Technical Assistance
UNCTAD	-	United Nations Conference on Trade and Development
WB	-	World Bank
WIPO	-	World Intellectual Property Organisation
WTO	-	World Trade Organisation

EXECUTIVE SUMMARY

Special and differential treatment (S&D) provisions introduced in the GATT and the WTO in support of strengthened global integration of the developing country (DC) and least developed country (LDC) members have come under increasing scrutiny and criticism in recent years. One criticism has been that most of the S&D provisions are weak in their formulations, i.e., are expressed in the form of best endeavour clauses and hence are non-enforceable. The other strand of argument is that that in order for the S&D provisions to be effective and enforceable they ought to be targeted to countries that are in need of them most and be applied not in general, but with discretion, by identifying and targeting select group of developing countries that require a particular type of support most. The Ministers in Doha, at the 4th WTO Ministerial Conference, therefore agreed that all S&D provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational. A number of proposals have since been put forward and discussed by WTO members.

Following a comprehensive review of the relevant S&D literature, an assessment of a select set of proposals to improve S&D WTO provisions is undertaken from the particular perspective of Asian LDCs. The analysis focuses on 12 Agreement Specific proposals which have been identified as having a high likelihood of reaching a decision (belonging to the so-called *Category I Proposals*). In addition, the paper takes a critical look at the five LDC specific proposals on which specific decisions were reached during the WTO Hong Kong Ministerial Meeting in December 2005. In undertaking the assessment of the 17 aforementioned proposals the paper compares the original proposals submitted by the various Members with the negotiated compromise and examines and analyses the relevance, priorities, concerns and the interests of the LDCs of the Asian region in the context of these 17 Agreement Specific proposals.

The analysis reveals that a majority of the reviewed proposals has failed to fully satisfy the demands of the Asian LDCs. In most cases, there is a high degree of divergence between what the original demand of the LDCs had been, as was articulated in the original proposals submitted to the WTO, and the wordings of the proposals that were finally negotiated. The paper argues that in most cases there is no benchmark which could serve as a reference point to compare and monitor whether a particular S&D provision is either being faithfully implemented or that it is reaching its objective. There is no concrete mechanism to ensure enforcement of the provisions. The paper further points out that in most cases a true and faithful implementation of the agreed proposals would hinge critically on a substantive inflow of technical and financial support from the developed countries and this is hardly forthcoming. The paper stresses the need for ensuring *coherence* and points out further that the need for coherence was indeed recognised in the Doha Ministerial Decision and that it was subsequently reiterated in the Hong Kong Ministerial Decision of the WTO. The paper underscores the need for a meaningful *Development Package* in the WTO that would put faithful implementation of the S&D clauses at the heart of the *Doha Development Round.*

INTRODUCTION

Special and differential treatment (S&D) provisions in the multilateral trading system emerged as a recognition of the specific problems that developing countries (DCs) and least developed countries (LDCs) were facing in their effort to integrate with global markets for goods, services, capital and labour. WTO Member Countries generally tend to agree that most of the LDCs have not been able to benefit fully and equitably from a liberalising global trade environment because of their weak institutions, inadequate infrastructure, weak bargaining capacity, scarce human resources and formidable supply side constraints. On the part of developed countries, the offer of S&D was also informed by the fact that if DCs and LDCs fail to integrate with the global trading system from a position of strength, it will limit the overall benefits in terms of global welfare that could potentially originate from the ongoing process of liberalisation and globalisation. The S&D provisions in the various WTO Agreements were designed to address these concerns.

In identifying theoretical rationale for granting of temporary S&D to DCs and LDCs in terms of both protection of domestic market and also ensuring preferential market access as part of WTO agreements, Conconi and Perroni (2004) have argued that, under the WTO rules, S&D can be interpreted as a '*transitional equilibrium feature of a self-enforcing international agreement between a developed and a developing country, where both transitional and post-transitional policy choices can be sustained by each party because of the policy path followed by the other*'. So, in a way S&D provisions in GATT/WTO reflected a confluence of interests of both DCs and LDCs on the one hand, and the Developed Market Economies (DMEs) on the other.

At the Doha Ministerial Conference of the WTO, member states in their joint declaration on November 14, 2001 (WT/MIN/(01)DEC/1), reaffirmed that S&D provisions are an integral part of the WTO agreement. The Ministerial declaration stressed that integration of LDCs into the multilateral trading system will require meaningful market access, support for diversification of their production and export base, and trade-related technical assistance and capacity building. S&D provisions were to play a critically important role in achieving these objectives. The Hong Kong Ministerial meeting also reiterated this support and reaffirmed that 'provisions for special and differential (S&D) treatment are an integral part of the WTO Agreements'.

However, S&D provisions in the WTO have come under increasing criticisms in recent years. These criticisms focused on three issues: (a) design and formulation, (b) enforceability, and (c) assistance for implementation of S&D clauses. Many of the S&D provisions were criticized because of their interpretative ambiguities and absence of any binding commitments on the part of the developed countries in implementing these provisions that were often articulated through *best endeavour* clauses. It is these concerns that led to the inclusion of paragraph 44 of the Doha Ministerial Declaration which stipulated that, '*members agreed that all S&D provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational.*'

According to UNCTAD, in 2004, LDCs share in world trade (export plus import) stood at 0.68 per cent (approximately $13 billion), compared to 3.06 per cent in 1954.[1] It is true that the share of the LDCs in global export has increased marginally from 0.46 per cent to 0.58 per cent between 1998 and 2003 and that share of import has also registered a marginal increase from 0.69 per cent in 1998 to 0.71 per cent in 2003.[2] In this connection, it is pertinent to remember that the top 5 exporters among the LDCs in 2003 (Angola, Bangladesh, Yemen, Equatorial Guinea and Myanmar) accounted for about 57 per cent of the total exports of the group. This process of concentration within the LDC group has been on the rise in the recent past. This would mean that the overwhelming majority among the LDCs are being marginalised at an accelerated pace. More than half of the LDC population continues to live on less than $1 a day, while about 81 per cent live on less than $2 a day. The number of people living in extreme poverty in LDCs is likely to increase from 334 million in 2000 to 471 million in 2015 (UNCTAD 2004). During 1995-2003, LDCs as a group continued to experience high negative trade balance; indeed, average trade deficit increased by more than 30 per cent in the non-oil, primary commodity dependent LDCs. The majority of the LDCs are not able to address the challenges and access the potential opportunities emanating from opening up of trade in goods and services. The picture is no different when global investment and financial flows are considered. It is in the aforesaid context that relevance and role of S&D provisions in the WTO need to be reviewed and examined as tools that aspire to address and correct the existing vulnerabilities of the LDCs in the multilateral trading system.

In view of the perceived weaknesses in the S&D provisions, developing countries and LDCs have been calling for a review of relevant articles with a view to making these '*more precise*, *effective and operational*' as is mandated by the Doha Declaration. This mandate led to the decision taken by consensus, of a review of the S&D provisions in the WTO. Since the Doha declaration, LDCs and DCs have submitted 88 Agreement specific proposals in the area of S&D accorded under the various WTO Agreements. As WTO member countries failed to reach an agreement on these between March 2002 and February 2003, the Chairman of the General Council, in coordination with the Chairman of the Committee on Trade and Development, explored the possibility (in consultations held between mid-March and the beginning of April, 2003) of a fresh approach to the work on Agreement specific proposals. The approach paper circulated by the Chairman on 8 April 2003 (JOB(03)/68) was based on two fundamental premises: (i) a prior understanding that all the Agreement specific proposals remain on the table and will be addressed; and (ii) a recognition that an informal categorisation of the proposals was required for these to be addressed in an effective manner.

Accordingly, Chairman of the General Council grouped all S&D proposals into three broad categories; *Category 1* comprised of 12 proposals[3] as regards which Members have come to an agreement in principle; this category also included 26 other proposals on which there appears to be greater likelihood of making recommendations, or which would have enhanced developmental value of the

[1] It should, however, be kept in mind that LDCs, as a distinct sub-strata among the developing countries was identified by the UN only in 1971.

[2] Petroleum and petroleum product exports from LDCs estimate 33 per cent of total LDC export to the world (for the US market, the share was as high as 63.3 per cent).

[3] These proposals are contained in Annex III of TN/CTD/7.

Agreements. *Category II* comprised of 38 proposals; these included 27 proposals covering areas in which mandated negotiations are continuing and also 11 other proposals the operative part of which are being considered in the respective WTO bodies. *Category III* includes proposals on which there appears to be, as of now, wide divergence of views, and as regards which the Chairman felt that progress might not be possible without a certain degree of redrafting of the original texts that were presented. Following the discussions held prior to the Cancun Ministerial, the Chairman of the General Council proposed specific decisions on 24 proposals out of which 23 were from category I, and 1 from category II. During the Cancun Ministerial Conference 3 more proposals from Category I were added to this list. The LDCs and the African Group refused to accept the decision considering that the proposals put forward by the chairman did not have much economic value; they preferred to have decisions on all S&D proposals placed by them.

The failure of the Cancun Ministerial meant that the progress in terms of improving the effectiveness of the S&D clauses suffered a serious setback. However, the July 2004 General Council Decision (the July Framework) was able to put the discussion back on track. In the Special Session of the GC, Members instructed the Committee on Trade and Development (CTD) to 'expeditiously complete the review of all outstanding Agreement specific proposals and report to the General Council with clear recommendations for a decision, by July 2005'. During the subsequent year, work on S&D continued on the basis of the July Framework Decision and within the parameters of paragraph 44 of the Doha Ministerial Declaration and paragraph 12 of the 'Decision on Implementation-Related Issues and Concerns'. A dedicated special session of the CTD was initiated in July 2005 to carry forward the issue (especially LDC Agreement-specific proposals). Although the expectation was that a consensus could be reached on this, Members were unable to come to an agreement on the relevant issues.

It is of crucial importance that members move forward on S&D issues to translate their commitment towards addressing the problems faced by DCs and LDCs into tangible and meaningful results. There appears to be a consensus among all WTO members on this. However, it has been argued by some that the current proposals have a number of limitations: Firstly, there is a lack of prioritisation of the proposals for the purpose of negotiations; secondly, a number of proposals suffer not only from lack of usefulness in the present context, but also suffer from lack of feasibility; and thirdly, proposals pertaining to similar areas submitted by different developing and least developed countries have varying undertones and suggestions which tend to make negotiations with developed countries a rather complex endeavour. Others, articulating developed country perspectives, have argued that many S&D provisions put considerable burden on developed countries, and in view of this any progress would have to be incremental.

Following the July Decision of the WTO there was protracted discussions on the relevant issues in the negotiations in Geneva. In light of these discussions, during the Hong Kong Ministerial Meeting, members agreed to adopt the decisions contained in Annex F of the draft document (WT/MIN(05)/W/3/ Rev.2) which dealt with five Agreement specific proposals submitted by the LDCs. However, there was no concrete decision as regards the rest of the 88 provisions, though the Hong Kong Ministerial reiterated its commitment to address these. Instead, the Ministerial

Decision states: "*We renew our determination to fulfil the mandate contained in paragraph 44 of the Doha Ministerial Declaration and in the Decision adopted by the General Council on 1 August 2004, that all S&D provisions be reviewed with a view to strengthening them and making them more precise, effective and operational. We accordingly instruct the Committee on Trade and Development in Special Session to expeditiously complete the review of all the outstanding Agreement specific proposals and report to the General Council, with clear recommendations for a decision, by December 2006. We are concerned at the lack of progress on the Category II proposals that had been referred to other WTO bodies and negotiating groups. We instruct these bodies to expeditiously complete the consideration of these proposals and report periodically to the General Council, with the objective of ensuring that clear recommendations for a decision are made no later than December 2006. We also instruct the Special Session to continue to coordinate its efforts with these bodies, so as to ensure that this work is completed on time.*"

In the context of the above, the objective of the present study is to review selected S&D proposals being considered at the WTO from the perspective of the LDCs of South Asia, South East Asia and East Asia (Asian LDCs). The study will examine twelve Agreement specific proposals belonging to Category I and also the five LDC specific proposals which were adopted in the Hong Kong WTO Ministerial. These proposals will be critically assessed from the perspective of the Asian LDCs , mainly focusing on the relevance of the proposals from the perspective of the Asian LDCs and whether these reflect concerns and interests of these countries. There are seven LDCs in the Asian region: Bangladesh, Myanmar, Nepal, Bhutan, Maldives, Lao PDR and Cambodia. Bhutan and Lao-PDR are in the process of accession to the WTO, whilst others are already members. To be true, many of the concerns of the Asian LDCs are indeed common for all LDCs as a group, although the regional LDCs will have their own priorities as far as S&D clauses and the proposals under discussion are considered.

Table-1 provides some characteristics of these Asian LDCs. The importance of S&D provisions in the WTO for these countries is demonstrated by the fact that the degree of openness of most of these countries is quite high which is a testimony to their increasing integration with the global economy[4].

An investigation into the state of current negotiations on the S&D provisions is being carried out here with the objective to (a) raise awareness among the LDCs, development community and relevant stakeholders in the region about the current state of play as regards the discussions and decisions on S&D proposals in the WTO; (b) make an assessment about the value of the twelve S&D proposals on which consensus has been reached (12 proposals belonging to category I) and examine whether the proposals were able to reflect concerns and interests of the LDCs by taking LDC submissions to the WTO as reference point; and (c) analyse the five Agreement-specific proposals belonging to category I and Category III, on which agreement has been reached in Hong Kong.

Table 1: Importance of Export Sector in the GDP of Asian LDCs[1]

[4] Degree of openness is defined as share of export and import in GDP.

Asian LDCs	Geographical Status	Population in (million)	Per Capita GDP (US$)	Exports of goods and services as a percentage of GDP	Openness to trade ratios in 2003
Bangladesh[1]	LDC with seaports	142.0	440	17%	0.36
Cambodia	LDC with seaports	13.3	278	62%	1.16
Lao, PDR	Land-locked LDC	5.68	361	25%	0.63
Maldives	Small Island LDC	0.29	2260	85%	0.84
Myanmar	LDC with seaports	53.22	1174	n/a	n/a
Nepal	Land-locked LDC	24.2	233	17%	0.34
Asian LDCs (weighted average)		*257.52*	*513*	*21%*	

1. Data refers to 2003. Bangladesh data relates to Year 2005.
Source: ADB 2003; Key Indicators of Developing Asian and Pacific Countries.

Section I reviews the literature as regards S&D to LDCs in the context of WTO and the current debates in this regard. Section II of the study analyses the outcomes of the 12 Agreement specific proposals on which members have reached an agreement in principle, in the WTO. The chapter examines how these agreed decisions compare with the proposals submitted and whether these proposals have improved particular S&D measures in terms of making these "more precise, effective and operational" from the perspective of trade interests of Asian LDCs. Section III examines five Agreement specific proposals on which decisions were taken at the Hong Kong WTO Ministerial and assesses their worth in terms of addressing the interests and concerns of the LDCs.

METHODOLOGY

The study is based on secondary sources of information. Relevant literature, dealing with analysis of the S&D proposals under consideration in the ongoing negotiations, was reviewed from the perspective of LDCs. Agreement specific proposals submitted by DCs and LDCs since the Doha Ministerial were analysed, and these were compared with the ones for which agreement have been reached, in order to assess their real worth from the perspective of the LDCs. An assessment of the Hong Kong Decision on S&D proposals was undertaken by making a comparative study of the final text and the LDC demands.

Statistical publications of relevant organisations and trade related databases served as major sources of data and information for the study (WTO website, UNCTAD Handbook of Statistics Online, UNSTAT (COMTRADE), World Investment Report, and AMAD). WTO documents and studies on associated issues were extensively used. Interest and concerns of Asian LDCs served as the reference point for the aforesaid assessment.

1. LITERATURE REVIEW

There is an extensive literature dealing with LDC interests in the context of the S&D accorded in the various GATT/WTO Agreements. Recent literature on S&D has concentrated on two important and interconnected strands in the relevant discourse: firstly, modalities to make S&D more effective (focusing on identification of eligibility criteria, assessing needs, operationalisation); secondly, an assessment of the concrete proposals that are being discussed in the WTO (relevance to demands on the ground, value addition, comparison between what was proposed in the submissions and what was agreed upon, ways to make the proposals more effective). Both these strands of literature have provided important insights and guidance for the present study, although the analysis in this paper has focused primarily on the second strand.

Keck and Low (2004) explored various forms of S&D and developed arguments favouring particular approaches to the design and management of access to S&D. The paper reviewed the historical context of S&D in which the relationship of developing countries with the multilateral trading system evolved with a view to establishing an interface with the current discourse on S&D. The paper distinguishes several elements in the arguments which are usually made in support of the S&D. The paper argues that concerns about graduation, meaning the definition of which countries qualify for special treatment and which do not, have complicated the progress that could have been made on this issue. Authors argue that a focus on measures rather than country status would contribute to more transparency on this issue and obviate some of the difficulties. The authors further think that at the same time this would enhance and strengthen the analytical underpinning of the case favouring S&D.

Hoekman (2003) discussed several options that could be considered in the WTO to respond to the call of trade ministers to make S&D provisions in the WTO 'more effective'. One of the issues that the author points out relates to the acceptance of the principle that poorer countries should be granted "better than MFN" treatment; the other issue which is raised relates to the developmental 'relevance' of negotiated rules and disciplines. Hoekman emphasised the need for a general recognition that S&D and more explicit consideration of the development implications of WTO rules benefit all members of the WTO and underpins the need for both developed and developing countries to engage constructively in the development of new S&D disciplines. It is argued in the paper that the eligibility for special and differential treatment should be restricted to fewer WTO member countries than is currently the case under the self declaration approach used to identify developing countries. The author stressed that S&D should be accorded in accordance with particular 'situations' that inform the state of the economy in the context of any S&D provision (*situational analysis*).

Some of the literature has examined the proposals in order to assess their relevance for DCs and LDCs. Melamed (2003) has analysed all the 88 proposals that were submitted by WTO member countries urging for changes in S&D provisions in the WTO. Four criteria were applied which concerned (a) policy space for developing countries, (b) improved market access, (c) assessment of whether the proposals are

likely to lead to any transfer of resources from developed to developing countries, and (d) WTO processes and proposals that have been put forward to address problems developing countries faced in such areas as notification requirements and dispute settlements. Matthews (2005) examined S&D for DCs as part of WTO Agreement on Agriculture, and analysed the instruments and exemptions in this respect. The study also analyses reasons for DC interests in S&D in the AoA. Some of the authors e.g. Sheila Page has classified the proposals and assessed their importance from the perspective of the LDCs and developing countries (Page, 2005).[5]

Velde *et. al.* (2004) carried out a stocktaking of likelihood of S&D for the ACP countries (African, Caribbean and Pacific), within the framework of the GATS, and assessed options for incorporating S&D in services in the Cotonou over and above the level in the GATS regulations and modes of supply. Tortora (2003) proposed various alternatives for reshaping of S&D in the post-Doha negotiations.

TABLE 2: FOCUS, AND FINDINGS OF MAJOR RELEVANT STUDIES

Study	Area of Study	Major Findings
Hoekman, Bernard. Michalopoulos, Constantine and Winters, L Alan (2003)	Need for S&D provisions in multilateral trading system and criteria for S&D treatment of developing countries.	✓ Builds a case favouring the need for granting the acceptance of the "better than MFN" treatment to poorer members. ✓ Focus on developmental 'relevance' of negotiated rules and disciplines. Calls for more explicit consideration of the development implications of WTO rules and underpins the need for both developed and developing countries to engage constructively in the development of new S&D disciplines. ✓ As regards eligibility of special and differential treatment the paper argues that S&D treatment should be restricted to a more limited set of WTO member countries than is currently the case under the self declaration approach used to identify developing countries. The authors stress that S&D treatment should be accorded in accordance with particular 'situations' that inform the state of the economy of a particular member in the context of a S&D provision (*situational analysis*).
Keck, Alexander and Patrick low (2004)	Review of historical context of S&D in which the relationship of developing countries with the multilateral trading system had evolved with a view to establishing an interface with the current discourse on S&D.	✓ The study explores various forms of S&D treatment and develops arguments favouring particular approaches to the design and management of access to S&D. ✓ The paper distinguishes several elements in arguments which are made in support of the S&D. The paper argues that concerns about graduation, meaning the definition of which countries qualify for special treatment and which do not, have complicated the progress that could have been made on this issue.
Matthews, Alan (2005)	Focuses on Special and Differential Treatment in the WTO Agricultural	✓ Examines S&D treatment in the context of WTO Agreement on Agriculture, and analyses instruments and exemptions in this respect and presenting an assessment of DC interests in S&D

[5] More on this in section II

Study	Area of Study	Major Findings
	negotiations.	treatment in the AoA.
Melamed, Claire (2003)	Analysis of proposals for changes to Special and Differential Treatment at the WTO (the 88 proposals belonging to category I, II and III).	✓ The study analyses all the 88 proposals that were submitted by WTO member countries with respect to changes in S&D provisions in the WTO. ✓ This was done by applying four criteria which concerned (a) policy space for developing countries, (b) improved market access, (c) assessment of whether the proposals are likely to lead to any transfer of resources from developed to developing countries, and (d) WTO processes and proposals that were put forward to address problems developing countries faced in such areas as notification requirements and dispute settlements.
Paola, Conconi and Perroni, Carlo (2004)	Analysis of the economics of Special and Differential Treatment.	✓ The study stresses that under the WTO rules, S&D can be interpreted as a 'transitional equilibrium feature of a self-enforcing international agreement between a developed and a developing country, where both transitional and post-transitional policy choices can be sustained by each party because of the policy path followed by the other'.
Priyadarshi, Shishir. (2004)	Evolution of S&D treatment in the WTO and the developing countries and LDCs criteria of selection of beneficiary members.	✓ The study reviews the evolution of S&D provisions in the WTO. The study argues against 'situational' analysis, pointing out the difficulties that could emanate from making differentiation among the DCs.
te Velde, Dirk Willem, Ian Gillson and Sheila Page (2004)	Special and Differential treatment in post-Cotonou Services Negotiations.	✓ The study carries out a stocktaking of likelihood of S&D treatment for the ACP countries (African, Caribbean and Pacific), within the framework of the GATS negotiations and ✓ Assessed options for incorporating S&D treatment in services negotiations in the Cotonou over and above the level in the GATS regulations and modes of supply.
Tortora, Manuela (2003)	Effectiveness of the S&D treatment and development issues in the Multilateral Trade Negotiations	✓ The study proposes a number of options for reshaping the S&D provisions in the context of post-Doha negotiations.
Page Sheila *et. al.* (2005)	Reviews the S&D proposals submitted to the WTO with a view to identify the nature of relevance and prioritise those from the perspective of LDC concerns and interests.	✓ The study assesses the S&D proposals and identifies which of the proposals concern *offensive* interests of LDCs and which concerns their *defensive* interests. ✓ The study undertakes an assessment about the degree of usefulness of the proposals submitted by various countries to strengthen S&D provisions from LDC perspective.

Source: Review of studies undertaken by the authors.

Whether application of S&D should be made on the basis of belongingness to a group (DCs and/or LDCs) or on specific need-based test has been a hotly debated issue in the WTO. Hoekman's main argument was that DCs and LDCs have not been able to make good use of trade preferences as tools for development. The central idea of the approach that was suggested was to establish a set of "core" rules applicable to all members (the Most-Favoured Nation principle, transparency, binding tariffs, no quotas) as well as an enabling mechanism allowing some countries not to implement particular "non-core" disciplines, thus providing them with the necessary *policy space*. Financial support mechanisms would assist in addressing supply-side constraints, the impact of preference erosion, possible price increases for net-food importing developing countries and the loss of fiscal revenue. Some are interested to consider replacing S&D with enhanced development assistance to be free from the political implications inherent in negotiated S&D provisions.

Others have argued that eligibility for such an enabling mechanism would be a highly politicised issue since it would require differentiation among the DCs (Priyadarshi, 2005).

The scope and content of S&D in the WTO has come a long way and changed over time. In the beginning, there was no differentiation among GATT members in terms of the commitments and obligations. However, during the Uruguay Round discussion, approximately 150 S&D related provisions were adopted. As was mentioned, as part of the Doha mandate a decision was taken to review the S&D provisions in order to make them precise, effective and operational. Many of the recent changes in the S&D provisions have also come about thanks to the increasing role being played by developing countries in setting the agenda in the WTO.

Some authors argued in favour of a specified set of graduation criteria, like those that are implicit in the UN definition of LDCs. However, Low (2004) has suggested that it could be very difficult to "*transform a historically politicised notion such as graduation into a precise policy outcome, especially if this is presented in binary terms across the entire legal edifice of the WTO*". In view of lack of any agreement on definition of a 'developing country'[6], it is indeed difficult to envisage a clear criteria of graduation.

The mention of the need to address the concerns of 'small economies' without creating a sub-category of Members and the more recent S&D component of the framework on Trade Facilitation in the July Decision, are examples that demonstrate the evolving concept of S&D in the WTO (Priyadarshi, 2005). The setting up of a work programme on *small economies* is a testimony that all developing countries can not be treated alike and that the concerns and interests of DCs may vary quite substantively. As some of the other authors have pointed out, this changing perception is also evident in the framework on Trade Facilitation, where for the first time the level of obligations that developing countries will be expected to undertake, was specifically linked to their capacity to do so, and was made contingent upon the provision of technical assistance. The reference to *cotton producing developing countries*; *preference dependent countries*; *recently acceded countries* etc all point to a particular subset of developing countries.

[6] This is a *self-selection* category.

Articulating clear cut criteria to take cognisance of the heterogeneity amongst developing countries is highly difficult: definition, differentiation and graduation are complex issues that have many political and economic ramifications. However, many developed countries have mentioned that it would be very difficult for them to accept mandatory and binding S&D provisions as long as the beneficiary group (targeted group) is not clear and inclusion in the group remains open ended because of self selection. Most developing country delegates think that a discussion on these issues was not mandated by the Ministers at Doha; many DCs feel that this is also not warranted by the experience of providing more meaningful S&D to the only sub-group of developing countries that exists, the LDCs. Some of the researchers have pointed out that notwithstanding the attendant concerns, a number of recent decisions taken by WTO Members already reflect an implicit acceptance of the differing needs and concerns of developing countries and the need to pinpoint beneficiary group(s). It has further been argued that implicit recognition of differentiation among DCs mentioned above is far from formal. In cases where the reference is linked to the setting up of a work programme, as in the reference to concerns of small economies, it comes with the precondition of not creating any further sub-categories of Members. None of the changes can be termed institutional, or having a cross-cutting impact. They have been largely sectoral, and with limited applicability (Priyadarshi, 2004).

Thus the frustrating experience with implementation of S&D provisions has led to two opposing conclusions: one is to stress that rather than addressing a wide ranging issues and countries, it is better to concentrate and focus on countries that need it most; the other is that the focus should rather be more on faithful implementation of the provision.

The apprehension of developing countries with respect to some of the proposed approaches is their explicit or implicit emphasis on creation of new country groupings. The resistance to this approach is informed by an apprehension that even if it is agreed that this would be limited to S&D matters, it may have serious knock on implications for the impact on ongoing negotiations. Some developing countries are apprehensive that this will ultimately lead to identification of a separate group of developing countries. The introduction of terms such as ‘advanced developing countries’ or ‘developing countries in a position to do so’ has added to this apprehension. These countries think that belonging to a sufficiently advanced sub-group which are accorded relatively weak S&D is likely to lead to more extensive and aggressive demand by negotiating partners.

The recent (December, 2004) initiative by the Chairman of the Special Session of the CTD could perhaps provide a compromise in this respect. The Chair’s statement recognises the need to provide flexibility to Members in most need of special and more differentiated treatment; however, it also makes it clear that no developing country shall be ‘a-priori excluded’ from these flexibilities and that this approach only applies to new or additional flexibilities, thereby preserving the universally accepted eligibility of the existing S&D provisions. This approach has many elements of the ‘situational approach’ in providing flexibilities in S&D. However, the litmus test should be whether the S&D clauses are being able to help the developing countries integrate with the global trading system effectively and from a

position of strength. It is from this perspective that the S&D clauses will need to be designed and implemented.

Inspite of the above debate, as regards the need, scope and degree of differentiation of S&D, there is a wide consensus about the need for taking focussed measures to address the specific difficulties of LDCs in the WTO. Measures in the form of S&D particularly geared to LDC interests and concerns are a testimony to this. However, there is a debate as regards effectiveness of such measures in adequately responding to these needs. The present study makes an assessment of the effectiveness of the S&D proposals being considered in the WTO. Whilst other studies have tried to evaluate the S&D proposals under consideration in the WTO from the perspective of developing countries and LDCs in general, the present study examines a select set of proposals from the particular perspective of the LDCs of this region, in the context of their specific concerns and interests and makes an attempt to come up with some recommendations to make these proposals more attuned to the demands and needs of the LDCs. A distinctive aspect of this particular study is that it also makes an assessment of the five LDC-specific proposals as regards which consensus was reached in Hong Kong.

2: AGREEMENT SPECIFIC CHANGES IN THE TWELVE S&D PROPOSALS BELONGING TO CATEGORY I

Classification of Proposals

In all, 88 proposals have been submitted to the WTO to address S&D related issues in the various WTO Agreements. As table-3 testifies, these proposals came from both individual developing countries (13 proposals) and LDCs (19 proposals), as also from the African Group that included both developing countries and LDCs (56 proposals). Several attempts have been made to categorise these proposals, most notably by the former chairman of the General Council Carlos Perez del Castillo and Chair of the CTD Special Sessions (CTD-SS), Faizel Ismail.

TABLE 3: Agreement Specific Proposals Submitted by various stakeholders

Agreement Specific Proposals	Developing Countries	African Group (Developing + LDCs)	LDCs	Total
Category I: Agreed in Principle 12	0	5	7	
Category I: Likelihood of reaching agreement	4	16	6	
Category I: Total	4	21	13	38
Category II	7	27	4	38
Category III	2	8	2	12
Total: Original 88 Proposals	***13***	***56***	***19***	***88***

Source: Adopted from WTO Website

As was noted earlier, classification by Carlos Perez de Castillo was based on the likelihood of reaching an agreement. The 38 proposals belonging to category I included those in which there was agreement in principle; another 38 belonging to Category-II included those proposals as regards which negotiations were being conducted in the WTO; the rest 12 proposals belonged to Category III on which there was wide divergence of views and scant prospect of reaching a consensus.

To deal more effectively with the task of arriving at decisions as regards the proposals and also to facilitate operationalisation of the S&D provisions, a number of scholars including Sheila Page (ODI, 2005) have grouped the aforesaid 88 proposals with a view to have a better understanding about the focus of the proposals and the interests of the beneficiary countries. Thus, Sheila Page has categorised the proposals into 'offensive' and 'defensive' ones. *Offensive proposals* are those which seek to achieve greater market access or advocate expanded and secure capacity building and technology transfer from developed countries to developing countries (market access and aid for trade). *Defensive proposals* are those which seek either to extend current flexibility in S&D provisions or are clarifications or enhancement of existing legal texts or procedures (flexibility and clarifications). The advantage of this classification is that by grouping the proposals into offensive and defensive categories, it is possible to get insights about the thrust of the negotiation process with respect to particular proposal. Offensive proposals have the potential ability to push forward an agenda or set out a new agenda (within the contours of the current discourse on S&D in the WTO) and bring economic gains to developing countries through greater and more secure market access. Defensive proposals are useful for increasing necessary flexibility or clarifying rules. Table-4 outlines these two broad categories of proposals belonging to category I.

TABLE 4: Offensive and Defensive Proposals Belonging to Category 1

Category I	**Offensive**		**Defensive**	
	Market access	'Aid for trade'	Flexibility	Clarification/ procedures
Proposals 1–12 (Agreement in principle)	---	2, 3, 10	1, 4, 5, 6, 9, 11	7, 8, 12
Proposals 13–38 (Likelihood of agreement)	19, 33–37	20, 26, 31, 32	13-18, 21, 24-25, 28-30	22-23, 27, 38
Sub-total	6	7	18	7

Source: Sheila Page (ODI: 2005).

Although S&D proposals are sometimes projected as being political statements of the relatively poor countries, in truth they do have strong economic implications, both for the DCs and LDCs, and also for the developed countries. Page (2005) has analysed the proposals according to whether these proposals (a) reaffirmed existing rights, (b) consolidated rights, and (c) advanced rights of developing countries in the international trading regime. Proposals that reaffirmed rights were restatements of current S&D rights and obligations, or called for changes which were thought to imply no stronger legal commitment than the current wording suggested. Proposals that consolidated rights strengthened obligations for implementation. Proposals that advanced rights suggested new rights (including market access or access to assistance) or provided new interpretations of old rights. Proposals which advanced or consolidated rights (which in turn are expected to be of higher priority to DCs and LDCs) were analysed for their desirability from an economic standpoint and for their political feasibility. Page graded economic utility and political feasibility as

low, moderate or high following classifications articulated. Table-5 captures the essence of Page's reasoning.

TABLE 5: Classification of S&D Proposals According to Economic Gains and Political Feasibility

Levels / Implications	High	Moderate	Low
Economic	*Clear Gains* Greater market access, reduction of implementation burden, resource transfer to DCs and LDCs (Proposal No.: 5, 9, 14, 16, 28, 69, 7, 45, 68, 33, 36, 37, 42, 54, 81, 31, 32, 54, 66, 67, 69, 76, 82)	*Mixed Evidence* Extension of trade related investment measures, use of agri-subsidies (Proposal No: 13, 15, 25, 41, 44, 46, 47, 49, 50, 52, 56, 73, 74, 75, 86, 88, 43, 60, 63, 2, 10, 83)	*Minimum Expected Gains* Weak call for implementation a decrease in incentives to move away from subsidies and investment measures (Proposal No.: 32, 71, 77, 84, 8, 23, 38, 51, 57–59, 62, 78, 80)
Political	*High Political Feasibility* Lower political or economic obligations from developed countries; already agreed in principle under the DDR agendas (Proposal No.: 5, 14, 41, 44, 8, 2, 10, 32)	*Moderate Chance of Agreement* Proposals which are not expected to impact on the developed counties, but may imply high cost for individual or groups of DCs (Proposal No.: 28, 88, 7, 23, 43, 42, 54, 66, 67, 69, 82, 83)	*Low Feasibility* Proposals that run contrary to WTO's rules based system (e.g. indefinite suspension of obligations); developed countries have expressed explicit opposition to these (Proposal No: 9, 13, 15, 16, 25, 32, 46, 47, 49, 50, 52, 56, 69, 71, 73, 74, 75, 77, 84, 86, 38, 45, 51, 57–60, 62, 63, 68, 78, 33, 36, 37, 80, 81, 31, 54, 76)

Source: Adapted from Page (2005)

Page's classification provides a good basis for our subsequent analysis since it looks at both economic gains and political feasibility of the various proposals and thus helps to assess the value of the proposals from the perspective of the LDCs and evaluate the nature of the gains and prospect of reaching consensus on particular proposals.

2.1 An Analysis of the 12 proposals on which consensus was reached

The 12 proposals belonging to Category I are included in Annex III of TN/CTD/7. Members have come to an agreement on these proposals, in principle, and there will be no further discussion on those. Among these, four Agreement specific proposals relate to GATS, two relate to enabling clause and the rest six relate to TRIPS, Rules of Origin, Notification requirement, Settlement of Dispute, Agreement on Agriculture and understanding of BOP provisions in GATT 1994 (Table-6).

TABLE 6: CLASSIFICATIONS OF PROPOSALS IN CATEGORY I

Areas of Proposals	Number
GATS	4
Enabling Clause	2
Agreement on Agriculture	1
Rules of Origin	1
Dispute Settlement	1
TRIPS	1
Rules Relating to Notification Procedures	1
Understanding on BOP Provisions of GATT 1994	1

Source: Adopted from WTO Website

S&D Proposals Relating to GATS

Importance of S&D Provisions in GATS

As is known, services were included in the GATT negotiation agenda during the Uruguay Round. Services related activities has come to occupy an important place in the economies of developing countries and also the LDCs; in many LDCs overall economic growth is increasingly hinging on the growth of the services sector. Thus, a greater market access for exports of services in which LDCs have a comparative advantage could enhance the growth prospects of not only the particular services sector, but also of the rest of the economy through spill over and linkage effects. At the same time it is also equally true that, most of the services sector in the LDCs is at an early stage of development, and have weak competitive strength. Their own services sectors also need to be provided with protection and safeguards from more mature, developed and often subsidised service providers from rich countries. In view of services sector acquiring growing importance in their economies, and the emerging opportunities in an ever expanding global services sector market, LDCs are in need of support from the WTO. Indeed, some of the S&D provisions in GATS do address the interests and concerns of the developing countries and LDCs.

TABLE 7: Structural Changes in the Shares of Major Sectors in the GDP of Asian LDCs: (PERCENT) 1990-2003

	Agriculture		Industry						
			All		Manufacturing only		Services		% change in service between 1990 and 2003
Country	1990	2003	1990	2003	1990	2003	1990	2003	
Bangladesh	29.4	21	20.9	25.3	12.7	15.2	49.7	53.7	8.05
Cambodia	55.6	37.2	11.2	26.8	5.2	19.3	33.2	36	8.43
Lao, PDR	61.2	48.6	14.5	25.9	10	19.2	24.3	25.5	4.94
Maldives	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Myanmar	57.3	57.2	10.5	10.5	7.8	7.8	32.2	32.4	0.62

Nepal	50.6	39.2	15.9	20.9	6	7.9	33.5	39.9	19.10
Asian LDCs average	***33.1***	***24.4***	***19.9***	***24.8***	***11.7***	***14.78***	***46.9***	***49.8***	***6.22***

Source: Calculated from ADB, Key Indicators of Developing Asian and Pacific Countries.

Importance of the Services Sector for Asian LDCs

Services were traditionally considered to be non-tradables as it required physical proximity of service suppliers and recipients (services are non-storable and are produced and consumed simultaneously). However, with the advent of information technology and accelerated technological development of the recent past, tradability dimension of services has shifted dramatically; this has consequently fostered increasing bilateral and multilateral trade exchanges in many services sectors. Cross-border trade in services has already emerged as a driving force in world trade. Global export of commercial services and their respective share in total exports have increased substantively over the past two decades: trade in services now comprises 20 per cent of global trade (Raihan: 2005). Recent trends show that the growth of services trade has consistently surpassed trade in goods during the entire decade of the 1990s.

For an overwhelming majority of developing countries, services sector at present accounts for more than 50 per cent of respective national incomes. As Table-6 shows, share of services sector in the GDP of LDCs of the region range from 25.5% to 53.7%. According to UNCTAD estimates, in 2000 over 50 per cent of FDI flows were directed to services sectors, while the corresponding proportion for manufacturing sectors was 42 per cent (UNCTAD, 2003).

At present, at least 25 developing countries depend on services exports for more than half of their total export earnings. These countries enjoy comparative advantage particularly in the areas of exports of manpower since they have a large pool of skilled, semiskilled, and less-skilled human resources. Recent estimates, based on limited empirical information, suggest that commercial presence (Mode 3) accounts for more than half of world trade in services whilst cross-border trade (Mode 1) accounts for about a fourth; consumption abroad (Mode 2) contributes less than one-fifth of world trade in services. On the contrary, contribution of temporary movement of natural persons (Mode 4) was found to be insignificant, accounting for just over 1 per cent of world services trade. S&D in GATS, particularly in Mode 4 could thus raise the share of developing countries and the LDCs in the global services trade through increased movement of natural persons. A recent study (Winters et al., 2003) estimates that if only three percent of the OECD labour market is opened for temporary migrant workers from DCs and LDCs, this could provide an incremental income opportunity to the tune of USD 150 billion for these countries.

Temporary movement of natural persons is especially important for the LDCs in the region since in recent years remittance inflows from their migrant labour force has been contributing significantly in their economies. For example, in Bangladesh, in FY2003, total remittance earning was equivalent to 31.4 percent of total foreign exchange earnings from export of goods and services and 46.8 per cent of total export earnings from export of goods. As table-8 shows, this is also an important source of foreign exchange for Nepal. Some of the other LDCs could reap significant benefits if

effective S&D provisions could be designed which could enhance their supply-side capacities.

Thus, in view of an increasing contribution of the services sector in their economies, LDCs accord high importance to the S&D provisions in the WTO-GATS. The analysis presented below makes an assessment of the proposed changes in the original S&D provisions, undertakes a comparison of these changes with the various proposals submitted, and assesses the value of the agreed proposals from LDC perspective.

TABLE 8: Contribution of goods and Services Sector to Exports from Asian LDCs

2003 (in percent)

Country	Agricul-tural Product (a)	Manufac-tured Items (b)	Others Merchandise goods (c)	*Total Merchandise Export (a+b+c)*	Services (Remittance)	Merchandise Export+ Remittance (Million US$)
Bangladesh	4.6	55.4	8.5	*68.6*	31.4	100.0 (10121.9)
Cambodia	0	88.2	5	*93.1*	6.9	100.0 (1815)
Lao People's Dem. Rep.	na	na	na	*100*	Na	100.0 (378)
Maldives	67.3	31.9	0.9	*100*	Na	100.0 (113)
Myanmar	na	na	na	*98*	2	100.0 (2652.1)
Nepal	8.1	51.7	28.1	*87.8*	12.2	100.0 (945.5)
Asian LDCs average	***3.9***	***48.3***	***7.6***	***78.3***	***21.7***	***100.0 (16025)***

Source: Estimates based on Trade Data from UNCOMTRADE; Remittance data from BOP CDROM, IMF.

2.1.1 GATS Article IV: 3: Increased participation of Developing Countries

Proposal for Change

GATS Article IV relates to increased participation of developing countries in the services negotiations. The text in GATS Article IV:3 mentions about difficulties developing countries face in ensuring compliance with specific commitments already negotiated. However, the text is weak and does not talk of any concrete commitments to address the concerns of developing countries and the LDCs. The proposals submitted by the LDC group attempts to strengthen the text by (a) requiring member countries to inform how the priority given to LDCs is being met, and (b) making it mandatory (using the word 'shall') to establish contact points.

Comments from LDC Perspective

The text uses the language "shall", which alludes to binding nature of obligations under the modalities. However, without commensurate Dispute Settlement Understanding (DSU) provisions, the "shall" provision may also prove to be without

any teeth. For the first time that in the text on modalities "serious difficulties" of LDCs in undertaking special commitments have been given due recognition; in addition, lack of institutional and human capacities in the LDCs, to analyse and respond to offers and requests, have also been recognised as a major problem confronting these countries.

LDCs had originally proposed inclusion of the following sentences in the Paragraph: "In sectors of their export interest multilaterally agreed criteria for giving priority to the LDC members shall be established". The LDC proposal attempted to incorporate a defensive criteria for giving priority to LDCs interests; however, the revised proposal calls for only information regarding implementation. Thus, the revised proposal appears to be taking obligations in the area of transparency only. The text also fails to come up with any modality that identifies sectors of special interests to the LDCs. LDCs will only be able to *monitor* whether or not they are being given special priority in the services sector by developed countries. There is no definitive *obligation* for giving special priority to sectors of interest to LDCs. Though LDCs have identified a number of sectors of their export interest, in the context of current negotiations, including temporary movement of natural persons (mode 4), the revised S&D proposal ignores this demand. For Asian LDCs, a definitive commitment to open up labour market under Mode-4 would have resulted in a significant improvement in their market access for services. However, the proposals do not allude to any such commitment.

2.1.2. GATS Article IV: Increased Participation of LDCs

Proposal for Change

GATS article IV mentions about strengthening of participation of developing country members through enhancement of developing countries' domestic capacity. The article also calls for establishing contact points by the developed countries to facilitate access of service suppliers from developing country members of the WTO. Moreover, special priority of LDCs for implementing the provision of this article has also been recognised. The modified text provides special priority to LDCs for broad-based and separate round of negotiations in services.

Comments from LDC Perspective

This proposal is merely a commitment to draw up modalities for ensuring participation of LDCs in services negotiations. It does not commit opening up of sectors of interest to the LDCs. It is unclear exactly what this proposal will achieve beyond enabling LDCs to express their interests and priorities regarding services by being present at the negotiating table. Besides, without adequate support for building up negotiations to produce skilled negotiators, which the LDCs at present seriously lack, such 'requirements' will hardly produce any tangible results. This clause should have been strengthened by explicit mention of the fact that the LDCs and developing countries require access to the services market of the developed countries, and their distribution channels and information network, as was emphasised in the proposal submitted by the African group. The need for flexibility and technical assistance from developed countries with a view to strengthening the service capacity, efficiency and competitiveness of the developing countries, particularly of LDCs, should have been explicitly recognised. The proposal submitted by the LDCs asked for establishing

appropriate criteria for giving priority to the export interests of the LDCs in implementing Article IV of services. The revised text does not address this demand. There is no firm modality as to how the requirement of effective application of access to technology provision of Article IV will be implemented on the ground.

2.1.3. GATS Article XXV.2: Addressing supply-side and infrastructural constraints

Proposal for Change

This article relates to strengthening of the supply side capacities of the LDCs and developing countries through technical assistance. The S&D clause in Article XXV.2 which refers to TA support to LDCs was strengthened through the revised text. The original text mentions about TA provision at the multilateral level to be delivered by the secretariat. The modified text (which was in line with the proposal submitted by the African group) includes five new sentences where WTO Secretariat is instructed by GC to conclude arrangement with other institutions for the purpose of TA to developing countries and LDCs to address supply-side and infrastructural constraints.

Comments from LDC Perspective

Assistance to address supply-side constraints is mandated to be discussed in sessions of the "Sub-committee on the Least Developed Countries". A recent WTO document (WT/COMTD/LDC/W/33) has noted that supply-side constraints went beyond the mandate of the WTO; however, the WTO has tried to respond to it through a number of cooperation arrangements with other institutions including through initiatives such as the Joint Integrated Trade Assistance Programme (JITAP) and Integrated Framework (IF). At the 38th session, the secretariat was requested to provide more specific data on the implementation of JITAP and IF. It is generally agreed that there is a need for significant enhancement of resource allocation under the IF initiative and other Trade Related Capacity Building (TRCB) initiatives in order to strengthen supply-side capacities of the LDCs and to build their technological and physical infrastructure. The present agreement recognises the supply-side and infrastructural constraints faced by the LDCs in the services area; however, the text is weak in the sense that there is no concrete ambition which could serve as a reference point as to whether any such measures have actually been undertaken.

Although, the need for addressing LDCs supply-side and infrastructural constraints and their developmental needs in the services sector is an important recognition, LDCs have been frustrated because of lack of resources to address those concerns. The need for such support was also reemphasised by the Dhaka International Civil Society Forum: which stated that "capacity building support and TA should not be only for training, but also for physical capacity building" (LDC Forum Declaration, October 2005). Although WTO is not a development agency, LDCs expect WTO to play a key role in ensuring that other agencies follow-up on WTO decisions. In view of this, the issue of coherence is getting increasing prominence from LDCs perspective.

2.1.4. GATS - Paragraph 6 of the Annex on Telecommunications

Relevance of the Issue for the LDCs

In view of the increasing importance of networking both within country and with the outside world, telecommunication sector has emerged as a major driver of economic development of the developing countries and the LDCs. However, teledensity and internet use continues to remain low in most of the LDCs, including the Asian LDCs. This is evidenced by Table-9. As a result, LDCs have a heightened interest to develop their telecommunication sector at a faster pace. They look at the sector as not only an important stimulant to ensure higher growth of the domestic economy, but also as an important conduit to access global market for various sectors with high potential such as data entry, voice mail and others. In view of this, this S&D clause which relate to strengthening support in the relevant areas is seen by LDCs to be of practical significance.

TABLE 9: Availably of Telephone and Internet Services in Selected Asian LDCs

Country	Telephone Mainline (per 1,000 people)		Internet Users (per 1,000 people)	
	1990	2003	1990	2003
Bangladesh	2	5	0	2
Cambodia	(.)	3	0	2
Lao PDR	2	12	0	3
Nepal	3	16	0	..
Maldives	29	..	0	..
Myanmar	2	7	0	1

Source: Human Development Report 2005.

Paragraph 6 of the Annex on Telecommunications relates to (a) endorsement and encouragement to participate more actively in various networks, organisations and development programmes, (b) asks members to support more cooperation among developing countries, (c) stimulate relevant information supply to developing countries, and (d) assist in transfer of technology to these countries. However, in its original form, the provision is merely a commitment to provide assistance to the development of telecommunication service sector of the developing countries and the LDCs.

Proposal for Change

The proposed change is in the form of an additional text that attempts to strengthen the S&D clause as regards support by the developed countries to developing countries and the LDCs in the four areas mentioned in the text. The additional text is as follows:

"The General Council instructs the Council for Trade in Services to put in place arrangements for prompt notification of any measures taken with regard to the implementation of subparagraphs (a) to (d) of paragraph 6 of the Annex on Telecommunications."

Comments from LDC Perspective

The revised proposal basically incorporates the suggestions made by the LDCs with regard to this S&D provision. The LDC Group submitted the following proposal

as an additional text: “Developed country Members will promptly notify the Council for Trade in Services of any measures they have taken with regard to implementation of subparagraphs (a), (b), (c), and (d) under this paragraph”. This additional text was submitted by the LDCs in view of lack of any real initiative on the part of developed countries to strengthen the telecommunication sector of the LDCs. The proposal is intended to allow WTO members to monitor to what extent developed countries are complying with the spirit and content of the Annex in relation to cooperation, information, and transfer of technology and training in telecommunications areas in support of LDCs. As was mentioned, availability of telephone and telecommunication services is very low in the region and any tangible capacity building support could help the LDCs in these ways: (a) strengthen their domestic telecommunication sector leading to higher teledensity and connectivity with resultant positive economic externalities; (b) help LDC telecommunication sector to withstand competition from foreign suppliers whose presence is becoming increasingly prominent, both under domestic reforms in LDCs and under GATS negotiations (e.g. Bangladesh has agreed to open up telecommunication sector as part of ‘offer’ under the ongoing GATS negotiations and (c) strong telecommunication sector would help the LDCs to access global services and ICT market. However, it needs to be recognised that the text only calls for ‘prompt notification of measures’. It does not talk of what happens if no such measures are taken by the developed countries; neither does it have any goal posts to compare. As such the proposal is only a ‘best endeavour’ addition.

2.1.5. TRIPS Article 67: Reviewing Agreement between WIPO & WTO

Relevance of the Issue for the LDCs

Under the TRIPS Agreement, member states are obliged to reflect in their national schedules and laws internationally agreed norms for protecting patents, trademarks, industrial design, trade secrets, integrated circuits and geographical indicators. However, developing countries in general, and LDCs in particular, face formidable difficulties in ensuring the compliance in this regard. Appropriate technical and financial support could assist LDCs to surmount at least some of these difficulties. Article 67 addresses these concerns and calls for technical assistance from the developed countries. However, the TRIPS agreement does not have any operational modality to implement these provisions. The Asian LDCs do not have appropriate TRIPS laws in place and ensuring compliance with the various TRIPS provisions would be difficult. LDCs thus have an interest in putting in place concrete efforts aimed at establishing appropriate modalities to assist the LDCs and making such measures obligatory on the part of the developed countries. LDC interest in this context relate to three areas: (a) in the design of appropriate law; (b) TAs to enhance compliance capacity and (c) getting flexible treatment. This particular S&D proposal, dealing with TA support to the LDCs, is thus of importance to the LDCs.

Proposal for Change

TRIPS article 67 refers to the technical and financial assistance (cooperation) in favour of developing countries and LDCs. Cooperation was to be in the form of preparation and enforcement of IP laws and establishment of the required infrastructure in this regard. LDCs proposals submitted in this respect focused on concretisation of provisions of support articulated in the original text. The LDC

proposal articulated a number of measures in the programme of assistance including improvement in legal framework, enhancement of enforcement mechanism, support for strengthening of coordination between IPRs, investment and competition authorities.

Comments from LDC perspective

The proposed text is in the form of an additional text. The inclusion in the first Para relates to enhancing enforcement mechanisms, increasing training of personnel, encourage and monitor technology transfer, making use of the rights and policy flexibility, and strengthening/establishing coordination between IPRs, investment and competition authorities. The second Para is an additional text where a review of the agreement between WIPO & WTO was asked for. It incorporates a number of suggestions put forward in the submissions made by the LDC group (rights and policy flexibility, strengthening coordination, change of laws/procedures). The first paragraph is more or less repetition of Article 67 of TRIPS. The second paragraph calls for the review of the state of implementation of the agreement between WIPO and WTO with a view to identifying opportunities for TA for the LDCs. From a practical point of view, this is a 'best endeavour' clause. Whilst an appropriately designed TA would be helpful to the LDCs, much will depend on what such a review will come up with, and whether the recommendations of the review (were there to be one) were faithfully implemented.

2.1.6. Enabling Clause

Relevance of the Issue for the LDCs

The Enabling Clause, officially called the "Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries", was adopted under GATT in 1979. The clause, as is known, enables developed members to give differential and more favourable treatment to developing countries.

The Enabling Clause is the WTO legal basis for the Generalized System of Preferences (GSPs). As is known, under the GSP, developed countries offer non-reciprocal preferential treatment (such as zero or low duties on imports, in certain instances also quota-free treatment) to products originating in developing countries and LDCs. Preference-giving countries unilaterally determine which countries and which products are included in their schemes. The Enabling Clause is also the legal basis for regional arrangements among developing countries and for the Global System of Trade Preferences (GSTP) under which developing countries exchange trade concessions among themselves. The importance of this provision lies in the fact that almost all of the Asian LDCs, enjoy preferential market access under the various GSP schemes operated by the developed countries. For example, Bangladesh is a beneficiary of 17 GSP schemes, including the ones run by the EU (EU-EBA), Canada, Japan, USA and Australia. A large part of their exports enters the developed countries market under the GSPs.

Proposal for Change

'Enabling clause' created a permanent legal basis for preferential treatment, which allows differential and more favourable treatment, reciprocity and fuller participation of developing countries. This clause thus allows a deviation from the MFN principle. Preferential market access for developing countries to developed countries on a non-reciprocal and non-discriminatory basis, were introduced through this clause. The entire enabling clause constitutes of nine paragraphs. The proposed change is in the form of an additional text. This additional text relates to the overall proposition in the enabling clause whereby the clause is made mandatory subject to actions taken by the members.

Comments from LDC Perspective

The additional text is as follow: "The General Council confirms that the terms and conditions of the Enabling Clause shall apply when action is taken by Members under the provisions of this Clause." LDCs have strong interest in making the GSP scheme predictable and LDC-friendly. Whilst this proposal does not change the status quo, it could provide increased certainty to GSP schemes, regional trade agreements and other initiatives to foster South-South cooperation. Theoretically, an assurance to the effect that such measures will not be challenged, could encourage developing countries, and more advanced economies to extend preferential treatment to LDCs and other low income countries on bilateral or multilateral basis. Thus, the additional text provides predictability to initiatives aimed at providing additional market access. It is not clear whether the current practice of some countries to exclude particular LDCs being excluded from the GSP scheme or similar initiatives is WTO-compatible or not. For example, AP-LDCs are not included in the AGOA or CBI initiative of the USA. This exclusion has seriously undermined export competitiveness of Asian LDCs in the US market. On the other hand, this proposal may become irrelevant in view of the Hong Kong WTO Ministerial Decision (Annex- F) pertaining to the DF-QF initiative.

2.1.7. Rules Relating to Notification Procedures: Reduction of the Administrative Burden

Proposal for Change

In view of difficulties faced by the LDCs in complying with the provisions of notification obligations, the proposed change related to inclusion of a para that calls for examining 'possible improvements to the notification procedures for LDCs'. The additional text also talked of seeking guidance from relevant WTO bodies to advise on the possibility of longer timeframes, specific exemptions and simplified procedures for notifications and cross-notifications. The sub-committee on LDCs was to be entrusted with this tasks and it was to report to the General Council.

Relevance of the Issue for the LDCs

LDCs as other WTO members have to comply with certain notification obligations and procedures. Evidently, capacity of most of the regional LDCs to ensure compliance with these obligations is weak. The original text sets up the terms of reference for the working group which asks the group to conduct a review with the objective of 'simplifying, standardising and consolidating these obligations, as well as improving compliance with these obligations." LDCs were interested to attain

flexibility in terms of undertaking these obligations since non-compliance could lead to imposition of sanctions.

Comments from LDC Perspective

The text provides for greater flexibility to LDCs by easing procedure as regards notification obligations. The proposal should lead to simplifications and relaxation of LDC notification requirements, in the form of longer time frames, specified exemptions and simplification which could reduce their administrative burden. This could prove to be helpful to Asian LDCs. However, such flexibilities will need to be complemented by appropriate support to comply with the obligations since any such derogation was likely to be time-bound.

2.1.8. Understanding on Rules and Procedures Governing the DSU Article 8.10

Relevance of the Issue for the LDCs

WTO's distinction as multilateral organisation is that it can impose sanctions. This power enhances the possibilities of disputes amongst member-states. No doubt in view of this the Dispute Settlement Mechanism (DSM) has evolved to be an important institution within the WTO system. The developed countries and also many developing countries are making good use of the Dispute Settlement Understanding (DSU) to settle disputes and safeguard their interests. However, LDCs are not being able to take resort to the DSM and participate effectively in its functioning. As regards participation of developing countries in the DSB, data shows that during 1995-2004, as much as 43 per cent of the complaints were brought in by the developing countries whilst these countries were respondents in 47 per cent of the cases (Hossain: 2005). It is pertinent to recall here that sanctions have been imposed on LDC exports. Bangladesh's export of terry towel was subjected to Anti-Dumping Duty (ADD) in the USA. However, till now LDCs have not figured either as complainant or as defendant (the Bangladesh lead acid battery case against India was resolved before going to the panel)[7].

In view of Article 8:10, the followings can be highlighted as concerns of LDCs with respect to participation in the panel:

- The panel process is too complex and cumbersome for the LDCs; LDCs lack the required capacity to fight cases against developed and developing members in the DSB.
- Panel process is time consuming; in case there is a case lodged against any LDC firm, that firm will hardly be able to sustain a protracted dispute settlement procedure.
- Panels and the Appellate Body (AB) may apply hard law criteria to soft law S&D provisions thereby nullifying their potential benefit.

Thus an LDC-friendly review of the attendant provisions was perceived to be of interest to the LDCs.

Proposal for Change

Article 8.10 of Dispute settlement understanding referred to bringing a balance among panelists in the DSU through inclusion of a developing country member.

[7] In late 2001, India imposed an ADD on Bangladesh's export of lead acid battery. Several initiatives were taken, on a bilateral basis, to resolve this issue. When these bilateral negotiations failed, Bangladesh decided to go to the DSB in 2004.

African group proposed to include at least one panelist from developing country member, unless the developing country members agree to waive the right. The text was revised accordingly.

Comments from LDC Perspective

The revised proposal in effect reflects the proposal submitted by the African group to include at least one member from the developing countries in the panel in case of disputes that involve developing countries. It is not clear, though, to what extent panel membership had actually been a problem. In a 1999 report for the South Centre, Hesham Youssef noted that out of 20 panels involving a developing country, 16 included panelists from a developing country, 3 had panelists chosen by consensus, and only 1 had panelists chosen by the DG. (Youssef: 1999) However, making inclusion of a panelist from the developing countries mandatory (giving the developing country participant in the dispute the right of waiver) needs to be perceived as some progress, though effective use of the DSM by the LDCs would require more than the inclusion of a panelist from developing countries.

2.1.9. Agreement on RoO: Recognition of Preferential RoO

Relevance of the Issue for the LDCs

All LDCs are beneficiaries of multiple GSP schemes run by developed countries. Asian LDCs, as the table would show, are no exception.

TABLE 10: MEMBERSHIP OF RTAs AND BFTAs OF THE ASIAN LDCs

Country	Members of RTAs	Member of Bilateral FTAs
Bangladesh	SAFTA, Bangkok Agreement, BCIM, BIMST-EC, General System of Trade Preferences among Developing Countries (GSTP), Protocol relating to Trade Negotiations among Developing Countries (PTN), D-8, IOR-ARC	Bangladesh – Pakistan (P); Bangladesh – India (P)[1]
Cambodia	AFTA	
Laos PDR	Bangkok Agreement, ASEAN,	Laos-Thailand
Nepal	SAFTA, BIMST-EC	India-Nepal
Maldives	SAFTA	
Myanmar	ASEAN, General System of Trade Preferences among Developing Countries (GSTP), BIMST-EC	India-Myanmar

Note: 1. Bangladesh is at present actively considering signing bilateral FTAs with both Pakistan and India. Proposals to this effect have been submitted by Pakistan and India.

Source: Compiled from Websites of the WTO and SAARC Secretariat.

Rules of origin are important since they establish the eligibility criteria for preferential market access under the GSP schemes run by the developed countries. They relate to the criteria used to determine the nationality of a product or a producer. Origin criteria applied by members of free trade area preferential trading agreement are known as preferential rules of origin; there is also an agreement on rules of origin that relate to non-preferential trade regime. There is a common declaration with regard to preferential rules of origin appearing in annex-Il of the agreement. In recent years the fact of low utilization of preferential access provided through the GSPs and complaints by LDCs as regards stringent rules of origin have led to a call for review of the RoO criteria.

Proposal for Change

Common declaration with regard to preferential rules of origin, provided in annex II of the agreement on RoO, was the basis for S&D clause in this respect. The

declaration stipulated that preferential RoO shall be defined as those laws, regulations and administrative determinations of general application applied by any member to determine whether goods qualify for preferential treatment. African group put forward a proposal in this respect which asked for adoption of RoO designed to achieve trade policy objectives, particularly through generating more regional trade. Proposed changes appeared as an additional text to the original one and this was accepted. Moreover, the proposal called for increased participation in the technical committee on RoO, and also called for identifying TA and FA to ensure compliance with the RoO.

Comments from LDC Perspective

The African Group's proposal was reflected in the revised provision. The proposal stipulates that developing countries and LDCs 'shall have the right to adopt their own Preferential Rules of Origin'. This is indeed already allowed under the WTO. Theoretically, this should help to increase trade within established and also newly established South-South trade agreements by allowing the participating countries to be flexible in determining the RoO. Greater participation by DCs and LDCs in the Committee on RoO is also welcome. But again the concerns relate to the implementation of TA and FA initiatives. The Asian LDCs are members of various regional groups. For example, Bangladesh is a member of SAFTA, BIMSTEC, D-8, SAGQ, IOR etc. The revised text gives them flexibility to determine the RoOs that are commensurate with their developmental status. However, in actualities determination of RoO depend on the negotiations within the purview of the particular RTA. Whilst this provision gives the LDCs a moral authority to ask for differential treatment, this is not binding.[8] For the LDCs countries to effectively participate in the Committee on RoO and Council for Trade in Goods, they would require significant capacity building support in terms for negotiations in trade related areas.

2.1.10. Decision on Measures in Favour of LDCs: Paragraph 2(v)

Relevance of the Issue for the LDCs

WTO Agreements include a Ministerial Decision on measures in favour of LDCs that recognise "the specific needs of the LDCs in the area of market access where continued preferential access remains an essential means for improving their trading opportunities" and reaffirms "commitment to implement fully the provisions concerning LDCs contained in paragraph 2 (d), 6 and 8 of the Decision of 28 November 1979 on Differential and More Favorable Treatment, Reciprocity and Fuller participation of developing Countries" (also known as the Enabling Clause).

The modalities for technical assistance for the LDCs are clearly spelt out in 2 (v). It is of limited value to the LDCs if they receive market access when they do not have the required supply side capacities to take advantage of these opportunities.[9] Anticipating this, paragraph 2(v) requires that technical assistance be provided towards supply-side capacity building of the LDCs. However, without clearly defined benchmarks and criteria to assess both the quantity and quality of TA such provisions

[8] It is true that the four LDCs in the SAARC were accorded flexibility in terms of RoO under the SAFTA. However, as negotiations under the SAFTA testify, LDCs actually wanted more derogation than what was actually negotiated.

[9] This is clearly borne by the data on GSP utilisation. Only 50 percent of LDC exports eligible for GSP treatment can actually enter developed country markets under preferential treatment.

do not matter much. LDC Group called for addressing this issue in their proposal submitted in this regard.

Proposal for Change

Decision on measures in favour of LDCs came out as an outcome of Ministerial Decision and Declarations adapted by the TNC on 15 December 1993. The need to ensure effective participation of LDCs was recognised, and, therefore, necessary steps were scheduled to be taken in order to improve their trading opportunity. Para 2(v) specially talks about TA, and strengthening and diversification of LDCs production and export bases. LDCs had submitted elaborate proposals to strengthen the WTO Decision on Measures in Favour of LDCs. LDC proposal included both modalities (TA through IF and JITAP) and benchmarking (e.g. level of resources provided by developed country, level of phasing out of export subsidy) for effective implementation of para 2(v). The original text only stipulated that LDCs shall be accorded increased TA; however, it was not identified as to which sources this TA was to be derived from. The proposed changes recognise the need for more intensive participation of IF and JITAP to enable LDCs to have greater trade capacity building support. Besides, the need for review of implementation and monitoring was also recognised in the text.

Comments from LDC Perspective

The moot issue here is the availability of additional funds. Much will depend on the effectiveness of the Integrated Framework initiative and also on the extent to which DTIS findings lead to enhanced donor support. Paragraph 2(v) is a mandatory provision. Here, the basic task of the LDCs is to ensure that the provision is implemented properly. There must be clearly defined benchmarks and criteria to assess the intensity and effectiveness of technical assistance. In this regard, the proposal put forth by the LDC group is fairly comprehensive. LDCs received only 28.9% of total commitments for support to trade policy and regulations, 18.6% of commitments for support to trade development and 29% of support to Infrastructure (WTO/OECD: 2004).[10] Funds allocated for Trade Capacity Building (TCB) have not seen any significant rise in recent years (see table below) and they remain inadequate in comparison to the real needs of the LDCs and developing countries. The table below clearly shows that the funds available for trade capacity building has been insignificant.

TABLE 11: CONTRIBUTION TO TCB TRUST FUNDS: 2001-2004

(US$ Thousands)

Year	ITC		JITAP		IF Trust Fund		WTO Trust Fund		Total	
	Total	%	Total	%	Total	%	Total	%		
2001	14002	53.00	2047	7.74	3266	12.36	7100	26.87	26416	100.0
2002	16091	44.36	1883	5.19	5845	16.11	12452	34.33	36271	100.0
2003	19196	42.64	1263	2.80	5979	13.28	18572	41.26	45011	100.0
2004	18752	41.88	2480	5.53	8974	20.04	14563	32.52	44769	100.0

Source: WTO-OECD Joint Report 2004.

The third LDC Ministerial meeting in Zambia held in 2005 asks for "Strengthening the effectiveness of the Integrated Framework, inter alia, by a significant resource increase, including through other initiatives, with a view to

[10] The total support has gone up from $ 26.4 million in 2001 to $ 44.8 million in 2004. By any measure, this is a paltry sum given the huge demand coming from the LDCs.

building up supply-side capacity, technological and physical infrastructure that would support diversification of LDCs' production and export base".[11] LDC demands in this area has also been clearly spelt out in the Livingstone Declaration of the LDC Ministers which called for "Aid for Trade" as an additional, substantial and predictable financial mechanism to strengthen supply-side and infrastructure capacity, diversification of trade, addressing adjustments challenges and costs for effective integration of LDCs into the international trading regime (Livingstone Declaration, 2005). The proposal creates a necessary condition, but not a sufficient one and unless the trade related support is not enhanced quite substantially, both in quality-term and in quantity, this provision will continue to remain a 'best endeavour' clause. The much-hyped 'development package' of the Hong Kong Ministerial could be one way of addressing this concern. However, it needs to be seen how much assistance is actually forthcoming as part of this package in the near future.

2.1.11. Agreement on Agriculture

Article 15.2 of the AoA: Special and Differential Treatment

Relevance of the Issue for the LDCs

Agriculture is the single most important sector for majority of the LDCs in the region, as is evidenced by data in Table-12. For many, agriculture continues to be the main source of foreign exchange earnings and employment as well.

TABLE 12: CONTRIBUTION OF AGRICULTURE IN GDP

Country	Contribution of Agriculture in GDP in 2004
Cambodia	36.0
Lao PDR [f]	48.6
Myanmar	54.6
Bangladesh	20.2
Maldives	…
Nepal [f]	38.7

f= Data are based on GDP at current factor cost.

Source: ADB Key Indicators 2005: Labor Markets in Asia: Promoting Full, Productive, and Decent Employment

However, the share of agricultural exports from LDCs has been declining over time. In view of this, many developing countries would like to see changes in the rules that guide agricultural production and export in developed countries. As is known, the Uruguay Round Agreement on Agriculture (AoA) has set up a framework of rules and disciplines, and initiated a process of gradual reductions in protection and trade-distorting support in agriculture. Negotiations on agriculture are related to the three pillars of the AoA: (i) market access, (ii) domestic support, and (iii) export competition. In addition to these three pillars, negotiations are also being held in terms of rules relating to Special and Differential (S&D) Treatment". In view of the importance of the agriculture sector, S&D provisions are of particular interest to the Asian LDCs.

[11] LDC exports are highly concentrated. For example 75 percent of Bangladesh's export and 91 percent of Cambodia's export is in apparels. The scenario is same for other regional LDCs as well.

Proposal for Change

Article 15 of AoA refers to special and differential treatment which allows developing country members flexibility to implement reduction commitments over a period of up to 10 years. In the last line of the original text of Article 15.2 it was confirmed that LDCs need not to take any reduction commitment. Both African group and LDCs had put forward proposals in this respect. The proposed change again stressed on confirmation (by the GC) with addition of a line "unless decided otherwise by consensus."

Comments from LDC Perspective

Although the LDCs are exempted from reduction commitments under the AoA, the addition of "unless decided by consensus" has definitely weakened the S&D accorded to the LDCs. It is however well know that in reality LDCs are compelled to undertake unilateral reductions under pressure from the international financial institutions, particularly World Bank and IMF. These institutions required the LDCs to reduce average tariff and decrease domestic support and subsidies to agriculture as a pre-condition of qualifying for the much-needed financial aid. Most LDCs have their applied tariff rates well below their bound tariff rates in the WTO. Bangladesh's highest applied tariff rate for agricultural imports was 37.5 percent against the bound tariff rate of 200 percent in 2000/01. Actual Aggregate Measure of Support (AMS) to agriculture in LDCs has also been low, mainly because of their financial constraint. Although the allowed *de minimis* level for AMS for Bangladesh is 10 percent of the total value of agricultural output, Bangladesh's actual AMS was 0.51 percent of the total value of agricultural GDP in 2001/02 (Deb, 2005).

It is pertinent here to take note of the relevant part of the Hong Kong Ministerial Decision with regard to the issue of coherence. The decision stipulates: "We welcome the Director-General's actions to strengthen the WTO's cooperation with the IMF and the World Bank in the context of the WTO's Marrakesh mandate on Coherence, and invite him to continue to work closely with the General Council in this area. We value the General Council meetings that are held with the participation of the heads of the IMF and the World Bank to advance our Coherence mandate. We agree to continue building on that experience and expand the debate on international trade and development policymaking and interagency cooperation with the participation of relevant UN agencies. In that regard, we note the discussions taking place in the Working Group on Trade, Debt and Finance on, inter alia, the issue of Coherence, and look forward to any possible recommendations it may make on steps that might be taken within the mandate and competence of the WTO on this issue".

However, this does not put any binding commitment on the relevant institutions to ensure compliance between what is decided in the WTO and what the LDCs are subjected to as part of conditionalities, particularly of the Bretton Woods institutions. In absence of a comprehensive approach to the issue of coherences such exemptions do not matter much to the LDCs.

2.1.12. Understanding on BOP Provisions of GATT 1994 Paragraph 8

Relevance of the Issue for the LDCs

The text relates to simplification of procedures with regard to the consultation process as regards BoP. These concern the provision for (i) "expanded consultations" enabling contracting parties to identify possibilities to alleviate and correct Balance-of-Payments problems through measures designed to "facilitate an expansion" in the export earnings of developing countries, and (ii) "simplified consultations" providing for a simple decision by the BOP Committee on whether full consultations are desirable. Since BoP concerns are critically important for LDCs, any S&D clause to address their attendant concerns is of interest to them.

Proposal for Change

Paragraph 8 of the understanding on the balance–of-payments (BOP) provisions of GATT 1994 refers to procedures for BOP consultations. The original text emphasised the need for simplified consultation procedure. Both African group and LDCs put forward their proposals in this respect. The additional text only allows examining different ways and means of simplifying administrative requirements. In the additional text, the committee on BOP Restrictions is mandated by the General Council to examine the consultation procedure.

Comments from the LDC Perspective

The proposal reiterates what is already in the WTO agreement regarding procedures relating to BOP consultations. The recommendations relate to 'simplification of administrative requirements' within the full consultation procedures. Again there is no benchmarking and compulsion to ease the consultation burden of developing countries and LDCs in cases where full consultation was required. The revised text also does not take cognisance the demand articulated in the proposal submitted by the African Group which called for replacement of 'may' by 'should' in paragraph 8. This would have made the provision LDC-friendly and more enforceable.

2.2 Summary of the Twelve Proposals

The preceding discussion has attempted to examine & assess the twelve proposals belonging to Category I (as regards which a consensus has been reached) from the perspective of Asian LDCs. The following table (Table-13) attempts to capture this discussion in a succinct manner by juxtaposing the revised text with the original one, and then commenting on the changes from the perspectives of the Asian LDCs.

TABLE 13: A brief Summary of the Comments on the S&D Proposals Beloning to Category1

Proposed S&D Clause	**Original Text**	**Revised Text**	**Comments from the perspective of LDC interests**
GATS Article IV: 3: *Special Priority to LDCs for ensuring increased participation*	Special priority shall be given to LDC for implementing Para 1 & 2	Requires member countries to inform how the special priority is being met. Talks of establishment of contact point; mandatory in nature (using 'shall') to provide information	"Shall", ensures binding nature of obligations; "serious difficulties" of LDCs has been recognized. However, no definitive obligation in terms of commitment for according special priority to sectors of interest to LDCs.
GATS Article IV:	Increased developing	In all services	Commitment was made

Proposed S&D Clause	Original Text	Revised Text	Comments from the perspective of LDC interests
Increased Participation of Developing Countries	country participation in services trade to be facilitated through strengthening domestic services capacity, access to technology, improvement of market access to distribution channels and information networks, liberalisation of market	negotiations, modalities shall be developed in order to ensure LDCs participation	to draw up modalities for ensuring participation of LDCs. However, no commitment on the part of developed countries to open up sectors of interest to LDCs. Need for access to technology recognized, but no firm mechanism for ensuring technology transfer.
GATS Article XXV.2: *Addressing supply-side and infrastructural constraints*	TA shall be provided at the multilateral level by the Secretariat, to be decided upon by CTS	Inclusion of five new sentences. WTO Secretariat is instructed by GC to conclude arrangement with other institutions for providing TA to Developing Countries and LDCs.	Need for significant enhancement of resource allocation under IF and strengthening supply-side capacities of the LDCs is recognised. However, there is no mechanism for enforcement.
GATS - Paragraph 6 of the Annex on Telecommunications: *Cooperation, information, and transfer of technology and training in telecommunications sector*	Relates to cooperation, information, and transfer of technology and training in telecommunications sector. Special emphasis has been given to the LDCs because of their weak institutional and infrastructural capacity.	GC instructs the CTS to put in place arrangements for prompt notification with regard to the measures articulated in the text.	Will allow monitoring of the extent to which developed countries are complying with the spirit and content of the Annex. However, no concrete measures as to what happens when this is not there.
TRIPS Article 67: *TA and Reviewing Agreement between WIPO & WTO*	Developed country Members shall provide, TA and FA in favour of developing and LDCs Members in the area of law making, enforcement of domestic regulatory measures, training of personnel.	First para more or less repetition of original text. Second para (new inclusion) mentions about review of conformity between WIPO & WTO.	Reaffirmation to provide TA in relation to TRIPS. This is at best a *best endeavor* clause, with no enforceability.
ENABLING CLAUSE: *Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries*	The Enabling Clause is called the "Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries" in WTO parlance.	GC confirms: terms and conditions of the *Enabling Clause* shall apply when action is taken by Members.	Proposal does not change the status quo, but may provide increased certainty to GSP schemes, regional trade agreements and other initiatives to foster South-South cooperation.
RULES RELATING TO NOTIFICATION PROCEDURES: R*eduction of administrative burden*	The Council for Trade in Goods will undertake a review of notification obligations and procedures under the Agreements in	GC instructs the Sub-Committee on LDCs to examine possible improvements to the notification procedures for LDCs,	Proposal should lead to simplifications and relaxation of LDC notification requirements, in the form of longer time frames, exemptions etc.

Proposed S&D Clause	Original Text	Revised Text	Comments from the perspective of LDC interests
	Annex 1A of the WTO Agreement. This will be carried out by a Working Group		This was expected to lead to reduction of their administrative burden.
DSU Article 8.10: *Having a panellist(s) from a developing country Member*	Inclusion of at least one panellist from a developing country Member when dispute is between a developing country Member and a developed country Member.	GC has agreed to this: one panellist shall be from a developing country Member, unless the developing country Member party to the dispute waives this right.	Makes the inclusion of a panellist from the developing countries mandatory; should be perceived as a progress. However, presence of panelist(s) is not likely to address the problem of weak participation capacity of LDCs in the DSM.
AGREEMENT ON RoO: *Recognition of Preferential RoO*	There is a common declaration with regard to preferential rules of origin appearing in annex-Il of the agreement.	Members shall have the right to adopt preferential rules to facilitate increased participation of developing and LDCs in the activities of the Technical Committee on RoO of the WTO. Coordination in identifying TA and FA to address the needs of the developing LDCs.	Confirmation of Preferential Rules of Origin. Aim is to increase trade within established and new South-South trade. Greater participation by DCs and LDCs in the Committee on RoO is a welcome development. But again the concerns are with regard to the implementation of TA, FA initiatives.
DECISION ON MEASURES IN FAVOUR OF LDC Paragraph 2(v)	LDCs shall be accorded substantially increased TA in the development, strengthening and diversification of their production and export bases including those of services, as well as in trade promotion	The proposed changes recognize the need for more intensive participation of IF and JITAP to enable LDCs to have greater trade capacity building support. The need for review of implementation and monitoring was also recognized in the text.	Availability of additional fund is the central issue here. Effectiveness of the IF initiative and also as regards the extent to which DTIS findings lead to enhanced donor support would be the real challenge. However, there is no defined benchmarks and criteria to assess the 'intensity and effectiveness of TA'.
AGREEMENT ON AGRICULTURE Article 15.2	For developing country Members, flexibility to implement reduction commitments over a period of up to 10 years; for LDCs no reduction commitments.	GC confirms: LDCs to be exempt from reduction commitments, unless decided otherwise by consensus."	The reconfirmation is welcome. However, "Unless decided by consensus" has somewhat weakened the S&D accorded to the LDCs, sine LDCs may succumb to pressure.
UNDERSTANDING ON BOP PROVISIONS OF GATT 1994 Paragraph 8	The text relates to simplification of procedures with regard to the consultation process with respect to BoP.	"GC mandates the Committee on BoP Restrictions to examine ways and means of simplifying the administrative	Simplification of burden of consultation has been stressed. But tells of only examination of ways and means. There is no benchmarking and

Proposed S&D Clause	Original Text	Revised Text	Comments from the perspective of LDC interests
		requirements within the full consultation procedures."	binding obligation to ease burden related to consultation to be conducted by developing and LDCs.

Source: Analysis carried out in this paper

In view of the above analysis, Table-14 attempts to examine possible impact of the twelve aforesaid proposals on the Asian LDCs. As the table bears out, many of the agreed proposals are unlikely to have positive impact in terms of strengthened global integration of the LDCs and their participation in the multilateral trading system. Only a few of the S&D proposals are likely to directly benefit the LDCs. Much will depend on other complementary measures in support of the LDCs.

TABLE 14: Brief Analysis of the 12 S&D Clause

Category 1	Proposed by	Content	Reflection of proposals in the revised text	Possibility of positive impact for LDCs
GATS Article IV: 3:	LDC Group	Flexibility	No	Very modest impact
GATS Article IV:	LDC Group	Flexibility	Partially	Some positive impact
GATS Article XXV.2	African Group	Technical Assistance	Yes	Some positive impact
GATS - Paragraph 6 of the Annex on Telecommunications	LDC Group	Flexibility	No	Not much impact
TRIPS Article 67	LDC Group	Technical Assistance	Partially	Very modest impact
ENABLING CLAUSE	Not mentioned	Flexibility	N/A	Not much impact
RULES RELATING TO NOTIFICATION PROCEDURES	Not mentioned	Clarification	N/A	Some positive impact
DSU Article 8.10	African Group	Clarification	Yes	Not much impact
AGREEMENT ON RoO:	African Group	Flexibility	Yes	Some positive impact
DECISION ON MEASURES IN FAVOUR OF LDC Paragraph 2(v)	LDC Group	Technical Assistance	Partially	Some positive impact
AGREEMENT ON AGRICULTURE Article 15.2	LDC Group and African Group	Flexibility	Yes	Insignificant impact
UNDERSTANDING ON BOP PROVISIONS OF GATT 1994 Paragraph 8	LDC Group and African Group	Clarification	Partially	Very modest impact

Source: Comments by authors based on the analysis carried out in this paper

3 ANALYSIS OF FIVE S&D AGREEMENT SPECIFIC PROPOSALS ADOPTED DURING THE HONG KONG WTO MINISTERIAL (ANNEX F OF THE HONG KONG WTO MINISTERIAL DECISION)

During the July 2005 Committee on Trade and Development – Special Session (CTD-SS) negotiations, which included both informal consultations and meetings of the CTD-SS, delegates worked on five Agreement specific proposals for S&D which were submitted by the LDCs. These five proposals belonged to the group of 88 Agreement specific proposals that were considered by the Members. These are: proposal 22/23 (Understanding in Respect of Waivers of Obligations), 36 (Duty and

Quota-Free Access for LDCs), 38 (On Coherence of IMF, WB and WTO Measures), 84 (Exemption from Agreement on Trade-Related Investment Measures, or TRIMs), and 88 (Measure in Favour of LDCs). Of these five proposals, three belonged to Category I (22/23, 36 and 38) and two belonged to category III. For better understanding of proposal 22/23, it was referred to as proposal 23.

The earlier version of proposal 23 (prior to the Hong Kong Ministerial) called for Members to accord "special consideration" to requests from developing and LDC Members for waivers from WTO obligations. However, Paraguay, Costa Rica and several other Latin American countries were reportedly reluctant to approve certain provisions of the proposal.

Proposal 36 demands that WTO Member states grant binding duty-free and quota-free market access to LDC exports. The US delegations opposed a binding language on this issue. The US also suggested that bilateral agreements between parties would be a better option in the context of duty and quota-free market access. It was mentioned that it would be a challenge to gain Congressional approval for such a provision. Similar concerns were expressed by a number of other developed countries, and also some Latin American Countries which were perhaps apprehensive that such preferential treatment could have negative implications for their competitiveness.

During the Hong Kong WTO Ministerial, the member countries once again reaffirmed that provisions for special and differential (S&D) treatment are an integral part of the WTO Agreements. Member countries took note of the work done on the Agreement specific proposals, especially the five LDC specific proposals, which were discussed in Geneva during July 2005. The ministerial conference in Hong Kong adopted the decisions contained in Annex F of the Hong Kong Declaration where the five LDC specific agreements on S&D were included.

The following section presents a brief analysis of the Hong Kong WTO Ministerial outcome with respective to the five Agreement specific S&D proposals on which a decision was taken.

3.1 Understanding in Respect of Waivers of Obligations under the GATT 1994 (Proposal 23)

Prior to the Hong Kong WTO Ministerial, two proposals (22 and 23) were under consideration in the context of S&D negotiations – one (TN/CTD/W/3/Rev.2) was submitted by the African Group and the other (TN/CTD/W/4/Add.1) by the LDCs. After the consultation during the December 2005 General Council Meeting, the two proposals were harmonised since they covered same territory. The draft proposal was put forward by the Chairman of the General Council on November 26, 2005. After consultation during the Hong Kong Ministerial, the decision as regards 'Understanding in Respect of Waivers of Obligations under the GATT 1994' was adopted.

Proposal for Change

Between the two proposals (22 and 23), the LDCs group put forward proposal number 23, which requested for waivers for the LDCs from WTO obligations with

stipulation that a decision shall be taken within 60 days, or in exceptional cases, as expeditiously as possible thereafter.

The latest version of the proposal which was finalised prior to the Hong Kong WTO Ministerial put 'shall' and 'should' in brackets. The final version cleaned the bracket, by putting 'shall'. However, under pressure from developed and some developing countries, it was added that LDCs request in this context will be considered 'taking into account the interests of other developing members so as not to affect them'.

Comment from LDC Perspective

In view of the prevailing situation, LDCs perhaps got what they could get out of the Hong Kong Ministerial. From a practical sense, it is a progress that members will now give a decision as regards waivers in favour of LDCs in a time-bound fashion (60 days). However, that decision could be positive or negative. The time limit can also be stretched 'in exceptional circumstances'. Definition of exceptional circumstances is not clear, however. The additional text in the draft text (in bracket) was reformulated by putting in the words 'without prejudice to other members'. Thus, this text is an improvement over the earlier text, but it is a waterdown version of what the LDCs wanted in the first place. It will also perhaps not be practical to expect that Members would agree to LDC requests for waivers unconditionally. Some have argued that this would have made WTO contract entirely voluntary and non-binding for the LDCs. However, the spirit of LDC proposal was to have a time-bound commitment for a positive decision. This has now been diluted through (a) the caveat of 'exceptional circumstances, and (b) with the mention of 'without prejudice to the rights of other members'.

3.2 Enabling Clause (Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries) – Paragraph 3(b) (Proposal 36)

Proposal for Change

This particular proposal, which dealt with the Duty-Free, Quota-Free (DF-QF) market access for all products from all LDCs, was the singlemost important issue with which the LDCs went to Hong Kong.

Although the GSP schemes, which have been in place since 1971, covers a large part of LDC exports to many of the developed counties, the DF-QF initiative was seen by the LDCs as a major step forward in terms of supporting strengthened global integration of their economies. The demand for DF-QF was forcefully advanced by LDCs when the Doha Development Round (DDR) was launched in 2001. Bangladesh, which by all accounts was expected to be a major beneficiary of such an initiative because of her relatively strong supply-side capacities compared to many other LDCs, argued most vigorously for the DF-QF market access during LDC Ministerial Meetings, WTO Ministerial Meetings and in the course of negotiations in Geneva over the past years.[12]

[12] Both at the Zanzibar LDC Ministerial Meeting (July, 2001) and at the Dalian mini-Ministerial meeting (July, 2005), Bangladesh and other LDCs had made it clear that the DF-QF initiative

Whilst there was widespread support for DF-QF market access favouring the LDCs, some of the developed countries, most notably the USA, whose GSP scheme did not cover many of the important items of export from the LDCs, were opposed to an overarching DF-QF initiative. Some of the other developed countries, whilst having generous GSP schemes in place for the LDCs, were reluctant to bring their unilateral GSP initiatives under any 'binding' multilateral discipline. Some of the developed countries also argued that a number of developing countries (the so-called advanced developing countries, including the 'BRICKS' countries i.e., Brazil, Russia (under accession process), India, China, Korea, South Africa, should also undertake commitments as part of a DF-QF initiative, should there be one negotiated under the purview of the WTO.

The Draft Ministerial Decision (Revision-2) of 26 November 2005 came up with three versions of the proposal. The second version talked of DF-QF access in a time bound fashion (the first version did not mention a date), and also called upon 'developing country members in a position to do so' to provide similar treatment to products from the LDCs. The third version added a caveat, leaving room for 'Members facing difficulties to provide DF-QF market access' to provide such access up to certain 'bracketed' percentage of products originating from LDCs with the additional statement that the rest of the commodities will be accorded similar treatment within an additional period. It was also stipulated that in providing DF-QF access, the developed countries will 'take into account the impact on other developing countries at similar level of development'. As it would be appreciated, of all the three versions, the third was the least most preferred version for the LDCs. In the end, however, it was in light of the third version that the Hong Kong Ministerial Decision was taken.

The final decision stipulated that 'developed countries and developing countries in a position to do will provide DF-QF market access for all products originating from LDCs, defined at the tariff line level, by 2008 or no later than end of the start of the implementation period {36 a (i)}. There was a caveat that Members facing difficulties at the present time will provide DF-QF access for at least 97 per cent of products originating from LDCs, which will be incrementally included into the DF-QF initiative {Annex F:36 a (ii)}. USA, which was instrumental in getting this escape clause included in the Annex, immediately indicated that it will take recourse to 36 a (ii). Japan also indicated that it will not be able to give DF-QF access for 180 line items belonging to farm product group rice, leather, fish and sugar.

Relevance of the Issue for Asian LDCs

Tariffs faced by the Asian LDCs generally tend to be high- apparels, agricultural, fisheries and food items, and leather are products which face tariff peaks in the developed country markets. Table –15 bears this out. In view of this, DF-QF market access was a major initiative for all Asian LDCs. Average tariffs faced by Bangladesh, for example, in developed country markets varied between 7.3% and 21.7%. Although most Asian LDCs enjoyed duty-free market access in most

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continued to remain topmost amongst all of their demands in the context of the Hong Kong Ministerial Meeting.

developed countries under the various GSPs, the DF-QF access was relevant and crucially important to Asian LDCs for several reasons.

TABLE 15: LIKELY PREFERENCE MARGIN ENJOYED BY SELECTED AP-LDCS IN QUAD MARKETS

Country	Average Tariff (in percentages)				
	QUAD	US	EC-15	Japan	Canada
Bangladesh	12.4	12.1	12.3	7.3	21.7
Cambodia	13.4	4.4	4.4	4.4	4.4
Maldives	14.9	14.6	17.6	5.8	11.9
Myanmar	4.7	12.1	6.1	1.1	19.5
Nepal	9.5	11.1	7.4	7.7	18.7

Source: Subramanian, A, (2003).

In spite of the 36 (b) Article of Annex F that leaves room for less than full DF-QF market access (at least on the part of some of the developed countries), it needs to be appreciated that through this Decision, for the first time, LDCs were successful in getting a firm commitment as regards their demand for a global DF-QF market access under the ambit of multilateral trading system. It is to be noted in this context that the GSPs are unilateral initiatives taken by developed countries under autonomous initiatives. On the contrary, the Hong Kong Decision now multilateralises such preferential treatment. The Hong Kong decision also calls for ensuring that the rules of origin are transparent and simple, and contribute to facilitating market access. This provides Bangladesh and other LDCs an opportunity to call for initiating negotiations in the WTO with a view to making the RoO under the DF-QF initiative more flexible and 'LDC-friendly'. Since duty-free (DF) market access is now part of the WTO decision, it brings more predictability and transparency to preferential treatment received by the LDCs in the markets of GSP-providing countries. The coverage of DF-QF treatment is also set to enhance under this initiative.

As was noted, only two developed countries, USA and Japan, have indicated their difficulties in granting DF-QF treatment for all LDC products at this point of time. However, the decision asks such countries to inform WTO the manner in which they would phase-out the 3 percent 'exclusion list'.

The decision also asks 'developing countries in a position to do so' to provide similar market access to LDCs (to be implemented with flexibility). Although there is an interpretative ambiguity as regards 'countries in a position to do so', the Hong Kong decision has opened an opportunity for greater market access for LDC products in the markets of some of the developing countries such as China and India. In view of the increasing importance of these countries in the global arena, this decision opens up an opportunity to put pressure on these countries to provide increased market access for products of export interest to LDCs such as Bangladesh.[13]

Comments from LDC Perspective

As was mentioned above, DF-QF initiative is crucially important for Bangladesh and the LDCs, as it provides predictability and security to market access

[13] These countries do provide preferential access to regional LDCs, on a limited scale - India under the SAFTA and BIMSTEC FTAs and China under the Bangkok agreement. Even when these countries agree to provide additional market access, it is likely that they would provide preferential treatment under various RTAs, and not under the WTO.

in developed countries. The mention of transparency and simplicity of RoO is also noteworthy. However, the LDCs were disappointed and disillusioned for several reasons.

Firstly, 36 a (ii) leaves room for developed countries for not granting such access, at this point of time. USA and Japan have already indicated their inability. Although the USA is one of the most important markets for AP-LDC export, its indication of resorting to 36 a (ii) was most frustrating for them. Average tariff rates facing AP-LDC export in the USA is quite high; major export of goods such as apparels do not enjoy GSP facilities in the USA. For example, as a recent study carried at CPD by Rahman, M and Anwar, A (2006) on *"Hong Kong Ministerial Decision on Market Access for the LDCs (Annex F: Special & Differential Treatment; Article 36: Decision on Measures in Favour of LDCs): Strategies for Bangladesh"* shows, import duties on Bangladesh's exportable alone stood at US$ 421 million in FY2005. Similarly exports from Cambodia and other Asian LDCs also faced high tariffs in the USA. DF-QF access to US market in particular could have been the most important gain for the Asian LDCs. As it appears now, taking advantage of 36 a (ii), USA will perhaps exclude almost all products of export interest to LDCs. US has 10265 items of import (at 8-digit tariff line). A 3 per cent exclusion list will allow USA to exclude almost all LDC products of export interest, particularly given the high concentration of LDCs exports. Bangladesh's export structure, presented in Table-16, gives good cause for this apprehension.

TABLE 16: BANGLADESH'S EXPORT TO USA IN 2005: CONCENTRATION PATTERN

	Number of Bangladesh Export Lines to US	Bangladesh's Export Coverage	
Percentage of Tariff Lines		**Export Value (Mln USD)**	**% of Total Export**
1% of Total US Tariff Line	103	2778.20	96.43
2% of Total US Tariff Line	205	2866.80	99.51
3% of Total US Tariff Line	308	2878.04	99.90

Source: CPD-TPA estimates based on USITC database.

Even an exclusion of 103 items could leave out 96.4 per cent of Bangladesh's export to USA. Accordingly, if the USA exclusion list for LDCs (308 items) include even a few items of Bangladesh's export interest, Bangladesh's incremental gain from this initiative will be minimal.

Secondly, although the decision talks of incremental inclusion of the exclusion list items under the ambit of DF-QF initiative, there is no time line for this, neither is there any guideline for incremental inclusion, e.g. in the form of certain percentage of items in the exclusion list.

Thirdly, the prospect of developing country Members declaring themselves 'in a position to do so' to provide DF-QF access is also not very promising. Eventually, the inclusion of the reference in the text about 'taking into account the impact on other developing countries in similar levels of development' has diluted the entire thrust of the provision. Any developed country which is reluctant to provide DF-QF access can now say, they would have given market access for all LDC products but since this may prove to be harmful to interests of particular countries (in Hong Kong,

Pakistan and Sri Lanka provided an early warnings as regard this) they are unable to give DF-QF market access for all products originating from LDCs.

Fourthly, and this is very important for Asian LDCs, there is the issue of preference erosion. The preferences enjoyed by the LDCs under GSP schemes, or under the proposed DF-QF initiative in Annex F of Hong Kong Decision, are likely to be eroding fast in view of the ongoing negotiations in Agriculture and NAMA. Thus, if the LDCs do not receive DF-QF access now, the significance of this will be far less five years from now when the MFN tariffs are scheduled to be reduced significantly. Since reduction of tariff will be steeper for higher tariffs (tariff peaks), whatever be the coefficient in the Swiss formula, the erosion of preference will be significant for many AP-LDCs such as Bangladesh and Cambodia. For Bangladesh, the preference currently enjoyed under the various GSPs would come down significantly, particularly under the EU-EBA and the Canadian GSP. The resultant erosion of preference for Bangladesh is estimated to be to the tune of $200-$300 million. (Rahman, M and Shadat W, 2005). A recent paper by Low et al. (2005) points out, rightly, that preference erosion will be significant for some particular LDCs (including Bangladesh) and will not be significant for others. This is a valid observation. However, it should be borne in mind that the low levels of preference erosion are also due to low preference utilisation under the various GSPs. The Hong Kong Ministerial Decision also mentions about ensuring that 'preferential rules of origin applicable to imports from LDCs are transparent and simple and contribute to facilitating market access.' If this be really the case, the utilisation would be higher and the prospect of preference erosion is also likely to be greater in view of tariff reduction. However, the point made by Low et all (2005) is that the margin of erosion is likely to be highly differentiated and, in view of this, the compensatory measures should be designed to address specific cases. This is a valid argument.

As was pointed out above, there is a high degree of frustration in LDCs such as Bangladesh, because of the way this particular proposal has been articulated. The Chair, in this context, had mentioned in his concluding speech, that Annex F is a framework and that manner in which this decision will be implemented will be decided through subsequent negotiations. A timeline has now been fixed for this: developed countries to notify by September, 2006; and developing countries in a position to do so to notify by December, 2006.

LDCs will now need to do their homework as regards the negotiations in the context of the framework. Their interest is to have as many of the developed countries as is possible to agree to 36 a (i) which stipulates DF-QF for all LDCs products. As regard developed countries which would take advantage of 36 a (ii), LDC position would be to have as many of their products of export interest included in the 'at least 97 per cent DF-QF list'. Here, the LDCs must strategise, as a group and on individual basis. One of the disquieting points for LDCs is the mention in the Hong Kong decision about taking cognisance of possible (negative) impact on other developing countries at similar levels of development. Here the point should be that if negative impact of the DF-QF initiative for developing countries is to be considered, LDCs also could agree that developed countries should liberalise at a slower pace since faster pace of liberalisation could also lead to preference erosion for the LDCs. Surely, the developing countries will not accept this line of argument. Besides, LDCs should argue that developing countries at 'similar level of development' is an

ambiguous category. 'Developing countries at similar levels of development' could only be other LDCs. In fine, LDCs should pursue coordinated strategy in Geneva to ensure that they are able to extract maximum benefit from Annex F of proposal 36.

It is also not clear how the possible impact on developing countries will be assessed. LDCs should argue that this can not be assessed a-priori and that developed countries' decision on DF-QF initiative must not be influenced by any a-priori consideration. DF-QF access must first be provided, and then if there is any consequent negative impact on developing countries exports, this should be taken cognisance of and addressed through appropriate measures (such measures may not necessarily be through denying the LDCs the benefits of DF-QF market access) for those line items, but could be through other means as well.[14]

3.3 Enabling Clause (Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries) (Proposal-38)

Proposal for Change

The objective of this submission (proposal number 38) was to strengthen an enabling clause (TN/CTD/W/4/Add.1). The proposal was submitted by the LDCs. The proposal reaffirmed that LDCs would be required to 'undertake commitments and concessions to the extent consistent with their individual development, financial or trade needs, and their administrative and institutional capacities.' The proposal also reiterates the need for coherence with other international institutions. The Hong Kong WTO Ministerial declaration reflected, to some extent, the LDC demand as articulated in the proposal.

Relevance for Asian LDCs

The S&D proposal is of heightened interest to all LDCs including the AP-LDCs in view of their limited institutional and administrative capacities. The need for ensuring consistency between obligations under the various WTO Agreements and the state of economic development and financial and trade needs of the LDCs is of paramount interest to the LDCs. In this context, LDCs have always argued for establishment of 'coherence' between WTO decisions, and the conditionalities imposed by the international institutions which often undermine the flexibilities provided to the LDCs in the WTO. For example under the NAMA and Agricultural negotiations, LDCs are not required to reduce their tariffs under WTO provisions. However, most Asian LDCs have already reduced their tariffs, to a substantial extent, under conditionalities of the various structural adjustment credit programmes. From the above perspective, for the Asian LDCs, this proposal had high relevance.

Comments from LDC Perspective

One of the overarching objectives of the WTO is to make trade work for economic development. The Doha round has this objective at the centre of its broad range of agendas and work programmes. Reduced levels of obligation and promise of TA and FA support for the LDCs are two ways that members have agreed to pursue in order to achieve the aforesaid overarching goals. However, most LDCs find it difficult

[14] For example, trade related capacity building support to these developing countries or according preferential market access for those particular line items originating from the affected countries.

to undertake the required initiatives to implement those obligations because they lack the required resources and expertise, or such obligations clash with their strategic interests. The aim of this particular proposal is to provide flexibility to the LDCs in terms of taking commitments. It requires them to do so to the extent that is consistent with their individual development, financial or trade needs. This derogation, if it can be realised on the ground, could be helpful to the LDCs. A fair and faithful implementation of this S&D provision would require a major departure from the current practices of organisations such as IMF and the World Bank. However, the reality is that most of the Asian LDCs have to implement reforms under aid-conditionalities of Bretton Woods Institutions and the waivers in the WTO have not meant much to the LDCs, at least not till now. The Hong Kong decision calls upon donors, multilateral agencies and international financial institutions to coordinate their work to ensure that their conditionalities are not inconsistent with LDCs 'rights and obligations under the WTO Agreement'. However, this is just a 'call' and there is no enforceability to such calls. Everything will depend on the goodwill of these institutions to craft their policies in a manner that conforms with the spirit of this S&D provision. Concrete modalities should now be identified to implement this provision. For example, LDCs could be asked to report to the WTO which of the conditionalities of other (than the WTO) multilateral institutions they find difficult to implement. The next step could be to examine whether LDCs have received derogation in WTO from implementing any (or all) of these policies/reforms. The third step could then be to identify ways and means to take care of the LDC concerns by bringing the necessary changes in the practices of those organsiations.

3.4 Trade-Related Investment Measures (TRIMS): (Proposal 84: Agreement on Trade-Related Investment Measures)

Proposal for Change

LDCs original proposal refers to a time period during which they would be allowed to deviate from their obligations under the TRIMS. Additionally, LDCs also wanted flexibility to adopt new measures to deviate from their obligations under the TRIMS Agreement. Prior to the Hong Kong WTO Ministerial, the General Council articulated a revised proposal, whereby LDCs would (shall) be allowed to maintain, on a temporary basis, existing measures that deviate from their obligations under the TRIMS Agreement. The Hong Kong declaration allowed LDCs this deviation until the end of a new transition period, for seven years. LDCs were also allowed to introduce new measures that deviate from their TRIMS obligations. However, it was decided that 'any (new) measures incompatible with TRIMS agreement and adopted under this decision shall be phased out by year 2020'.

Relevance for Asian LDCs

Most LDCs find it difficult to implement TRIMS obligations and they were interested to have extension of the timeline for this. The difficulties arose from their lack of capacity to implement, as also from their need to provide preferential treatment to their own investors (i.e., deny national treatment to foreign investors). Position of Asian LDCs in this context is informed by three considerations: *Firstly*, they lacked appropriate capacity to implement the obligations; *secondly*, they wanted to defer implementation of some of the obligations; and *thirdly*, they wanted the power to implement new measures to safeguard their concerns and interests as regards trade related investment measures.

Comments from LDC Perspective

The provision provides flexibility in terms of both implementation of obligated measures and introduction of new measures. Bangladesh and other LDCs will now be able to take new investment-related measures that deviate from TRIMS obligations. This is a positive achievement and gives LDCs considerable flexibility. The LDCs have also been accorded an extension as regards TRIMS for another seven years, i.e. till 2013. LDCs will now be able to continue with the old TRIMS, subject to notification. Asian LDCs will be able to introduce new investment measures as well to be phased out by 2020. These waivers and flexibilities should allow LDCs to take measures in support of domestic investors and apply discretionary measures in their support. However, it is doubtful to what extent the Asian LDCs, many of which are under Bank-Fund conditionalities, will be able to take advantage of these waivers. Here again, the issue of coherence looms large.

3.5 Decision on Measures in Favour of Least-Developed Countries: (Proposal 88: Decision on Measures in Favour of Least-Developed Countries–Paragraph 1)

Proposal for Change

Original para 1 of the decision on measures in favour of LDCs stipulated that LDCs were required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs. Proposal submitted by the LDCs (TN/CTD/W/3/Rev.2) urged members to provide further TA and FA to enable them to meet their obligations and commitments in the WTO. 'Aid for Trade' facility was mentioned in this respect. It was argued that the size of the funds should be sufficient to enable the LDCs to comply with new commitments and also attendant costs (for example emanating from preference erosion). General Council decision of 2005 articulated two alternative proposals. The first one stipulated that LDCs shall be required to undertake commitments that were consistent with their individual development and trade needs. GC agreed that for fulfilment of these commitments, LDCs would require appropriate levels of TA and FA. The second proposal called upon the GC to consider any difficulties that LDCs may face when these were brought to GC's notice. The proposal directs WTO to 'coordinate' its efforts with donors and relevant agencies to 'significantly increase aid for trade-related technical assistance and capacity building.'

Relevance for Asian LDCs

This proposal is relevant for Asian LDCs since it reiterates the need for according flexibilities to the LDCs in undertaking commitments. The provision asks LDCs to bring to the attention of the GC any difficulty they may face and promises 'examination and appropriate action'. The proposal also addresses a key demand of Asian LDCs which relates to TA and FA needs for meeting the obligations. 'Aid for Trade' was a major slogan of all Asian LDCs in the Hong Kong and this proposal, by instructing the WTO to explore for additional funds in support of the LDCs addresses this concern.

Comments from LDC Perspective

This proposal reiterates LDCs demand for waivers from obligations on the one hand, and more support in the form of 'aid for trade' on the other. From this perspective, the proposal could be a step forward to implement the "development

package" of the WTO since it directs WTO to 'coordinate its efforts with donors and relevant agencies' to significantly increase aid for Trade Related Technical Assistance (TRTA) and Capacity Building (CB). However, the proposal does not have a target: 'significantly increase' is a vague term that is devoid of any reference points. The proposal would have been much more meaningful if there was a provision for reporting back to the GC as regards WTO's success in carrying out this direction.

3.6 Summary of the Five Agreement specific S&D Proposals Adopted During the Hong Kong WTO Ministerial

The discussion above has attempted to present an analysis of the five proposals on which decision was reached in Hong Kong. The fact that members decided to deal with LDC-specific proposals on a priority basis must be seen as a step forward and in the right direction since it is this particular sub-strata of countries among the developing country members of the WTO which is facing more hardship in their effort to integrate successfully with the global market and in undertaking commitments in the WTO. However, as the analyses have shown, the Hong Kong decision failed to meet LDCs expectations fully. Besides, large part of whatever has been achieved will hinge on other complementary and supportive follow up measures.

Based on the above discussion, Table-17 below presents a brief summary of these five Agreement specific proposals adopted during the Hong King WTO Ministerial, and comments on these from perspectives of Asian LDCs.

TABLE 17: Summary of the Five Agreement Specific S&D Proposals Adopted During the Hong Kong WTO Ministerial (Annex F)

LDCs Original Proposal	Proposals in the Second Revision of Draft Declaration	Hong Kong WTO Ministerial Declaration	Comments/Outcome
1) Proposal 23: Understanding in respect of waivers of obligations under the GATT 1994 We agree that requests for waivers by LDCs shall be given positive consideration and decision taken within 60 days.	Introduction of "shall/should" term in bracket before the word "positive consideration". A new para was added, whereby whilst considering requests for LDC-specific waivers, member countries agreed to take decision within 60 days, [taking into account the interest of other developing countries]	Declaration adopted the word: shall" and used the line "without prejudice to the rights of other members"	Decisions on waivers for LDCs have been made time-bound. However, reference to rights of other members may raise difficulties during implementation.
2). Proposal 36: Decision on measures in favour of LDCs Developed country members "shall' commit themselves to provide DFQF market access for	Three alternative proposals were placed. <u>First alternative</u> stipulates that DFQF MA for all LDCs products shall be provided by developed	Hong Kong text essentially adopted the third variant of the draft. Whilst the proposal talked about DF-QF market access for	For the first time LDCs will get DF-QF market access under WTO discipline, which is very important. However, meaning of 'on a lasting basis' is not clear. Leaves

LDCs Original Proposal	Proposals in the Second Revision of Draft Declaration	Hong Kong WTO Ministerial Declaration	Comments/Outcome
LDCs goods. Developing country who are in a position to do so 'should' provide DFQF access. Members shall notify GC at least once in a year. GC urges all donors for TA and FA for fulfilling SPS & TBT requirement and managing their adjustment process.	countries (use shall), developing countries in a position to do so by a bracketed year are also to provide similar access. Besides urged to ensure that preferential RoO are simple and transparent. Regarding the FA and TA, the earlier text submitted by LDCs remained same. Second alternative, both developed and developing country member declaring themselves in a position to do so, shall build on commitment for DFQF MA for products coverage (not mentioned). Other issue remained same. Only Asked for TA for adjustment process resulting from MFN liberalisation. Third alternative, The text called for DF-QF market access for a certain percentage of LDC products [99%]. All the three proposals mentioned about flexible RoO and TA and FA support for LDCs.	LDC products on a 'lasting basis', 36 a (ii) allows developed countries to provide access to 97% of LDC products. 'Taking into account the impact on other developing countries at similar levels of development', was introduced. The text also pointed out about simplified rules of origin, and TA and FA support for the LDCs.	scope for developed countries not to provide DF-QF market access for up to 3 per cent of LDCs products. The possibility of greater market access in USA (which does not provide GSP for many products of export interest to Asian LDC) remaining severely constrained in terms of coverage of exported value. The introduction of additional text referring to consideration of interest of other developing countries along with the allowance of (upto to) 3 per cent exclusion list will allow developed members not to provide DF-QF to all products from LDCs if they so desire. The chair has mentioned in concluding speech that Annex F is a framework. Developed (and developing) countries will need to sit with LDCs to detail out the manner in which the DF-QF initiative will be implemented.
3) Proposal 38: Enabling Clause (Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries) LDCs will undertake commitments consistent with their individual financial, trade and other needs. Coherence with	Revision -2 put forward the same proposal that LDC submitted. It was reaffirmed that LDCs will only be required to undertake obligations consistent with their capacity and needs.	The Hong Kong Decision on this is similar to the revision-2 of the General Council decision.	The reaffirmation of WTO decision that LDCs will undertake obligations to the extent these are commensurate with their capacity and needs, is a positive step. However, it is not clear whether urging donors and other agencies to ensure 'coherence' is going to work on the ground. No concrete modality or proposal has been placed in support of this provision.

LDCs Original Proposal	Proposals in the Second Revision of Draft Declaration	Hong Kong WTO Ministerial Declaration	Comments/Outcome
other international institutions was also mentioned.			
4) Proposal 84: Agreement on Trade-Related Investment Measures For a period of [25] years from the signing of this agreement, LDCs shall be allowed to maintain existing measures that deviate from their obligations under the TRIMs Agreement. Additionally, LDCs may adopt new measures that deviate from their obligations under the TRIMs Agreement. All TRIMs should be phased out as soon as the member concerned attains its development goals. The possible extension of the above provisions will be reviewed by the General Council in [25] years.	LDCs shall be allowed to maintain, on a temporary basis, existing measures that deviate from their obligations under the TRIMs Agreement. For this purpose, LDCs shall notify the CTG of such measures within one year, starting [x]. This transition period may be extended by the CTG under the existing procedures set-out in the TRIMs Agreement, taking into account the individual financial, trade needs. new TRIMs shall be notified to the CTG no later than [x] months [after] [prior to] their adoption.	The Hong Kong decision is similar to what appeared in Revision -2. LDCs shall be allowed to maintain, on a temporary basis existing measures that deviate from their obligations under the TRIMs Agreement. For this purpose, LDCs shall notify the Council for Trade in Goods (CTG) of such measures within two years, starting 30 days after the date of this declaration. LDCs will be allowed to maintain these existing measures until the end of a new transition period, lasting seven years. The duration of these measures will not exceed five years, renewable subject to review and decision by the CTG. Any measures incompatible with the TRIMs Agreement and adopted under this decision shall be phased out by year 2020.	LDCs have been also accorded an extension regarding Trade-related Investment Measures (TRIMS) for another seven years, i.e. till 2013. LDCs will be able now not only to continue with old TRIMS (subject to notification), but also introduce new one. However, the apprehension is that the LDCs are not being able to use many of these TRIMS due to conditionalities under Bank-Fund Credit programme. No concrete modality was suggested to ensure coherence in this context.
5) Proposal: 88: Decision on Measures in Favour of Least-Developed Countries–	Two alternative proposals were put forward: *The first proposal* stated that LDCs shall	The second proposal was adopted with a modification: the word 'may require' FA, TA,	The proposal stipulated that when LDCs face difficulty in implementing WTO agreements, they can seek a waiver. In addition, LDCs could

LDCs Original Proposal	Proposals in the Second Revision of Draft Declaration	Hong Kong WTO Ministerial Declaration	Comments/Outcome
Paragraph 1 The General Council agrees that the implementation by LDCs of their obligations or commitments may require further technical and financial support directly related to the nature and scope of such obligations or commitments, and urges donors and relevant agencies to coordinate their efforts in the delivery of such support. Such support should also be available to address the costs of preference erosion. LDCs believe that an 'Aid for Trade' facility needs to be developed. Its size should be adequate to meet explicit needs for assistance to enable LDCs to comply with new commitments in the context of current round of negotiations. LDCs also think that there should be support in place to bear the attendant costs, such as in view of the envisaged preference erosion.	only be required to comply with obligations which were consistent with their individual development, financial or trade needs. GC agreed that FA and TA would be needed to fulfill this obligation. *The second proposal* stated that should an LDC Member find that it is not in a position to comply with an obligation or commitment because of lack of adequate capacity, it should bring the matter to the attention of the General Council for examination and appropriate action. GC agreed that LDCs may require TA, FA for implementing obligations.	was replaced by the words, "will require"	seek financial assistance for implementing such agreements. However, the proposal is of best endeavour nature. The proposal mentions about significant increase in TA and FA for the LDCs. However, there is no reference point for this increase; neither is there any mention about reporting back to the GC about WTO's success or failure in this regard.

Source: Analysis carried out in this paper.

4. CONCLUDING REMARKS

The paper has analysed twelve Category I S&D proposals for which the likelihood of a decision is high. In view of the Hong Kong Ministerial Decision on S&D for the LDCs (Annex-F), the paper also analysed the five proposals on which a consensus was reached in Hong Kong in December 2005. In conducting the assessment of the aforesaid proposals, the paper has considered the perspective of the six LDCs that belonged to South and South-East Asia (Asian LDCs) as the reference point. The importance of this exercise for the Asian LDCs lies in the fact that these countries are being increasingly integrated into the global economy and in view of this the S&D proposals need to be evaluated from the perspective of their capacity to further facilitate the global integration of LDCs. The assessment of the

aforementioned proposals was made by taking into cognisance four interconnected perspectives: (a) relevance of the proposals with regard to LDC interests and concerns; (b) extent to which proposals submitted by various developing and LDC members differed from the text that was agreed in the course of negotiations; (c) extent to which proposals on which consensus was reached in Hong Kong differed from LDC texts; and (d) the nature of implications of the agreed proposals from the vantage point of the LDCs.

The paper highlights the interest of LDCs in terms of (a) market access, (b) waivers from obligations, and (c) implementational flexibilities. It also showed that the LDCs had both offensive and defensive interests with respect to the two sets of proposals considered. The analyses bear out that some of the proposals were of critical importance to the Asian LDCs. These include enhanced market access, waivers from undertaking obligations, deferred implementation of obligations, and strengthening of supply-side capacities.

The DF-QF market access related proposal was perhaps the singlemost important S&D proposal from LDCs perspective since it was a longstanding demand of all LDCs which was also supported by a majority of developing and developed members of the WTO. In the end, LDCs were only partially successful in achieving their target. The paper has pointed out that the absence of any time line for phasing out the 'exclusion list' is a major weakness of the agreed text. In subsequent negotiations, LDCs should try to extract a time line in this regard. Implementation of some of the studied proposals, including the one relating to market access, were weakened because of reference to possible negative effect on other developing countries.

The analysis has also brought out the importance of ensuring coherence and the need for adequate trade related TA and FA to facilitate capacity of the LDCs to take advantage of particular S&D proposals. Interpretative ambiguities associated with some of the agreed proposals are likely to weaken their implementation (e.g., wordings such as 'lasting basis' may be subjected to various interpretations in the course of subsequent discussion; impact on 'other developing countries in similar situation' in the DF-QF proposal could raise a lot of confusion and conflicting situation). In many cases the proposals sought to strengthen the relevant enabling clause by putting the word 'shall', and calling upon members to provide trade-related technical assistance and financial assistance in support of the LDCs. However, there is no concrete modality, reference point and/or enforcement mechanisms to ensure greater flow of TA or FA.

It was also pointed out in the analysis that coherence was becoming a major issue in the discussions on S&D at the WTO. Many of the S&D related provisions favouring the LDCs, agreed or under consideration by the WTO, will not matter much to the potential beneficiary countries unless other multilateral institutions and financial organisations do not craft their behaviour and tailor their policies; accordingly. Most of these S&D provisions can hardly be implemented, without major inflow of resources as part of the much hyped 'Development Package'. Even when waivers are given to LDCs, these would not result in any significant practical benefit unless parallel initiatives, in the form of coherence assurance and FA/TA support, are not forthcoming.

LDCs are apprehensive that a situational stance could lead to differentiation among LDCs, resulting in some LDCs receiving S&D, and others not. In this context, it needs to be kept in mind that implementation of S&D proposals are country-specific: from the donor (developed country) side as well as the recipient (LDC) side. For example, the DF-QF is an initiative for all the LDCs; however, capacity to enjoy the potential benefits will vary from LDC to LDC according to their supply-side capacity. The major focus of the WTO should be to strengthen the capacity of LDCs to enjoy commercially meaningful market access, rather than making differentiation amongst the LDCs.

In case, if there is an initiative addressing the issue of preference erosion, for obvious reasons, implementation of such an initiative will be country-specific. For some countries (such as Bangladesh), tariff preference erosion is a major problem, whilst for others, it is not. For valid reasons, the measures and support will vary across LDCs. There may be a strong case for situational analysis with respect to the non-LDC developing countries. The introduction of word such as 'advanced developing countries' or 'developing countries in a position to do so' in some way is a recognition of this. However, given the dire economic condition in which LDCs find themselves without exclusion (which in the first place led to identification of this particular sub-strata among the developing countries), it is apprehended that such differentiation may lead to further confusion, and distraction from the real task at hand.

Indeed, the real task at hand is to help this sub-strata among the developing countries achieve the objectives of their respective poverty reduction strategies (as articulated in their PRSPs) and their Millennium Development Goals (MDGs) through the help of the international trading system. Once these are accepted as the overriding principles which should guide the functioning of the multilateral trading system, approach to the S&D provisions in the WTO will be significantly different than it is now.

As it was pointed out in this paper, till now consensus could be reached as regards only five of the 88 proposals under consideration in the WTO. A decision could not be reached even with regard to the twelve proposals on which an agreement had been reached 'in principle' during earlier negotiations in Geneva. The discussion in the paper has shown that many of these proposals have some utility and economic significance for the Asian LDCs and that much can be achieved from these proposals if other parallel and complementary initiatives are also put in place. LDCs will need to project a common front in the ongoing negotiations in Geneva to ensure that LDC specific proposals get highest priority, and a decision is reached as regards the remaining proposals by taking into cognisance concerns and interests of the LDCs.

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