

**WTO GENERAL COUNCIL DECISION OF  
JULY 31, 2004: INTERPRETING FROM  
BANGLADESH PERSPECTIVE**

Paper 46

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**The Centre for Policy Dialogue (CPD)** was established in 1993. The CPD came into being as a civil society initiative to promote an ongoing dialogue between the principal partners in the decision-making and implementing process. The dialogues are designed to address important policy issues and to seek constructive solutions to these problems. The Centre has organised a series of such dialogues at local, regional and national levels. The CPD has also organised a number of South Asian bilateral and regional dialogues as well as some international dialogues. These dialogues have brought together high level policy makers, opposition frontbenchers, Members of Parliament, leaders of trade, business and labour organisations, representatives of grass roots organisations and NGOs, development partners, professionals and other functional groups in the Bangladesh civil society within a non-confrontational environment to promote constructive engagement and focused discussions. The CPD seeks to create a national policy consciousness where members of civil society will be made aware of critical policy issues affecting their lives and will come together in support of particular policy agendas which they consider to be conducive to the well being of the country.

Along with its dialogue programme, CPD also implements an extensive research programme. CPD's research works are both serviced by and are intended to serve as inputs for dialogues organised by the Centre throughout the year. Some of the major research programmes at the CPD include **The Independent Review of Bangladesh's Development (IRBD), Trade Policy Analysis (TPA), Governance and Policy Reforms, Regional Cooperation and Integration, Investment Promotion and Enterprise Development, Agriculture and Rural Development, Ecosystems and Environment, and Youth Development Programme.** Young Scholars' Seminar Series is designed for the young CPD researchers to present their work at the centre. The CPD also conducts periodic public perception surveys on policy issues and issues of developmental concerns.

Dissemination of information and knowledge on critical developmental issues continues to remain an important component of CPD's activities. Pursuant to this, CPD maintains an active publication programme, both in Bangla and in English. Till now, CPD has brought out about two hundred publications in the form of books, monographs, occasional papers and dialogue reports. CPD's publications are also brought out under **CPD Policy Brief Series.**

As a part of its dissemination programme, the Centre for Policy Dialogue (CPD) brings out an **Occasional Paper Series** on a regular basis. Dialogue background papers, investigation reports, results of perception surveys and other outputs of studies conducted under the various programmes implemented at CPD are published under this series.

The present paper titled *WTO General Council Decision of July 31, 2004: Interpreting from Bangladesh Perspective* was prepared under the CPD's *Trade Policy Analysis (TPA)* programme. The TPA programme of CPD was initiated in 1999 in response to a felt need to enhance Bangladesh's capacity to more effectively deal with the emerging trade issues in the face of deregulation, liberalisation and globalisation. The successful completion of the Uruguay Round Agreement in 1994 and the establishment of the WTO in 1995 was expected to have crucial implications for the LDCs such as Bangladesh. In the 1990s Bangladesh economy was becoming increasingly open and trade related policy making and trade negotiations were assuming critical importance for Bangladesh's future development.

In view of the emerging challenges in the context of the ongoing process of globalisation, the objective of CPD's *Trade Policy Analysis* programme is to monitor the impact of the evolving trading regime under the WTO on Bangladesh economy with a view to support trade related capacity building process in the country by strengthening CPD's institutional capacity in the areas of (a) trade related research, (b) preparation of policy briefs, (c) organisation of dialogues, (d) organisation of workshop and training, (e) strengthening trade related documentation, and (f) trade related publication and networking.

The present paper on *WTO General Council Decision of July 31, 2004: Interpreting from Bangladesh Perspective* has been prepared by Professor Mustafizur Rahman, Research Director of CPD and Dr. Ananya Raihan, Research Fellow of CPD. The paper looks at the salient features of July 31 text, identification of departure of it from the Cancun draft text (progression or regression) from an LDC perspective and to put forward some suggestions as regards issues which Bangladesh could pursue in the course of future negotiations in the run up to the Sixth Ministerial Meeting to be held in Hong Kong by the end of 2005.

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## **WTO GENERAL COUNCIL DECISION OF JULY 31, 2004: INTERPRETING FROM BANGLADESH PERSPECTIVE**

### **INTRODUCTION:**

The Doha Development Round (DDR) suffered a major setback when the fifth Cancun Ministerial Meeting of the WTO failed to hammer a *Ministerial Declaration*. Fortunately, the DDR could be put back on track, thanks to the July 31 decision of the 147 member states of the WTO General Council. The July decision has given a breathing space to the DDR agenda, not least because it has extended the dead-line for negotiations under the DDR work plan from the previously decided Jan, 2005 to the end of 2005. The July text is also important since it provides a framework on the basis of which future negotiations will take place. The text provides a road map for working with a foreseeable negotiating horizon. The July package provides the broad principles for continuing the work on liberalizing agricultural trade, industrial tariffs, services and other areas, however, negotiators must now reach specific agreements on where and by how much farm subsidies and tariffs must be cut, and markets opened.

The present Policy Brief has three objectives: (a) to articulate what are the salient features of July 31 text, (b) to identify the points of departure from the Cancun draft text (progression or regression) from an LDC perspective and (c) to put forward some suggestions as regards issues which Bangladesh could pursue in the course of future negotiations in the run up to the Sixth Ministerial Meeting to be held in Hong Kong by the end of 2005.

### **SECTION I. BACKGROUND OF JULY 31 MEETING: DOHA DEVELOPMENT ROUND IS BACK ON TRACK**

#### ***Developments since Cancun***

Cancun was a setback for all countries. All members thought that there will be no repetition of Seattle, and the good beginning of Doha will be continued. After the initial shock following Cancun, there was a concerted effort to get the ball rolling thee again. Following Cancun, in order to restart the stalled talk, the WTO General Council set on with the task of searching for negotiating frameworks for the implementation of the DDR agenda. Because of the lack of any progress from the

“informal consultations”, held during October – December 2003, no new text could be agreed upon which could push forward the issues over which the Cancun Ministerial Conference collapsed before arriving at an agreed Declaration.

As was expected, the last meeting of the General Council of the WTO in 2003—held on 15th and 16th December in Geneva—took no substantive decisions. Instead, members took account of consultations held over the preceding few months and agreed to re-establish the trade negotiation bodies “as soon as possible”. The Chairman of the GC Carlos Perez del Castillo, in his statement, summarised the major outcomes of the consultations carried out since Cancun. These concentrated on four issues. He identified these as (a) agriculture (which was the most controversial), (b) non-agricultural market access, (c) Singapore Issues and (d) the Cotton Initiative. The only decision taken was to re-establish the trade negotiating bodies in the TNC, and its various subgroups, in early 2004. The General Council Chair tentatively concluded that negotiations could perhaps be initiated on trade facilitation, the least controversial of the four Singapore issues. He, however, mentioned that nothing has been formally agreed.

A number of WTO members and WTO Director General Supachai continued their efforts to restart trade talks during Christmas and New Year 2004. The World Economic Forum in Davos, held in January, 2004, provided an opportunity for a *Mini-Ministerial* meeting. Among other issues, consultations were held for appointment of new chairpersons for the GC and the trade negotiating bodies.

In its meeting of February 11, 2004 the WTO General Council approved a slate of new Chairs for the WTO’s subsidiary and negotiating bodies; however, because of continuing disagreement among the Members on how to treat the Singapore Issues, no Chair was appointed for the working groups on investment, competition policy and transparency in government procurement.

At the GC meeting held on 17-18 May, 2004, the Director General of the WTO acknowledged the importance of the discussions which took place in Paris (Informal WTO Ministers’ Meeting in Paris – 14 May 2004). The LDC Ministerial meeting in Senegal was also an important development during this period. The meeting articulated LDC priorities and drew attention of other members of the WTO to the urgent need to address LDC concerns. The Director General noted that the political

impetus given to the Round in the recent weeks including the Paris meetings, the Fischler/Lamy exchange of letter and the meeting of LDC Ministers were crucial in giving impetus to the Geneva process and in obtaining concrete outcomes at the multilateral level. A decision was taken during the General Council meeting in May, 2004 that an effective framework package would be agreed upon by the end of July, 2004 in order that the negotiations could proceed to their next stage.

### ***Towards The July 31 Draft: The Process***

The first draft of the July package came out only on 16 July, 2004. There was not enough time, before the General Council meeting, for the member countries to respond since many of these were not part of the “Green Room Consultations”. The delegations of LDCs and other developing countries in Geneva should have had enough time to study the text, to consult among themselves and with likeminded delegations, and finally, to receive approval from their respective Capitals. Unfortunately, because of the looming deadline, this was not possible. The meeting of the General Council commenced on 27 July and was planned to end either on 29, or latest on 30 July 2004. Drawing on the Green Room Consultations, the first revision of the “July 31 Text” came only on July 30 morning. The informal meeting of the heads of delegation was held at 10 am on the same day to discuss the text, allowing hardly any time to study it properly or to consult their capitals, or to propose amendments. It was a repeat of the Cancun situation: “take it or leave it”. Considerable pressure was put on some of the developing countries whose rigidity was perceived as the major stumbling block towards a consensus. Once again the multilateral system epitomized by the Geneva consultations was on the brink of failure. Western media blamed some of the developing countries for possible failure and accusing them of hurting, in the first place, the interest of the poorer developing countries. Apart from the “blame” factor, various groups of developing countries also felt that they were getting at least a minimum of what they were asking for, even though they had to give up the ground in some of the other areas. There was simply no time for most of the developing countries to seriously consider the drafts and the final text. Most importantly also, the majority of trade Ministers from developing countries were not present in Geneva whereas Ministers of many of the developed countries were indeed present in Geneva. For the developed countries the General

Council meeting turned out to be a “Mini-Ministerial” of sorts. The decision making power of the developed countries was once again manifested in Geneva.

Under these circumstances, delegations of the developing countries were under considerable pressure to lend their support to the draft text. The final draft of July 31 package came out in the afternoon of the day and a meeting was held to adopt it that very night. The framework for future negotiations was thus agreed upon. To be true, what happened is that the WTO members agreed to start negotiations on possible Agreement, rather than reaching any negotiated Agreement. Consequently, the results achieved remained fragile, and divergence of opinion may yet crop up once again during the negotiations on actual modalities of liberalization.

### ***The July 31 Draft: The Content***

By the end of the deadline set for July 31, 2004 negotiating countries in Geneva were able to thrash out a deal for going ahead with the stalled negotiations under the Doha Development Round. This agreed package of framework is titled “Doha Work Programme: Draft General Council Decision of July 31, 2004”. Since no Ministerial Declaration for guiding the Doha Round negotiations could be adopted in Cancun, this framework agreement is likely to serve as the guide line for moving the negotiations forward in Geneva. It is, however, to be kept in mind that this framework is not a final agreement. Under the framework agreement on agriculture and NAMA, the next phase will focus on finalising the "modalities" (principles and magnitudes, for example, on how much tariff to be reduced).

The framework agreement is being seen as an important breakthrough in the deadlock experienced during the Cancun Ministerial Meeting. The progress made in terms of (a) agriculture, (b) non-agricultural market access, (c) development issues and (d) trade facilitation, under the framework agreement of July 31, 2004, is expected to provide some measures of momentum to work of WTO members’ in other important areas of negotiations including rules, services, environment, reform of dispute settlement procedures and intellectual property protection.

One important development is that the duration of the Doha Development Round (DDR) has been extended up to December, 2005 from the earlier determined limit.



Thus the DDR negotiations will now continue till January 1, 2005. The Sixth Ministerial Meeting is to be held in Hong Kong, China in December, 2005. Some of the other deadlines have also been extended hoping to conclude the DDR.

The deadline for recommendations on *special and differential treatment* has been moved to July 2005. The deadline for placing revised and improved *market opening offers* for trading in services has also been extended to May 2005. A report on *Implementation Issues* will be prepared and presented to the Trade Negotiations Committee (TNC) and the General Council (GC) by May, 2005 for necessary measures to be taken by the Council by July 2005.

Substantive Negotiations were to be initiated in September, 2004.

## **SECTION II. UNFOLDING THE JULY PACKAGE: WHAT IS THERE FOR BANGLADESH**

### ***July Package: Salient Features***

**Agriculture:** An outline of agricultural trade negotiations has been developed in the July Package. The text is a compromise variant that attempts to reconcile the formidable conflicting interests of the USA, EU and the G-20 which include such important developing country members as China, India, Brazil and some of the other farm goods exporting countries. However, detailed and comprehensive modalities for negotiations in Agriculture are yet to be developed in the next phase. These agreed modalities will then be placed before the next WTO Ministerial meeting for approval.

For the first time, the July text incorporates *specific commitment* for elimination of *export subsidies* [paragraph 18]. However, there is no time frame or road map for such elimination. It needs to be appreciated that the inclusion of a commitment by the developed countries to do away with export subsidies is a major achievement of the July General Council Meeting. Under this commitment, export credits, export credit guarantees or insurance programmes with repayment periods beyond 180 days will also be eliminated; at the same time those of 180 days and below will be disciplined. When the elimination of subsidies takes place, this will get rid of a few of the most trade distorting subsidies which had enabled the dumping of agriculture exports from

rich countries, and had unfairly kept out farm products originating in the developing countries from the international market.

**Singapore Issues:** As far as developing countries and the LDCs are concerned, the most important achievement of the July package is that three of the four "Singapore Issues" (investment, competition policy, and transparency in government procurement) were dropped from the WTO's negotiating agenda, at least for the duration of the DDR.<sup>1</sup> Only the issue of *Trade Facilitation* (TF) will now be discussed as part of the DDR *work plan*. The attempt by the rich countries to also include the other three issues was a major factor behind the Cancun debacle. The formulation in the July text, however, leaves room for these issues to make a comeback as negotiating topics once the Doha programme is over. Nevertheless, relief from the burden of negotiations regarding these three Singapore issues at least for the time being is an achievement for Bangladesh and other least-developed countries. They have been fighting all through for exclusion of these issues from DDR agenda and this was also articulated during the Senegal LDC meeting.

### ***Regress in July Package***

**Agriculture:** The positive impacts of the July package which concern export subsidies under the *Agreement on Agriculture (AoA)* could be offset if subsidies in the so-called "second pillar", domestic support, is not adequately curbed, or what is worse, allowed to increase. Small farmers in developing countries could be further marginalized because of continuing domestic support in developed countries because of weak competitive strength with subsidised imports. In this context, the outcome in the domestic support and market access pillars was not to the satisfaction of developing countries and potentially damaging. Importantly, the relatively more transparent formulation as regards liberalisation of trade in agriculture which was set out in the draft Cancun declaration, was somewhat blurred in the July text.

Meaningful reform in agriculture appears to have been undermined in the July text. Changes within the *Blue Box* relating to allowable areas for the purpose of domestic support point more towards a shift in allowable subsidies, rather than a reduction. The

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<sup>1</sup> The decision says "no work towards negotiations on any of these issues will take place within the WTO during the Doha Round." [paragraph 1g].

text will permit the developed countries to protect sensitive products while not providing enough options to the developing countries to protect sectors of their agriculture system which are essential for food security. By expanding the Blue Box and insisting on increased market access for most products without sufficient protection for crops necessary for food security, the framework has the potential to enhance scope for dumping which has caused significant damage to farmers around the world. Apparently, the July draft will allow the developed countries to window-dress their domestic support measures.

**Non-Agricultural Market Access (NAMA):** Perhaps the compromise over agriculture and *Singapore Issues* was somewhat offset by what developing countries were expected to undertake under the AMA. To some extent this was because of application of "non-linear" formula of tariff reduction which is aggressive for its sharply reducing tariffs, with steeper cuts for higher tariffs. For example, under a variation of this formula, a 40% tariff on a product would have to be reduced to 7%. To estimate the new bound rates, the applied tariff rates of the presently unbound products will be considered, and this will be multiplied by two (this figure is mentioned within brackets) and then subjected to the non-linear formula. In this case, the new bound rates may end up significantly lower than the present applied rates. The gap between applied and bound rates will be narrowed significantly; this gap generally provides some flexibility by way of a "safety zone" whereby the developing countries can choose to raise the applied rates towards the bound rate in the event of serious difficulties arising from import competition. This flexibility will now be substantially squeezed.

The provision for fast-track elimination of tariff for sectoral tariff component [paragraph 7], which is implied to be compulsory, will put the domestic industries at risks once they are selected for tariff reduction in the course of subsequent negotiations.

**Services:** The services text appears to be very general. Although the number of annexes in Cancun draft was seven, there was no separate annex on Services. This time the July text does include such an Annex, although it does not reflect the nitty-gritty of negotiations on services. As a matter of fact, GATS issues did not receive due priority in the DDR Agenda and suffered as a result of wrong sequencing and

missed deadlines. The offer-request negotiations had been launched before the completion of rule making negotiations, violating the guidelines for GATS negotiations. The deadlines for both offers and requests were missed by many countries. Only 30 countries made offers within June 30, 2002, the stipulated deadline. Assessment of liberalisation in services had not been accomplished, which also was a prerequisite for initiating the offer-request negotiations. Although the Annex includes a paragraph on rule making negotiations, there is no roadmap for completion of these negotiations on fast track basis.

The overall impression that one gets by going through the Annex is that no significant progress is expected before the Sixth Ministerial Meeting. It is expected that the upcoming negotiations will be highly concentrated on agriculture and NAMA. The draft emphasises on submission of initial offers by the Members who are yet to make one.

The new deadline of May 2005 was fixed without any discussion, at the very end of the GC Meeting of July 31, 2004. It was not clear whether the given time frame will be adequate for the member countries most of which are developing that don't have the requisite capacity to assess the implications of opening their services sectors.

**Cotton Issue:** The inclusion of cotton as part of the agricultural negotiations may be considered as progress. Mention may be made here that this was excluded from negotiations during the Uruguay Round, where all fibres were excluded from the purview of the agreement. Nevertheless, this inclusion virtually excludes the cotton issue from a fast track resolution and by the time the cotton subsidies are expected to be eliminated under the general liberalisation formula, the African cotton producers may as well become an extinct category because of the existing market distortions.

### ***New Elements in DDR***

*Trade Facilitation (TF)* is the only new item which was included in the negotiations based on the *explicit consensus* in the General Council Meeting of July 2004. Inclusion of TF was a compromise between developed and developing countries: developed countries insisted that at the least this one issue of the four Singapore

issues be included in the agenda; the developing countries had to swallow this as a compromise variant in lieu of excluding the other three Singapore Issues.

The negotiations modalities on TF described in the July text was more elaborate than those were in the Cancun draft. When the developing and least-developed countries expressed their intention to accept one of the four Singapore Issues, presumably the TF was the issue that was in the back of their minds. However, the developing and least-developed countries raised a set of specific concerns related to their implementation capacity emanating from the obligations. Bangladesh submitted a proposal on behalf of core group on TF. A number of the provisions of that proposal have been reflected in the July 16, 2004 draft and subsequently in the final July framework text.

The negotiations modalities did not elaborate on the core issues of “further expediting the movement, release and clearance of goods” and clarification of Article V, VII and X of GATT 1994, rather 8 out of 10 paragraphs of the Annex D on TF focus on various issues of derogation and technical assistance to be provided by the developed countries to the developing and least-developed countries. From developing world perspective, the text seems to be very friendly; however, it is still not clear what actual modalities will be discussed during the negotiations.

Developing countries were apprehensive that new customs rules could impose an entirely new layer of technological infrastructure for tracking and inspection, even though they hardly had the adequate resources to cover the attendant costs. As the developed countries are pledging "aid" to developing countries to build the new infrastructure, it appears that this will give some of their corporations an opportunity to earn a lot of money.

### **SECTION III. JULY PACKAGE: IMPLICATIONS AND STRATEGIES FOR BANGLADESH**

#### ***Implications of the July Package for Bangladesh***

**Agriculture:** The July text exempts Bangladesh, as an LDC, from undertaking any reduction commitments in agriculture. However, in terms of getting duty-free and

quota-free market access, the July text is more regressive than the Cancun draft text. The formulation in Cancun draft text was as follows:

*Developed countries [should][shall] provide duty-free and quota-free market access for products originating from least developed countries.*

On the other hand, the July text refers to the issue in the following way:

*Developed country Members, and developing country Members in a opposition to do so, should provide duty-free and quota-free market access for products originating from least developed countries.*

The delegations from the LDCs got little opportunity to raise this issue due to the limitation in time and scope to enter the *Green Room* discussions.

The progressive liberalisation in export competition and market access pillars has dual implications for Bangladesh. In the short run, Bangladeshi agricultural products will be more competitive in the global market because of the reduction in tariff and export subsidies. In the long run, Bangladesh may benefit from cheaper import of products which are not cost effective to produce domestically. To realise this benefit, active government support will be required to promote agricultural export.

If the Cancun text on agriculture was kept intact with additional amendments on export subsidy components, this would perhaps be the best possible outcome for most of the developing and least developed countries.

**Non-Agricultural Market Access:** The July text related to the LDCs as regards NAMA is exactly the same as it was in the Cancun text. As an LDC Bangladesh will not have to apply the formula or sectoral approach in tariff reduction. However, the text expresses “expectation” of developed and developing country Members from the LDCs to take higher level of binding commitments which essentially, in all likelihood, will put pressure on the LDCs to further reduce tariff over the subsequent period.

The duty-free and quota-free market access for the LDCs for non-agricultural products has not received the support the LDCs expected in the text.

A trade-off where the issue of duty-free market access is exchanged for undertaking some explicit commitments under the NAMA may as well be an option for Bangladesh, particularly in view of Bangladesh's already liberalised trading regime.

**Services:** The services text appears to be very general. The text gives an impression of a lack of adequate attention to the concerns of the developing and least-developed countries. As against this, the services text in the Cancun draft appears to have been more carefully crafted.

Overall, it appears that the Cancun text was significantly better than the July text as regards promoting the LDCs' interest in services sector. The Cancun text mentioned, "In services, we shall give priority to the sectors and modes of supply of export interest to LDCs, particularly in regard to movement of service providers under mode 4." However, the July text does not have anything specific or explicit as regards the LDCs.

**Trade Facilitation:** Although the negotiations are to be confined within Articles V, VII and X of GATT 1994 for further clarification and improvement, the new framework is likely to capture other aspects [paragraph 9]. As happened in case of TRIPS, which had an initially innocuous negotiating mandate, and subsequently became a major concern for developing countries and LDCs, there is a tendency to broaden the mandate once an issue has been included for negotiations. As Article V is related to *freedom of transit*, transit among Bangladesh, India, Nepal and Bhutan may turn into an important issue for the South Asian region to be debated in the WTO. However, how 'transit' is defined, is also likely to become a contested issue.

From LDC perspective "one size fits all" approach is not the best possible solution as far as their customs harmonisation rules are concerned. As the LDCs would need to maintain high standards of trade facilitation, which will involve costly adjustments, such an approach will be unfair for these countries. Moreover, the structure and functions in the customs procedures are not uniform across countries. The attendant

disciplines may also constrain trading capacities of LDCs and many as well serve as protectionist tools by some non-LDCs.

Making TF regulations “least trade restrictive” could also lead to negative/downward harmonisation of border controls, in some instances making it difficult for a country to implement more stringent controls, e.g. in the name of safety.

It is doubtful that the developed countries will be able to provide adequate financing to cover the trade facilitation related expenses in LDCs, given the current state of aid flow, technical assistance and the experience with building a *WTO Trust Fund* to help LDCs and developing countries.

### ***Strategies for Bangladesh***

**Agriculture:** It is clear that the negotiations under the new framework will not be able to reduce trade-distorting domestic support within a short period of time. Thus, Bangladesh may call for incorporation, in the agreement, of an article on compensation for those LDCs, which are negatively affected due to the subsidies, till the time these are phased out.

Majority of the LDCs are dependent on agriculture both for export and subsistence. Many countries will not be able to take advantage of potential preferential market access to the developed countries. Bangladesh should call for initiation of a programme to support the enhancement of supply side capacities in the agricultural sector so as to enable the LDCs to take full advantage of market access opportunities

The July text did not include the demand of the LDCs to exercise the right to use additional duties based on a simple countervailing measure on subsidised imports, until trade distorting support is effectively eliminated. Bangladesh should demand for inclusion of such provision in the outcome of the negotiations.

**NAMA:** One of the priority demands of LDCs was putting moratorium on anti-dumping and countervailing duty on the products originating from the LDCs. This was particularly important for apparels, in view of the uncertainties in the context of



MFA phase out. This issue was not addressed in the draft text. Bangladesh should demand inclusion of a binding text on this in the modalities of negotiations.

Yet another demand for granting non-reciprocal credit for autonomous liberalisation, particularly advanced by Bangladesh, was not addressed in July text. There was some reference to this in the Cancun draft. Bangladesh should raise the issue in the Geneva negotiations as regards granting of non-reciprocal credit for autonomous liberalisation undertaken prior to 1995 by LDCs such as Bangladesh.

The Cancun text included issue of flexible rules of origin in Article 26 of the draft, in a manner which did not ensure commercially meaningful market access for the LDCs. The July text was silent on this issue. Bangladesh should argue for rules of origin (ROO) that takes into account supply side capacities of the LDCs.

**Services:** For developing future negotiating stance in services negotiations, the point of departure for Bangladesh is the *special modalities for LDCs*, which provided some encouragement to the LDCs. It addressed one of the pre-conditions for initiating the offer-request negotiations. The modalities were the outcome of persistent demand of the LDCs over the last few years. It is interesting to note that the LDC modalities in the text had in many places incorporated, verbatim, the text of the *Dhaka Declaration of the LDC Ministers* held in June, 2003. Out of 20 demands of the LDC Ministerial 14 demands were met through the special modalities, albeit with various degrees of ambiguity and clarity. Active role of Bangladesh in finalisation of special modalities was well appreciated. The language of the text uses “shall”, which ensures binding nature of obligations under the modalities. However, without commensurate DSU provisions, the “shall” provision may also prove to be useless. It is the first time that in the text on modalities “serious difficulties” of LDCs in undertaking special commitments, and lack of institutional and human capacities to analyse and respond to offers and requests, have been given due recognition. It was also recognised that trade in services plays important role in addressing poverty, upgrading welfare, improving universal availability and access to basic services. LDCs should endeavour to promote this message in future GATS negotiations.

The achievements of the LDCs in terms of accommodation of some key demands in the special modalities are presented in the table 1.

TABLE 1. ACHIEVEMENT IN LDC MODALITIES FOR GATS NEGOTIATIONS<sup>2</sup>

Sl.	Unconditional	Conditional
1	Members... shall exercise restraint in seeking commitments from LDCs due to achieving the objectives of Art. IV	LDCs shall not be <i>expected</i> to offer full NT, nor are they expected to undertake <i>additional commitments</i> under Article XVIII of the GATS on regulatory issues which may go beyond their institutional, regulatory, and administrative capacities <b>Alternative text:</b> Members shall not demand full NT and additional commitments from LDCs
2	Flexibility to LDCs for opening few sectors, liberalising fewer types of transactions	In response to requests, LDCs <i>may</i> make commitments compatible with their development, trade and financial needs and which are limited in terms of sectors, modes of supply and scope. <b>Alternative text:</b> LDCs shall have flexibility to make...
3	In addition, Members shall refrain from requesting credits for autonomous liberalization from LDCs.	Members shall [Articles IV and XIX] give special priority to providing effective market access in sectors and modes of supply of export interest to LDCs, <i>through negotiated specific commitments</i> pursuant to Parts III and IV of the GATS. <b>Proposal:</b> Omit <i>italic</i> text [should be provided multilaterally]
4	Technical assistance shall also be provided to LDCs to carry out national assessments of trade in services in overall terms and on a sectoral basis	Members shall take measures, <i>in accordance with their individual capacities</i> , aimed at increasing the participation of LDCs in trade in services. <b>Proposal:</b> Capacity in terms of % of GDP
5		LDCs shall be granted <i>appropriate</i> credit for their autonomous trade liberalization.
6		It is recognized that the temporary movement of natural persons supplying services (Mode 4) provides potential benefits to the <i>sending and recipient Members</i> . LDCs have <i>indicated</i> that this is one of the most important means of supplying services internationally. Members shall <u>to the extent</u>

<sup>2</sup> The table has been taken from the CPD publications titled *Bangladesh's Strategies for Post Cancun Negotiations*, Occasional Paper No. 28, 2003.

Sl.	Unconditional	Conditional
		<p><u>possible</u>, and consistently with Article XIX of the GATS, <u>consider</u> undertaking commitments to provide access in mode 4, taking into account all categories of natural persons identified by LDCs in their requests.</p> <p><b>Proposal:</b> Omit <i>italic underlined</i> text. Adopt ISCO-88 Classification of Occupation as the basis of inclusion</p>
7		<p>Targeted and coordinated technical assistance and capacity building programmes shall continue ...</p> <p><b>Proposal:</b> ...programmes shall be introduced...</p>

In the upcoming negotiations on GATS Bangladesh should play an active role to ensure that the special modalities become part of the single undertaking.

However, the special modalities have left the following issues which will need to be addressed before full-fledged negotiations are initiated:

- ***Assessment of Services Liberalisation:*** Article 6 of the draft Cancun declaration included text on assessment of impact of services liberalisation. Bangladesh should propose the following changes: “We call upon CTS to put in place mechanisms for assessment of impact of services liberalisation before starting the negotiations within [...]. We call upon those participants who have not yet submitted their initial offers to do so as soon as possible. Improved offers should be submitted by *[the date mentioned in the bracket above]*”.
- ***Completion of Rules Making Negotiations***
  - Preference for Domestic Companies in Government Procurement
  - LDCs should be allowed to provide subsidies to nascent services industries
- ***Completion of ESM Negotiations***
  - Bangladesh should also propose the following change in the Article 6: “We recognise the development implications of the mode 4 market access and shall provide priority to the negotiations on mode 4 and other sectors of interest for the developing countries”.

- The inclusion of text on interest of the developing countries in mode 4 has been nullified by the following text: “In accordance with GATS provisions, there shall be due respect for the right of Members to regulate and to introduce new regulations in pursuance of national policy objectives”. This should be deleted.
- In Article 26, the text on mode 4 should be revised as follows: “In services, we shall give priority to the sectors and modes of supply of export interest to the LDCs, particularly in regard to movement of service providers under Mode 4”.
- For meaningful market access in mode 4, it is essential that less skilled categories are included in the services classification. Bangladesh should propose that ISCO-88 Classification of occupation should be adopted as a basis for negotiations on the mode 4 liberalisation.
- The negotiations on mode 4 should also include the discussion on elimination of economic needs test (ENT) and quantitative restrictions (QRs), de-linking of temporary movement of natural persons from commitments on commercial presence and introducing simplified visa schemes.

*Trade Facilitation:* Considering the post-Cancun reality and prospect of getting advantage in other areas of negotiations, Bangladesh may keep the following perspectives in upcoming negotiations:

- Negotiations must be confined to the premise of Article 1 of Annex D of the July text and should guarantee that the scope of negotiations will not be elaborated in future.
- Special and differential treatment to LDCs should include, *inter alia*, at least a ten year period for implementation of provisions for trade facilitation.
- Needs assessment exercise will need to be carried out with participation of the concerned LDCs. Negotiations should ensure that failure in compliance in the area of TF should be tailored to the flow of technical assistance support.

## **Concluding Remarks**

The explicit consensus achieved by the WTO members as regards the July 31 text gave that multilateral trading system the much needed lease of life. It was revealed once again that negotiating skill and strategising is extremely important for winning negotiations and that in the WTO 'countries get not what they deserve, but what they negotiate'. The fear of being blamed for another collapse immediately after Cancun led many developing countries to be extra cautious and, eventually, accept a deal of which they had been critical.

In summary, one could conclude that the Geneva work programme framework text, in many respect, is not better, and in some instances worse than the Cancun text as far as interests of the LDCs are concerned. A first reading of the July text evinces a few gains for the developing countries and LDCs, however, this is more than offset in other areas where they have lost ground. Annex-A captures some of the trade-offs in a summarised manner. The July 31 text has failed to satisfy fully any of the interested blocs of members. The text appears to be the outcome of a compromise between the US and the EU; and the developing countries have been accorded some concessions. At the end of the day, the LDCs which had high hopes of getting commercially meaningful market access, were disappointed. However, much will depend on how the works of the various negotiating groups evolve in the run up to the sixth Ministerial Meeting in Hong Kong which is scheduled to be held by the end of 2005. Bangladesh will need to proactively pursue her interests in the course of these negotiations. The present policy brief has identified a number of areas where Bangladesh could focus her attention in future negotiations in Geneva in order to pursue and advance LDC interests.

**Annex – A**

**A Comparative Study of Cancun and Geneva Text: Bangladesh Perspective**

	<b>Cancun Draft</b>	<b>July 31 GC Text</b>	<b>Comments from the perspective of Bangladesh</b>
Agriculture	Developed Country Members [should] [shall] provide duty-free and quota-free market access for products originating from least developed countries.	Developed Country Members, and developing country Members, in a position to do so, should provide duty-free and quota-free market access for products originating from least developed countries.	Unfortunately the text has been substantially watered down by adding “in a position to do”. This is non-committal and leaves room for maneuvering by the developed countries. The fact that LDCs got little opportunity to raise this issue during the <i>Green Room</i> consultations, perhaps also contributed to the insertion of this particular version in the text. However, having said that, it needs to be noted that more concerted pressure will need to be put in this regard, more specifically on the USA since its position of this issue will be decisive.
NAMA	We agree that least-developed country participants shall not be required to apply the formula nor participate in the sectorial approach, however, as part of their contribution to this round of negotiations, they are expected to substantially increase their level of binding commitments.	We agree that least-developed country participants shall not be required to apply the formula nor participate in the sectorial approach, however, as part of their contribution to this round of negotiations, they are expected to substantially increase their level of binding commitments.	There is no change in the two texts. However, the “expectation” of developed and developing country Members that the LDCs need to take higher level of binding commitments could perhaps be referred to in future negotiations to put pressure on the LDCs to widen the ambit of their commitments. Bangladesh and other LDCs should be cautious as regards any such development.

	<b>Cancun Draft</b>	<b>July 31 GC Text</b>	<b>Comments from the perspective of Bangladesh</b>
	Furthermore, in recognition of the need to enhance the integration of least-developed countries into the multilateral trading system and support the diversification of their production and export base, we call upon developed-country participants and other participants who so decide, to grant on an autonomous basis duty-free and quota-free market access for non-agricultural products originating from least-developed countries by the year [...].	Furthermore, in recognition of the need to enhance the integration of least-developed countries into the multilateral trading system and support the diversification of their production and export base, we call upon developed-country participants and other participants, who so decide, to grant on an autonomous basis duty-free and quota-free market access for non-agricultural products originating from least-developed countries by the year [...].	There is no change in the two texts. The demand of LDCs for duty free access for their industrial products was essentially ignored. Rather the July text reiterates the Cancun draft text and urges developed countries 'who so decide' to grant duty-free access on an <i>autonomous basis</i> . Although a deadline has been proposed, albeit in bracket, it appears that when read with 'who so decide', the text does not amount to much. The demand of a duty-free market access for non-agricultural products on a multilateral basis, continues to remain unheeded by the developed country members in the WTO.
	We urge Members to adopt and implement rules of origin so as to facilitate exports from LDCs.	No text	Although the Cancun text was vague, it at least talked about flexibility in the ROO in view of difficulties faced by many LDCs. It is a regress that the July text has entirely ignored the issue.
Services	In services, we shall give priority to the sectors and modes of supply of export interest to LDCs, particularly in regard to movement of service providers under Mode 4.	Members note the interest of developing countries, as well as other Members, in Mode 4.	The July text on mode 4 has been substantially toned down (when compared to the Cancun draft text). This is against the spirit of <i>special modalities</i> which was adopted before the Cancun Ministerial. In the upcoming negotiations Bangladesh should refer to the <i>special modalities</i> and argue that this is a key area where market openings are essential in order that trade liberalisation negotiations are balanced (between liberalization of goods and services sectors) and in order that the LDCs could benefit from the multilateral trading system.
Trade Facilitation	2. In the case of developing and least-developed countries, it is	1. Negotiations shall aim to clarify and improve relevant aspects of	Out of ten paragraphs eight are dedicated to clarification on derogation for the LDCs and developing

	<b>Cancun Draft</b>	<b>July 31 GC Text</b>	<b>Comments from the perspective of Bangladesh</b>
	<p>agreed that their implementation capacities shall be an important factor to take into account in the negotiations. The negotiations shall also take fully into account the principle of special and differential treatment for developing and least-developed countries.</p> <p>3. Recognizing the needs of developing and least-developed countries for enhanced technical assistance and capacity building in this area, we commit ourselves to ensuring adequate technical assistance and support for capacity building both during the negotiations and after their conclusion.</p> <p>4. in order to make the process of identification and assessment of needs related to technical assistance and capacity building effective and operational and to ensure better coherence, a collaborative effort shall be undertaken with other international organizations, including the World Bank, IMF, UNCTAD and the</p>	<p>Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit.<sup>3</sup> Negotiations shall also aim at enhancing technical assistance and support for capacity building in this area. The negotiations shall further aim at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues.</p> <p>2. The results of the negotiations shall take fully into account the principle of special and differential treatment for developing and least-developed countries. Members recognize that this principle should extend beyond the granting of traditional transition periods for implementing commitments. In particular, the extent and the timing of entering into commitments shall be related to the implementation capacities of developing and least-developed Members. It is further agreed that</p>	<p>countries; they also refer to technical assistance. This is a welcome development from Bangladesh's perspective. However, it is to be noted that the modalities do not deal with real issues of negotiations on the relevant articles of GATS 1994. Although this is termed as modalities for TF negotiations, relevant points on actual negotiations have not been elaborated; only the issues of derogation and technical assistance for the LDCs are mentioned in the text.</p> <p>The text recognises that LDCs may face difficulty in undertaking any commitment with respect to TF. The text explicitly mentions about the need for S&amp;D treatment for the LDCs. It calls upon developed country members to support LDC effort to improve their capacity in this area.</p> <p>Bangladesh should get on with the task of identifying areas where TAs are essential to enable Bangladesh to agree and to comply with any disciplines in the context of TF that is negotiated in the course of future negotiations.</p> <p>As Article V relates to <i>freedom of transit</i>, the issue of transit among Bangladesh, India, Nepal and Bhutan may turn out to be an important issue for the South Asian region. Bangladesh should work on articulating its interests in this regard.</p>

<sup>3</sup> It is understood that this is without prejudice to the possible format of the final result of the negotiations and would allow consideration of various forms of outcomes.

<sup>4</sup> In connection with this paragraph, Members note that paragraph 38 of the Doha Ministerial Declaration addresses relevant technical assistance and capacity building concerns of Members.



	<b>Cancun Draft</b>	<b>July 31 GC Text</b>	<b>Comments from the perspective of Bangladesh</b>
	<p>WCO, in this regard.</p>	<p>those Members would not be obliged to undertake investments in infrastructure projects beyond their means.</p> <p>3. Least-developed country Members will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.</p> <p>4. As an integral part of the negotiations, Members shall seek to identify their trade facilitation needs and priorities, particularly those of developing and least-developed countries, and shall also address the concerns of developing and least-developed countries related to cost implications of proposed measures.</p> <p>5. It is recognized that the provision of technical assistance and support for capacity building is vital for developing and least-developed countries to enable them to fully participate in and benefit from the negotiations. Members, in particular developed countries, therefore commit themselves to</p>	<p>The insertion in the text (paragraph 6) that ‘it is understood that the commitments by developed countries to provide such support are not open-ended’, has somewhat watered down the text. However, it is good for the LDCs that a commitment has been made in the text as to the effect that ‘where required support and assistance for such infrastructure is not forthcoming, and where a developing or least-developed Member continues to lack the necessary capacity, implementation will not be required’.</p> <p>Bangladesh should endeavour to make best use of this text which calls on multilateral institutions and organisations such as the World Bank and IMF to help LDCs address capacity building in TF related areas. A comprehensive TA needs assessment study should be initiated to articulate Bangladesh’s needs in the TF area.</p>

	<b>Cancun Draft</b>	<b>July 31 GC Text</b>	<b>Comments from the perspective of Bangladesh</b>
		<p>adequately ensure such support and assistance during the negotiations.<sup>4</sup></p> <p>6. Support and assistance should also be provided to help developing and least-developed countries implement the commitments resulting from the negotiations, in accordance with their nature and scope. In this context, it is recognized that negotiations could lead to certain commitments whose implementation would require support for infrastructure development on the part of some Members. In these limited cases, developed-country Members will make every effort to ensure support and assistance directly related to the nature and scope of the commitments in order to allow implementation. It is understood, however, that in cases where required support and assistance for such infrastructure is not forthcoming, and where a developing or least-developed Member continues to lack the necessary capacity, implementation will not be required. While every effort will be made to ensure the necessary support and assistance, it</p>	

	<b>Cancun Draft</b>	<b>July 31 GC Text</b>	<b>Comments from the perspective of Bangladesh</b>
		<p>is understood that the commitments by developed countries to provide such support are not open-ended.</p> <p>7. Members agree to review the effectiveness of the support and assistance provided and its ability to support the implementation of the results of the negotiations.</p> <p>8. In order to make technical assistance and capacity building more effective and operational and to ensure better coherence, Members shall invite relevant international organizations, including the IMF, OECD, UNCTAD, WCO and the World Bank to undertake a collaborative effort in this regard.</p>	