Chapter 5

The Doha Round of Negotiations
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11. Summary
Chapter 5

The Doha Round of Negotiations

After the collapse of the Seattle Ministerial in 1999 the developing countries were hoping to get their concerns addressed during the Fourth Ministerial Conference to be held in Doha, Qatar in 2001. While the developing countries were focusing, once again, on the resolution of implementation issues, the developed countries had an ambitious agenda of launching a new round of negotiations not only on the mandated ones (Agriculture and Services) but also on the ‘Singapore Issues’ namely – Trade and Investment, Transparency in Government Procurement, Trade Facilitation and Competition Policy. Apart from this, they were also keen on including issues like environmental and labour standards. The developing countries were opposed to a new round of negotiations without the old issues being resolved. After the protests held by the civil society outside the Seattle Conference and the abrupt end to the conference due to protests by the delegates of developing countries, it had become imperative that issues troubling the developing countries had to be addressed or else there would be no movement forward. The Doha Ministerial Declaration took cognizance of the problems of the developing countries. The Round was billed as the Doha Development Agenda due to the numerous references to developmental issues in the ministerial declaration. However, more than a decade after the negotiations were launched, the Doha Round remains inconclusive, mainly because of the difference in positions of the developing and developed countries. What are the concerns of the developing countries that have been included in the agenda? What are the other issues that are likely to affect the developing countries? What is the actual status of negotiations after the launch of the Round. How far have the concerns of developing countries been actually taken care of? All these questions are dealt with in this chapter.
1. Doha Work Programme

The formulation of the Agenda is the most important work preceding any Ministerial and the Doha Ministerial was no exception. The formulation of the agenda assumed much more importance because of the difference in positions of the members. As discussed above, the ‘Like Minded Group’ (LMG) and India were of the opinion that the Ministerial should not launch a new round of negotiations but focus only on the implementation issues. The developed countries wanted the launch of a new round of negotiations. A series of meetings were held both within and outside the World Trade Organization (WTO) to achieve a consensus for launching a new round of negotiations. However, there was no consensus. The opposition was mainly from India and the LMG. As the Ministerial Conference drew to a close, India was the only country opposed to the launching of a new round but which gave in ultimately. The Doha Ministerial Declaration (DMD) was adopted on 14 of November 2001. Apart from the Doha Declaration proper, there were separate decisions on Implementation Issues and Trade Related Intellectual Property (TRIPS) and Public Health.

The Doha Ministerial Declaration gave the members a Work Programme. The Work Programme can be divided into the four categories:

1. Issues pertaining to the developing countries;

2. Inbuilt mandates for new round of negotiations (agriculture and services) and review (TRIPS);

3. New round of negotiations on Non-agricultural Market Access (NAMA);

4. New issues like the Singapore Issues and Trade and Environment

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1 The “Like Minded Group” is an informal grouping of developing countries which have similar views on various global issues.

1.1 Issues Pertaining to the Developing Countries

The DMD has eleven paragraphs which refer to ‘development’. Para 2 of the DMD declared that there was a need to place the concerns of the developing countries at the heart of the Work Programme as majority of the members of WTO are developing countries.

The implementation related issues which was one of the most important concerns of the developing countries were taken into account in the DMD and a separate decision on implementation related issues and concerns was adopted.

The DMD mandated that the issues related to small economies shall be examined under the auspices of the General Council with an objective of achieving their fuller integration into the multilateral trading system.

There was also a mandate for the establishment of Working Groups on Trade, Debt and Finance, and Trade and Transfer of Technology under the auspices of the General Council. The objective of the Working Group on Trade, Debt and Finance was to examine the relationship between trade, debt and finance and find ways to solve the problem of external indebtedness of the developing and least developed countries within the framework of the multilateral trading system.

The Working Group on Trade and Transfer of Technology was mandated to explore the relationship between trade and transfer of technology and to take steps to enhance the flow of technology to the developing countries.

The DMD also recognised that the integration of least developed countries (LDCs) into the multilateral trading system required greater market access, diversification of production for exports and technical assistance and capacity building. It was asserted that the members are committed to duty-free quota free access to the products of the LDCs.
It was decided that all the provisions relating to Special and Differential Treatment (S&DT) will be reviewed as a part of the Work Programme set out in the Decision on Implementation-Related Issues and Concerns to make them more precise, effective and operational.

1.2 Inbuilt Mandates

Negotiations on agriculture had begun in 2000 pursuant to the inbuilt mandate for new round of negotiations. The DMD therefore decided that it would continue the negotiation process which had begun in 2000. With reference to AoA the DMD aimed at improvements in market access, substantial reduction in trade-distorting domestic support and, reductions – with a view to phasing out – all forms of export subsidies. There was also an acknowledgement of non-trade concerns and it was decided that non-trade concerns would be taken into account during the negotiations. The mandate on Services sought to build upon the negotiations started in 2000 with a view to promote the economic growth of all trading partners, in particular the development of developing and least developed countries.

The Declaration on TRIPS and Public Health made it clear that the Agreement should not prevent members from taking measures to protect public health. Apart from the separate declaration for TRIPS and Public Health the DMD also mandated the TRIPS Council, which was reviewing the TRIPS Agreement, to examine the relationship between the TRIPS and the Convention on Biological Diversity (CBD), protection of traditional knowledge and folklore, and any other new developments raised by members.

1.3 New Round of Negotiations on NAMA

The mandate for NAMA, dealt with in Para 16 of the DMD said that the negotiations would be aimed at reduction or as appropriate, elimination, of tariffs including tariff peaks, high tariffs, tariff escalation and non-tariff barriers, particularly on the products of interest to the developing countries. It was also mentioned that product coverage would be comprehensive without a priori
exclusion. The concerns of developing countries were recognised by way of enumerating that the negotiations would take into consideration the special needs and interests of the developing countries recognizing the ‘less than full reciprocity’ (LTFR) principle in reduction commitments.

1.4 New Issues

The DMD said that the Working Groups on the Singapore Issues would continue the study, focusing on scope, definition, core principles, transparency issues, non-discrimination principle and the like. The DMD stated that negotiation on these issues would begin after the Fifth Ministerial on the basis of an explicit consensus on the modalities of negotiations.

On the issue of Trade and Environment, the DMD agreed to launch negotiations with a view to enhance mutual supportiveness of trade and environment. According to the DMD, the scope of negotiations would be to examine the relationship between WTO rules and trade obligations set out in multilateral environment agreements (MEAs) and the reduction or elimination of tariff and non-tariff barriers to environmental goods and services. The Committee on Trade and Environment was instructed to pay particular attention to the effect of environmental measures on market access, particularly in relation to developing and least developed countries, including the labeling requirement for environment purposes.

1.5 Development Agenda – Facts

The developing countries, as a part of the reform process, had mainly wanted greater market access in agricultural and industrial goods, reduction and elimination of agricultural subsidies by the developed countries, implementation of S&DT provisions and balancing the right of the developing countries with regard to TRIPS and Public Health. The developing countries were also very particular that they did not want a new round to begin before the resolution of old issues. It appears at the outset that the DMD has taken cognizance of the problems of the developing countries because of the numerous references to their concerns. The DMD states that
it places the problems of the developing countries at the heart of the Work Programme. There are separate decisions for implementation-related issues and TRIPS and Public Health. But what the developing countries were not able to achieve during the Doha Ministerial is of more consequence than what they were able to achieve.

It is clear from the highlights of the Doha Ministerial Declaration as to which of the problems of the developing countries were taken into consideration and what solutions were presented. Benefits arising from market access are to be realised only at the completion of the Round which is part of the single undertaking and hence are subject to uncertainties. The stand of the developing countries that all the outstanding implementation issues had to be resolved before launching the new round was ignored and a new round of negotiations was launched. The decisions over the implementation concerns has less to do with market access and more to do with giving reliefs to the developing countries in case of non-compliance of provisions. As far as the Declaration on TRIPS and Public Health was concerned it was a hard fought battle with the pharmaceutical multinational companies (MNCs) and though the developing countries were successful in getting a declaration affirming their rights with regard to public health, there have been attempts to deny these rights. Though Services had a seemingly simple mandate, the idea of developed countries was to get the developing countries to make broader and deeper commitments. The Singapore Issues were included in the Ministerial Declaration despite strong opposition from the developing countries. All in all, the Doha ‘Development’ Agenda, as it has been named, was a strategy to get the developing countries to say ‘yes’ to a new round of negotiations.

When the Doha Round of negotiations began in early 2002, there was lot confusion over the mandate. It was considered as a please-all agenda and an arrangement to make the negotiations get going. There were various interpretations of the mandate. This confusion came to fore when the negotiations began. This was reflected in the contrasting positions between the developing and developed countries. The

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3 Bhaumik, n.2, p.105.
4 Ibid. p. 111.
developed countries, as always, wanted greater market access for their products in the developing countries but the developing countries were keen on translating the mandate for development into market access concessions. This divergence led to the collapse of the Cancun Ministerial held in 2003. The Cancun Ministerial was again marred by the non-transparent negotiating process and it is opined that this was the primary cause of the collapse of the Ministerial. The WTO has a history of Green Room meetings but it was felt that non-transparency during the Cancun Ministerial was ‘unprecedented’. The draft on modalities for agriculture and NAMA were drawn up by the chairs who were ‘appointed’ and not by the members who were elected representatives of the people. This blatantly undemocratic procedure, combined with the divergence over Singapore Issues led to the collapse of Cancun Ministerial.

Even after several months after the collapse of the Cancun Ministerial, talks did not resume. While the US and a few other countries felt that the Draft Cancun Ministerial Text could be used as a starting point to resume the negotiations, the developing countries especially the G-20 disagreed. However, a framework for negotiations on modalities, now known as the ‘July Framework’, was reached in July 2004. The July Framework consisted of a general text followed by annexes on each of the issue. Three of the four Singapore Issues were dropped from the Doha Work Programme and only trade facilitation was retained for negotiations. The proposals of the July Framework on NAMA and Agriculture are discussed in the ensuing sections.

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6 The G 20 is a grouping of developing countries. Its members are Argentina, Bolivia, Plurinational State of Brazil, Chile, China, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Tanzania, Thailand, Uruguay, Venezuela, and Bolivarian Republic of Zimbabwe.
2. Modalities for Non-Agricultural Market Access

With regard to NAMA the developed countries were of the view that their tariff levels were already low, therefore the onus for tariff reduction was on the developing countries. The developing countries on the other hand, were of the opinion that the Doha mandate had recognised their special position and hence they should be given flexibility in tariff reductions.

The July Framework adopted the Derbez Text (the Derbez Text was the Draft Ministerial Declaration of Cancun Ministerial Conference, named after the Chairperson of the Conference) on NAMA, as the basis for negotiations, inspite of objections by the developing countries. After the Hong Kong Ministerial of 2005 it was decided that the NAMA negotiations would be based on the DMD, Cancun Ministerial Draft and the Hong Kong Ministerial Declaration. This has resulted in a decision to reduce the tariffs from the bound levels and increase the coverage of binding commitments by binding the hitherto unbound levels. A formula based approach has been agreed for the tariff reduction. The Hong Kong Ministerial favoured the adoption of the Swiss formula for the reduction of tariffs.

2.1 Implications of NAMA Modalities for the Developing Countries

Even though the Uruguay Round had resulted in binding tariff commitments for the developing countries, they had some amount of flexibility with respect to tariff reduction. They could chose the number of products to be bound and the level at which they would be bound. The developing countries had bound their tariffs at a much higher rate than the applied tariffs so that they could increase their tariffs when required without having to compensate for the raised tariffs. This flexibility is much needed by the developing countries in view of their developmental needs. The fact that the developing countries agreed to bind their tariffs for 73% of their product lines during Uruguay Round, was a huge concession advanced by the developing countries. To ask them to further reduce their tariff levels would be unfair. The developed countries had not adopted the formula approach for a long time and the US had refused to adopt this approach as it would have leveled its high tariffs. Now,
the developed countries want the developing countries to reduce their tariffs according to the formula. The formula approach will rob the developing countries of the much needed flexibility as it advocates across-the-board tariff reduction.

The Doha Round of Negotiations will also result in the members increasing the coverage of bound tariffs and reduce the existing levels of tariffs. This is a clear violation of the special and differential treatment accorded to the developing countries.

It has been decided that the Swiss formula will be adopted for the reduction of tariffs. Under the Swiss formula approach a higher tariff will attract higher rates of reduction. The developing countries have higher rates of tariff than the developed countries and the Swiss formula will result in higher cuts for developing countries. This will be contrary to the less than fuller reciprocity clause that has been guaranteed by Article XXVIII *bis of* the General Agreement on Tariffs and Trade 1994 (GATT 1994) and reiterated in Para 50 of the DMD.

The Swiss formula which has been adopted for the tariff reduction is dependent on a co-efficient to be selected by the members. The formula for tariff reduction is such that a lower co-efficient will result in higher tariff reduction. There will be two different coefficients for tariff reductions, one for the developed countries and other for the developing countries. If the principle of ‘less than full reciprocity’ is adhered to in tariff reductions it is essential that the coefficient for developing countries be much higher than that of developed countries, in other words the difference between the two coefficients must be very large.7 The NAMA draft modalities Text of December 2008 recommends a coefficient of 8 for the developed countries and coefficients of 20, 22 and 25 for the developing countries. The negotiations over NAMA have been stalled over the question of coefficients. The average tariffs of developing countries are close to 30% and even the highest co-efficient (as proposed by 2008 NAMA Modalities Text) of 25 would result in a cutting down of average

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tariffs of developing countries to 13.6% which will be a reduction of 54.6% whereas
developed countries whose average tariffs are in the range of 5% will be reduced to
3.4% - a reduction of 32%. This would be violation of the principle of S&DT and
the ‘less than full reciprocity’ clause that has been accorded to the developing
countries through Para 2 and Para 16 of DMD, Para 8 of Annex B of the July
Framework and Paras 14 and 15 of the Hong Kong Ministerial Declaration. In this
direction the developing countries are of the view that the coefficient for the
developing countries should atleast be 35 (it is opined that even this would result in
drastic reduction of tariffs and if tariff reduction should reflect the LTFR principle
the co-efficient for developing countries should be in the range of 160 which seems
to be a pipe dream given the realities of world politics) to which the developed
countries are not agreeing. In fact NAMA was not at all supposed to be in the
negotiating agenda as the GATT 1994 had not mandated a new round of
negotiations on NAMA. A new round of negotiation has been launched inspite of
opposition by the developing countries. To top it, the coefficients have been decided
in a way that the reductions for the developing countries are higher than the
developed countries. This is highly inequitable.

There is also the question of binding the hitherto unbound tariffs to which the
developing countries have agreed. Leaving certain tariff lines unbound had given the
developing countries flexibility to raise tariffs whenever the need arose. But now by
agreeing to bind the unbound tariffs, the developing countries will lose policy space
required to protect the infant and vulnerable industries and thereby give away the
chance to build a strong industrial base. The Indian industry leaders have pointed out
that the small and medium enterprises (SMEs) will be the ones who will be hard hit
by binding unbound tariffs as most of the unbound tariffs relate to products of
SMEs. The NAMA negotiations have been stalled over the differences between the
developed and developing countries regarding the coefficient. The developed
countries have been blaming the developing countries, especially India and Brazil,
for blocking the progress on NAMA.

It has been argued that formula based tariff reductions will be equitable as it will
result in harmonization of tariffs. But this will ensure only ‘equity of process’ as
against ‘equity of outcome’, as Amrita Narlikar says.\(^8\) Any further reduction of tariffs by the developing countries will result in deindustrialization.

3. Modalities for Agriculture

By the time of the Doha Ministerial the negotiations on agriculture were already underway and were in their second phase. The DMD’s mandate on agriculture was full of ambiguities and had led to different interpretations. For instance, the DMD had mandated the reduction of export subsidies but did not state what those export subsidies were. The US interpreted it as export subsidy only, but the European Communities (EC) was of the opinion that this should include all forms of export support. The developing countries were of the opinion that this provision also applied to export competition elements like export credits, food aid, state trading enterprises etc. The DMD had mandated the reduction and eventual ‘phasing out’ of export subsidies, but the EC did not accept the ‘phasing out’ of subsidies. Similarly, regarding domestic support, the DMD was not clear whether the reduction of trade-distorting subsidy meant only the Amber Box subsidies or all three boxes. The developed countries were of the opinion that it included only Amber Box subsidies whereas the developing countries contended that the Blue Box and Green Box subsidies also had a trade-distorting effect, hence the mandate was for the reduction of Blue and Green Box subsidies as well. The recognition of non-trade concerns by the DMD opened up another controversy. The EC averred that non-trade concerns included issues like trade and environment, animal welfare and food safety; the developing countries opined that non-trade concerns meant only food security and rural development. This led to a debate about the scope of non-trade concerns.

3.1 Agriculture in the “July Framework”

The July Framework’s Annex A had recognized that Para 13 of DMD would be the starting point for negotiations and specifically mentioned in Para 2 that:

“The final balance will be found only at the conclusion of these subsequent negotiations and within the Single Undertaking. To achieve this balance, the modalities to be developed will need to incorporate operationally effective and meaningful provisions for special and differential treatment for developing country Members. Agriculture is of critical importance to the economic development of developing country Members and they must be able to pursue agricultural policies that are supportive of their development goals, poverty reduction strategies, food security and livelihood concerns. Non-trade concerns, as referred to in Paragraph 13 of the Doha Declaration, will be taken into account”.

The July Framework recognised that the developing countries had to be given special and differential treatment in the reduction of domestic supports by way of longer implementation periods and lower reduction coefficients for all forms of trade-distorting domestic support. The Framework also stipulated the reduction of Final Bound Aggregate Measurement of Support (AMS) and the *de minimis* levels and the capping the Blue Box subsidies. The Framework adopted a tiered formula for the reduction of overall trade-distorting domestic support and stipulated that members having higher levels of trade-distorting domestic support will have to make greater reductions in order to achieve harmonization of results. The Framework stipulated that the overall trade-distorting support shall not exceed 80% of the sum of the final bound AMS plus permitted *de minimis* and the Blue Box. The cap on Blue Box subsidies was placed at 5% of the member’s average total value of production during a historical period, to be established during the negotiations. The July Framework was an improvement over the DMD for the fact that it said, “*Green Box criteria will be reviewed and clarified with a view to ensuring that Green Box measures have no, or at most minimal, trade-distorting effects or effects on production.*”

Regarding the export subsidies the Framework continued the mandate of the DMD and stipulated that an end period will be established for the reduction and phasing

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out of the export subsidies, export credits and guarantees or insurance programmes with a repayment period of more than 180 days. The July Framework adopted a tiered formula for tariff reductions as well, with deeper cuts for higher tariffs but made exceptions by allowing members to designate an appropriate number of tariff lines as ‘sensitive products’ to be decided during negotiations.

With regard to S&DT, the Framework clearly mentioned that keeping in mind the needs of developing countries with regard to food security and rural employment, S&DT will be an integral part of all elements of negotiations like tariff reduction formula, number and treatment of sensitive products, expansion of tariff rate quotas and implementation period. The Framework also agreed that developing country members will have flexibility to designate an appropriate number of products as ‘Special Products’ based on criteria of food security and livelihood and these products will be eligible for flexible treatment. It was also agreed that that a Special Safeguard Mechanism (SSM) for the developing countries would be devised. It was mandated that the long standing commitment of fullest liberalization of tropical products and the products which are particularly important to the diversification from production of illicit narcotic crops, should be operationalised.

3.2 Agriculture in the Hong Kong Ministerial Declaration

The Hong Kong Ministerial Declaration further developed the framework for modalities and established three bands for the reduction of overall trade-distorting subsidies (OTDS) and Final Bound AMS with higher linear cuts for higher bands. The Declaration stipulated a deadline of 2013 for the elimination of export subsidies and had an element of frontloading as it stipulated that the substantial reduction will be achieved in the first half of the implementation period. Four bands were adopted for tariff reduction. The declaration reiterated that the developing countries shall have recourse to SSM based on price triggers and import quantity.
The revised draft modalities of 6 December, 2008 are the latest position on modalities. According to these modalities the base OTDS would be reduced according to the following formula:

i. For base OTDS greater than $60 billion the reduction shall be 80%. The EC with an OTDS of €110.3 billion falls into this category and through this formula the ceiling will be reduced to €22.06 billion.

ii. The base OTDS in the range of $10 billion - $60 billion the cut will be 70%. The US and Japan fall in this category. The US, whose base OTDS has been estimated as $48.2 billion will have a ceiling of $14.46 billion whereas Japan whose OTDS exceeds its average value of production by 40% will have to make 75% reduction.

iii. For base OTDS in the range of $10 billion the reduction will have to be 55%.

**Final Bound AMS**

i. Countries with AMS of $40 billion and above would make a cut of 70%. EC falls in this category and its current ceiling of €67.16 billion will come down to €20.1 billion.

ii. Countries with a final bound AMS in the range of $15 billion-$40 billion will have to reduce it by 60%. The US and Japan fall in this category and the US whose current ceiling is $19.1 billion will be reducing it to $7.6 billion.

iii. For the lowest tier of $15 billion the cut will be 45%.

A new category has been introduced for the Blue Box which is based on payments that do not require production but are based on a fixed amount of production in the past. The type of Blue Box under which a member wants to provide support will have to be chosen and no changes can be made later on.
Regarding the Green Box subsidies it has been suggested that the “policies and services related to farmer settlement, land reform programmes, rural development and rural livelihood security in developing country Members”, would be exempted from reduction commitments. It has also been proposed that the acquisition of stocks of foodstuffs by developing country members with the objective of supporting low income or resource-poor producers, shall not be required to be included in the calculation of AMS. Along with this, it has been proposed that the difference between acquisition price and administered price in relation to the public stock holding for the purpose of meeting food requirements of rural and urban poor will not have to be accounted for in the AMS. It also says that trade-distorting subsidies (TDS) for cotton would have a higher cut than rest of the sector according to the formula proposed by ‘Cotton Four’.

In the case of tariff reduction a four-tiered structure has been maintained and developed further. According to the revised draft the tariffs will be further reduced from the bound rate. For developing countries, the reduction will be 2/3 of the cut for developed countries. The revised draft mentions that developed countries could have 4% of products as sensitive products and the developing countries could have 1/3 more, designated as sensitive products. For these products the deviation can be one-third, one-half or two-thirds of the reduction that would otherwise have been required by the tiered reduction formula.

It has been proposed that developing countries could designate 12% of the products as ‘special products’, based on the criteria of food security and livelihood. With regard to special products, up to 5% of the products could be completely exempted from tariff cuts provided the average cut is 11%.

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11 Ibid.
12 ‘Cotton Four’ is a grouping of four African countries of Benin, Burkina Faso, Chad and Mali, who have submitted a proposal which deals with modalities for reduction of domestic support for cotton.
The draft suggests that the developed countries should reduce the number of tariff lines eligible for Special Agricultural Safeguard (SSG) to 1% of the tariff lines, immediately, and the tariff not to exceed the pre-Doha level bound tariffs and that it should be eliminated completely after seven years. A separate text has been issued for SSM as it is an area of controversy.

3.3 Implications of the Agricultural Modalities for Developing Countries

Agricultural subsidies is one of the most controversial issues and the subsidies provided by the developed countries, as discussed earlier, has had an adverse impact on the small farmers of the developing countries. Therefore the developing countries had asked for the elimination of trade-distorting subsidies during the Uruguay Round itself. The Uruguay Round did introduce disciplines for agricultural subsidies but the creation of three different boxes for subsidies gave a chance to the developed countries to shift several trade-distorting subsidies to other boxes and thereby make full use of their allowed limits in the Amber Box. This actually resulted in an increase in the amount of subsidies. The developing countries became aware of such malpractices and therefore demanded that there was a need to eliminate not just the Amber Box but also the Blue and Green Boxes which are equally trade-distorting in nature. However, the Doha Declaration’s mandate for reduction and phasing out of overall trade-distorting subsidies included only the Amber and Blue Box subsidies.

It was found that the developed countries would be able to retain their subsidies even after making the cuts proposed in the draft modalities. This has been demonstrated by J Berthelot who points out the fact that the US and EC have not notified or under-notified some of their product specific AMS as a result of which their allowed OTDS in the base period have been jacked up. An artificial increase of their allowed OTDS means the cuts will result in higher level of allowed OTDS than they are actually supposed to be.13

The expansion of the scope of the Blue Box before capping it is improper. This will result in retaining trade-distorting subsidies. According to AoA the trade-distorting subsidies which actually fall into the Amber Box, can be categorized as Blue Box if the subsidies require the farmers to limit production. But the new category that is being proposed does not require production but is based on a fixed amount of production in the past. The draft modalities propose that the members can shift the Amber Box subsidies or introduce a subsidy in the newly created Blue Box, if it meets the criteria. Therefore the introduction of a new category of Blue Box actually allows the members to transfer their trade-distorting subsidies into the new category and thereby retain them. The whole exercise is stage-managed to give leeway to the developed countries. The US intends to include its counter cyclical payments in the new category. The counter cyclical payments are the subsidies that are paid to producers when commodity prices fall below a particular level. According to the US, the counter cyclical payments are based on current prices but not related to current production levels and hence they belong to a new category of Blue Box. It has been found that the price targets for counter cyclical payments are set so high that the payments have become ‘perpetual’ rather than cyclical. 

Amendments proposed to Annex 2 of the AoA to exempt the subsidies provided for public stock holding for food security purposes and supporting the low income and resource-poor farmers is to divert the attention from the real issue of reduction of Green Box subsidies. It has been found that the Green Box subsidies like investment aid have the effect of increasing productivity.

The interests of the developed countries have been taken care of by allowing them to mark 4% of the products as sensitive products and allowing them to have higher tariffs on these products. The developing countries are of the opinion that since there is no criteria for the selection of these products, products of interest to them may be designated as ‘sensitive’ thereby making market access more difficult.

14 Oxfam, Oxfam Briefing Paper, Little Blue Lie; Harmful Subsidies Need to be Reduced, Not Redefined, , 21 July, 2005, p.3.
15 Third World Network Briefing Paper No. 41, Marita Wiggerthale, Survey Shows EU’s Green Box Subsidies are Trade-Distorting, October 2007.
For ‘Special Products’, a single tier formula has been suggested. According to the single tier formula, out of 12% of product lines categorized as special products, up to 5% may have no cut as long as the overall average of 11% is met. This implies that the developing countries will have to compensate for not reducing tariffs on certain percentage of products by making higher cuts for rest of the products in order to reach an average target of 11% reduction. The developing countries are not happy with this proposition as they had wanted 50% of the special products to be exempted from tariff cuts and a tariff cut of 5-10% for rest of the products.\textsuperscript{16} The developing countries are also not satisfied with the numbers proposed for special products. Besides, there is a long list of indicators specified in ‘Annex F’ for the selection of special products. Some of these indicators are quantitative. For instance, Para 6 of Annex F says:

“A significant proportion of the producers of the product, in a particular region or at the national level, are low income, resource poor, or subsistence farmers, including disadvantaged or vulnerable communities and women or a significant proportion of the domestic production of the product is produced in disadvantaged regions and areas including, inter alia, drought prone or hilly or mountainous regions”.

The term ‘significant proportion’ has been used in almost all the indicators thereby assigning quantitative criteria for designation of special products. The next step would be to convert ‘significant proportion’ into a number. Even if a number is not assigned the developing countries will be at a disadvantage as ‘significant proportion’ can be interpreted variously in case of a dispute. The developing countries do not want quantitative criteria for special products as there are several indicators in the WTO agreements which are based on qualitative criteria. For instance the criteria for determination of injury in cases of dumping and for invoking SSG are not quantitative.

\textsuperscript{16} B L Das, n.5, p.27.
The tariff reduction process is also unfair to the developing countries as they will be required to make an average cut of 36% which is more than the 24% average reduction that they had to make during the Uruguay Round.

The SSM is an issue on which there is a lot of controversy. It may be recalled here that the Special Safeguard (Article 5 of AoA) is available only to developed countries as they had undertaken tariffication. The developing countries also wanted a similar mechanism in times of emergency. This is being sought to be addressed by way of SSM. The controversy is over the ‘triggers’ (volume based and price based) for SSM and the question of exceeding the pre-Doha level of tariff while imposing SSM.

Several conditions have been imposed on the use of SSM. Para 137 says “Developing country Members shall not normally take recourse to the price-based SSM where the volume of imports of the products concerned in the current year is manifestly declining, or is at a manifestly negligible level incapable of undermining the domestic price level.” There are also limits on the time period for which the volume based SSM can be in place and the periodicity of SSM (Para 140). The present draft stipulates that the SSM will be subject to the limitation that pre-Doha bound tariff shall be the upper limit for tariff imposition. The SSG does not have any such conditions. The developing countries had wanted a SSM to protect their farmers from import surges as the general safeguard would not have served the purpose. But it has been felt that the conditions imposed upon SSM are so onerous that it does not serve the purpose.

Overall the developing countries will be getting a bad deal if the present draft is going to be the basis for negotiations. If these proposals become rules, the position of developing countries with regard to agriculture will be worse than the Uruguay Round.
4. Modalities for Services

General Agreement on Trade in Services (GATS) had a built in mandate for market access negotiations under Article XIX and these negotiations began in February 2000. The guidelines and procedures formulated during these negotiations were adopted during the Doha Ministerial as the basis for further negotiations. The DMD had a very simple mandate for the Services negotiations. Para 15 of DMD just mentions that negotiations will be undertaken with a view to enhance the economic growth of all partners and the development of developing and least developed countries.

4.1 Services in the July Framework

The July Framework emphasized that the Services negotiations would aim at achieving progressively higher levels of liberalization with “no prior exclusion of any sector or mode of supply”, with special attention to sectors and modes of supply of interest to the developing countries especially the mode 4 of service supply. The Framework also urges special attention to be given to the least developed countries. It also says that technical assistance be given to the developing country members in order to enable them to participate effectively in service negotiations.

4.2 Services in the Hong Kong Ministerial Declaration

The Hong Kong Ministerial Declaration reiterated the above facts and added that negotiations would achieve higher levels of liberalization with appropriate flexibilities for the developing countries as provided in Article XIX of GATS. The Declaration agreed to the plurilateral approach to the negotiations apart from the bilateral approach to present request and offers. Under the plurilateral approach a group of members may present collective request to other members.

\[17\] Emphasis added.
The Declaration enumerates certain objectives to be kept in mind in making new and improved commitments. Some of the objectives are as follows:

- Removal of existing requirements of commercial presence in Mode 1.
- Enhanced levels of foreign equity participation, removal or substantial reduction of economic needs test and commitment allowing greater flexibility on types of legal entity permitted.
- New or improved commitments on the movement of contractual service providers and independent professionals delinked from the commercial presence and on movement of intra corporate transferees and business visitors.
- Removal of economic needs test.

### 4.3 Implications of Services Modalities for Developing Countries

Though the service negotiations are seemingly simple and appear to take care of the interests of the developing countries more than any other agreement the negotiations are aimed at getting the developing countries to make broader, deeper and irreversible commitments in sectors of importance to the developed countries. As it can be discerned from Annex C of the Hong Kong Ministerial Declaration, the guidelines for negotiations suggest that commitments in Mode 3 of service supply should ease restriction on foreign equity participation, remove economic needs test and allow flexibilities regarding the type of legal entities to be formed. As already discussed in the chapter on GATS, the liberalization commitment made in the Service sector has a lot of implications not only on the economy of a country but also on the welfare of the people, as the scope of Services is very wide. Hitherto, GATS has allowed the developing countries the flexibility to undertake liberalization commitments according to its developmental needs. But the new round of negotiations are trying to take away this flexibility not overtly, but covertly as the developing countries are being pressurized behind the scenes to open up sectors of interest to them. The developed countries in nexus with the trans-national
corporations (TNCs) have been pressurizing the developing countries to further open their Service sectors.

In the plurilateral approach for request and offers, a group of developed countries have put forward their requests to developing countries for further liberalization of the first three modes of service supply, especially Mode 3. They are asking for removal of restrictions on the establishment right, share of ownership and type of legal entity.  

The developed countries want the Service negotiations to be placed on par with NAMA and Agriculture and hence want a Services’ Text to be formulated and placed along with the NAMA and Agriculture Text. The developing countries are of the contention that there is no requirement for any change in Annex C of the Hong Kong Declaration and that Services cannot be placed on equal footing with Agriculture and NAMA as Agriculture is the first priority in Doha Round. The US, EC and Japan want services to be considered as one of the market access pillars of the Doha Round of Negotiations. They also want plurilateral approach to negotiations to be placed on par with the bilateral approach. The developing countries are opposed to both these propositions. It has come to light that the United States Trade Representative (USTR) had sent personal letters to the Trade Ministers of developing countries and asked them to make better offers in areas of interest to the US. The USTR also explicitly mentioned in the letter that people who have the power to take decisions about particular sectors should be sent to Geneva. It was also made clear in the letter that US was making concessions in Agriculture contingent on the improved offers made by the developing countries in Services. It has been revealed by a developing country which had received one such letter that

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the tone of the letter was not in the language of trade diplomacy but offensive and rude. The USTR on one occasion remarked that: "The Doha Round is coming down to the question of what contribution will the emerging markets, the advanced developing countries, be prepared to make to support the global trading system" elaborating further, the USTR said, "Here, I am talking about India and Brazil and South Africa, and others like China, Argentina and Indonesia."  

Of late there have been talks about the formation of the International Agreement on Services (ISA) by ‘Really Good Friends of Services’ whose members are Australia, Canada, Chile, Colombia, Costa Rica, the European Union, Hong Kong, Israel, Japan, Mexico, New Zealand, Norway, Pakistan, Peru, Singapore, South Korea, Switzerland, Taiwan and the US. The developed countries want the emerging economies of Brazil, India, China and South Africa to further open up their Service sector. The developed countries who are the chief proponents of such an agreement have visualized it as a ‘conditional plurilateral agreement’ to be lodged in the WTO, which others can accede to, on certain conditions. Such agreements are against the rules of WTO as plurilateral agreements are not permitted unless explicit provision has been made in the Marrakesh Protocol and because any concession provided to one member has to be extended to all the members unconditionally as per the most favoured nation (MFN) rule. But the proposed ISA is a conditional plurilateral agreement. There is an opinion that the ISA is a ‘bluff’ intended to create panic among the emerging economies about the loss of markets with regard to trading partners and other suppliers, and make them join the agreement.  

The proposed agreement involves heavy liberalization of the service sector, and if the developing countries join this agreement they will end up making commitments which might prove costly to them.

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21 Ibid.

4.4 Negotiations on Domestic Regulation Disciplines

More important than the negotiations for market access, are the negotiations on domestic regulations. The disciplines on domestic regulations for Accounting Services are ready for implementation after the conclusion of Doha Round. The negotiations for developing general disciplines for all services are underway and are scheduled to be implemented after the conclusion of Doha Round. In a briefing paper issued by the Trade in Services Division of the WTO on background and current state of play of the domestic regulation, it has been stated that the effects of domestic regulations are more pronounced in the case of Services even if adopted solely for public purpose. At the same time it acknowledges that regulation in Services is essential in view of the special nature of services transactions. The relevant portions of the paper are reproduced here;

“Specific characteristics of services markets make the use of regulation particularly important. Services are intangible and their supply often requires an interaction between the service supplier and consumer. This implies that consumers frequently cannot appreciate the quality of the service until they have consumed it. Through regulation, governments seek to avoid that service suppliers exploit these information asymmetries. For instance, regulation may impose information requirements to inform consumers in advance, or impose qualification requirements for professionals or licensing requirements that seek to ensure the competence of the service supplier and thus the quality of the services provided.

A government may also be convinced that certain services, even if provided by private commercial entities, like education or health services, need to be available to all citizens at equitable conditions, no matter their location or income. Domestic regulation may, in some cases, be used to further certain policy objectives such as job creation in disadvantaged regions or to promote the access of disadvantaged persons to the labour market. In other cases, governments adopt regulation to tackle fraud and tax evasion or prevent service suppliers from indulging in anti-competitive practices to exploit a dominant market position. The provision of certain services may also create negative externalities the costs of which are insufficiently borne
by the service suppliers themselves. For instance, heavy road transport or intensive tourism could strongly affect the environment. Furthermore, as abundantly shown by the recent financial crisis, excessive risk-taking by financial institutions can undermine the financial stability of countries and create macroeconomic tensions around the world.

Since many services contracts involve customized products (medical intervention, legal advice, financial products etc.), the need for regulatory protection is particularly evident.”

This makes it amply clear that regulation of services is essential from the developmental perspective. The paper, however, contends that benefits derived from the commitments should not be curtailed by domestic regulations that are most of the times formulated in response to specific problem that has arisen in the course of the provision of a particular service, often without forethought about its effect on the efficiency of the service (Para 8). The paper highlights the argument that even though the GATS aims at the reduction of barriers to trade in services by disciplining the restrictions on market access and by way of ensuring national treatment, there are certain domestic regulations that are out of the schedule of commitments of the members and tend to act as unnecessary barrier to foreign service providers and hence should be disciplined.

The regulatory principles that have been favoured in the negotiations are:

- Transparency – information on regulatory requirements and procedures shall be available to all participants;
- Impartiality and objectivity – in the decision made by competent authority which should be devoid of commercial interests or political influence;
- Relevance of foreign qualifications and experience – acceptance of qualification and experience obtained abroad;

23 World Trade Organization, Trade in Services Division, Discipline on Domestic Regulation Pursuant to GATS Article VI.4: Background and Current State of Play, June 2011. Emphasis in original.
• Legal certainty – regarding the assessment criteria for applicants;

• International standards – to facilitate the qualifications obtained abroad;

• Necessity tests – to assess whether legitimate objective chosen by a member could have been achieved by methods which are less trade-restrictive.

The disciplining of domestic regulation is a major restriction on the policy space of developing countries. Though the GATS and the subsequent documents regarding disciplines on domestic regulation accept the importance of domestic regulation, there have been attempts to impose restrictions on the capacity of governments to formulate domestic regulations for public purpose.

The March 2009 Draft Disciplines on Domestic Regulation recognizing the right of the developing countries to regulate says that:

“Members recognize the right to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right”.

Inspite of this recognition of the necessity for domestic regulation, several restrictions are being sought to be imposed on domestic regulation. Though the Draft Disciplines on Domestic Regulation says that the Disciplines should not be construed to prescribe or impose particular regulatory approaches or any particular regulatory provisions on domestic regulation, they definitely do so.

The most controversial of the disciplines on domestic regulations is the ‘necessity tests’ which aim to assess whether a particular domestic regulation was absolutely necessary or there were other less restrictive options available to achieve the desired objective. This is purely a subjective issue and what is deemed to be necessary from the point of a member imposing the particular regulation, could be definitely be interpreted as unnecessary by the service supplier as any regulation is considered to
be burdensome by the proponents of free trade. This could create problems if a dispute arises. The provision for a necessity test itself will be unfair to the developing countries. Though the March 2009 draft on domestic regulation does not explicitly mention necessity tests, it has several provisions that amount to necessity tests.24

The March 2009 draft proposes several provisions to discipline domestic regulations that will severely curtail the rights of the members to regulate the services if they come into being. The following are some of the disciplines that could restrict the scope of domestic regulation:

- A requirement that measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards shall be pre-established, based on objective and transparent criteria and relevant to the supply of the services to which they apply.25

- Each Member shall ensure that licensing procedure, including application procedures and, where applicable, renewal procedures, are as simple as possible and do not in themselves constitute a restriction on the supply of services.26

- An applicant shall, in principle, not be required to approach more than one competent authority in connection with an application for a license.27

Criteria like ‘relevance’, ‘necessity’ and ‘simplicity’ are highly subjective and are situation specific. They might be relevant or necessary for a country in a particular stage of development. For instance, a regulation that health care should be provided to the economically weaker section at a substantially low cost is relevant and

26 Ibid., Para 17, emphasis added.
27 Ibid., Para 19.
necessary from the point of the poor but not from the angle of profitability of a service provider. It might be contested as an unnecessary restriction.

Members will have to make changes in their administrative system and institute mechanisms for the implementation of the disciplines on domestic regulations. Provisions pertaining to transparency requirements like publication of measures relating to licensing requirements, qualification requirements, procedures and technical standards, establishment of mechanisms to respond to the enquiries of the service providers and so on will prove to be a strain on the financial resources of the developing countries.

The domestic regulations of several nations taken for public policy purpose could come under the scanner if these disciplines are implemented.

The status of service negotiations shows that the developed countries are trying to extract more out of the negotiations. Though the Doha mandate for services clearly states that the negotiations shall be conducted with a view of promoting the development of developing and least developing countries, the actual negotiations are moving in an opposite direction. This is clear from the pressure exerted behind the scenes, by the developed countries to manipulate and coerce the developing countries to further open their services sector. The developed countries are aware that broader and deeper commitments alone will not suffice, as regulations may be imposed on the service supplier in order to achieve a balance between the developmental goals and liberalization. Hence the process of disciplining the domestic regulations is underway. The developing countries are resisting these moves but it needs to be seen if they are going to be successful.

5. Review of Trade Related Intellectual Property Rights

Of all the mandates of the DMD for TRIPS, the Declaration on TRIPS and Public Health and the review of Article 27.3(b) are important for the developing countries.
5.1 Declaration on TRIPS and Public Health

Owing to persistent efforts and pressure from the developing countries a separate Declaration was issued for TRIPS and Public Health. The declaration accepted that:

“TRIPS Agreement does not and should not prevent Members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members’ right to protect public health and, in particular, to promote access to medicines for all”.

In this direction it recognised that members should have the following rights:

- Each Member has the right to grant compulsory licences and the freedom to determine the grounds upon which such licenses are granted.
- Each Member has the right to determine what constitutes national emergency or other circumstances of extreme urgency.

Regarding the question of those members who did not have sufficient manufacturing capacities in pharmaceuticals and who might find it difficult to use the compulsory licensing mechanism, the TRIPS Council was mandated to find an expeditious solution to the problem and report to the General Council before the end of 2002.

The Declaration on TRIPS and Public Health addressed most of the concerns of the developing countries with regard to public health by agreeing that each member had the right to grant compulsory licenses, determine what constitutes a national emergency or extreme emergency. It also guaranteed the freedom for members to establish their own regime for exhaustion of intellectual property during emergency and put such a regime out of the scope of the dispute settlement mechanism.

The only problem that was left unresolved at the time of this declaration was the question of compulsory licensing mechanism for countries that did not have
sufficient manufacturing capacity in pharmaceuticals. The problem was supposed to be resolved by 2002. But after acrimonious debates, the TRIPS council gave an interim solution in 2003 through the “Decision on Implementation of Paragraph 6 of the Doha Declaration on TRIPS and Public Health” (now known as Para 6 system). Though the Decision made provision for the least developed countries or any other country to make use of the compulsory licensing mechanism as an importer by making notification to the TRIPS council, it imposed certain conditions on the exporting members which will act as restriction on the use of compulsory licensing mechanism.

The Decision said that the obligations of an exporting member under the TRIPS Agreement could be waived after an eligible exporting member has made a notification specifying the names and quantity of the products, after confirming that the importing member has no manufacturing capacity for the product concerned and that it has granted the license in accordance with Article 31 of the TRIPS Agreement and the provisions of the decision.

The Decision also stipulated certain conditions for the exporting member in the issuance of compulsory license. They are:

a) It had be ensured that the manufacturer who has been issued a compulsory license will manufacture only the amount necessary to meet the requirement of the importing country and the product will be exported entirely to the member issuing a notification;

b) Products produced under such license will be distinguished by specific label or marking, special packaging and/or colour and shape of the products; and

c) The licensee shall post on a website, before the shipment of the product, information regarding quantities being shipped to each destination according to the indent, and the distinguishable features of the product.

d) The decision also stipulates that the exporting member shall inform the TRIPS Council of the grant of compulsory license and the conditions
attached to it like the name and address of the licensee, the products and the quantity for which license has been granted, the country to which the products are being exported, the duration of the license and the website on which the licensee has posted the information referred to in paragraph above.

e) It is also stipulated that the exporting member shall pay adequate compensation for the compulsory license issued under the system set out in the decision, pursuant to Article 31(h) of the TRIPS Agreement.

f) The eligible importing member shall take measures to ensure that the products imported are used for public health purpose and that there is no diversion of products by way of re-exportation to some other territory.

g) Members shall ensure the availability of legal means to prevent the importation into and sale in their territories of the products produced under this system and diverted to other markets inconsistently with the provision of this decision.

The Decision was accompanied by a statement from the Chair which emphasized that:

a) Members should recognize that the system established by the decision will be used solely for public purposes and not for industrial or commercial policy objectives.

b) All reasonable measures should be taken to prevent the diversion of products from the markets they are intended to.\(^28\)

c) Exporting countries follow ‘best practices’ adopted by some of the major pharmaceutical companies.\(^29\)

\(^{28}\) This was not limited only to the pharmaceuticals produced and supplied but also to the active ingredients produced and supplied under the system and the finished products using such active ingredients.

\(^{29}\) Companies whose best practices have been mentioned are Bristol Myers Squibb, Novartis, Merck, Glaxo Smith Kline Beecham and Pfizer, three of which are head quartered in US, one in Switzerland and one in UK. [www.wto.org/english/news_e/news03_e/trips_stat_28aug03_e.htm](http://www.wto.org/english/news_e/news03_e/trips_stat_28aug03_e.htm)
d) Information gathered by the implementation of the decision shall be brought to the notice of the TRIPS Council.

5.2 Implications of the Declaration

The provision for the use of compulsory licensing mechanism by countries with insufficient manufacturing capacity is popularly known as the ‘Para 6 System’, as the decision was taken pursuant to the mandate of Para 6 of the declaration on TRIPS and Public Health. Conditions imposed on the use of this system and the Statement of the Chairman of the TRIPS Council which accompanied the Decision clearly indicate that they are intended to protect the interests of the pharmaceutical MNCs which were opposed to the provision of compulsory licenses as it leads to dilution of their ‘perceived rights’ and loss of markets and profits – to protect which they had fought so hard. The US wanted the insertion of a footnote to Para 1 of the Declaration on TRIPS and Public Health, indicating a list of 23 diseases, thus limiting the scope of compulsory license, but this was thwarted by the developing countries. However it seems like they have been successful in protecting their interests by the insertion of conditions that make the process for issue of compulsory license cumbersome and increase the level of difficulties for the developing countries. The procedure for issuing compulsory license during a national emergency or extreme urgency should be as simple as possible. But conditions like ‘establishment of the fact that the importing countries do not have sufficient manufacturing capacities, following best practices and posting of information on website’ will increase the administrative costs for importing and exporting nations. It will also result in considerable time lapse which is not desirable in times of national emergency or public health crisis. Besides compulsory license will not come free of cost as the members issuing compulsory license will have to pay adequate remuneration to the company which holds the patent.

The conditions imposed on the use of the Para 6 System points to the fact that the WTO places the interests of the pharmaceutical MNCs above the interests of the developing countries. The people of the developing countries are more vulnerable to diseases and cannot afford medicines. The provisions of WTO are not going to be
helpful to the developing countries in making available drugs to the poor at low cost. The Para 6 System has been used only once hitherto. India had asked for a thorough analysis to find out the reasons for the sub-optimal use of the system. The response has been conduct of workshops as technical cooperation and capacity building activities. The underlying statement is that the conditions imposed are not by themselves unfair and it is just that the developing countries are finding it difficult to understand and implement them.

5.3 TRIPS Plus Agenda

As a result of activism by the developing countries and the decline in new products, the pharmaceutical majors are seeing a decline in their profits. Hence they are trying new methods of ensuring profits. One such development is the TRIPS Plus provisions that the developed countries are trying to impose on the developing countries through the WTO mechanism and through bi-lateral deals. Some of the features of the TRIPS Plus agenda are:

- Enlarging the scope of patents – the pharmaceutical companies want the scope of patent to include new uses of existing medicines and for incremental improvements made to the existing drugs. This way they want to retain their monopolies for a period more than 20 years.

- Extension of patent terms – the pharmaceutical companies have been asking for the extension of patent terms citing delay in granting of patent or registration of patent.

- Curbing parallel importation – according to the rule of exhaustion of IP rights, patent rights will be exhausted after the point of first sale. Article 6 of TRIPS Agreement as well as the Declaration on TRIPS and Public Health has given the members freedom to have their own provisions regarding the exhaustion of IP rights. This means if a member chooses to apply the
principle of international exhaustion\textsuperscript{30} it is in conformity with TRIPS. But the pharmaceutical companies want to prevent parallel importation. They have been able to get such provision inserted in the Decision on “Para 6”. Developed countries are also exerting pressure to prevent parallel importing.

- Data exclusivity- Article 39.3 of the TRIPS Agreement says;

\begin{quote}
“Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public or unless steps are taken to ensure that the data are protected against unfair commercial use”.
\end{quote}

It is therefore clear that the TRIPS Agreement allows for the use of pharmaceutical data for public purposes. But the developed countries are trying to deny this by including data exclusivity clauses in the bi-lateral agreements. If these data exclusivity clauses are agreed to, it will result in denial of compulsory licenses or registration of generic drugs, even if the patent on a particular product has expired or if there is no patent at all.

Also in store is the Anti-Counterfeit Trade Agreement (ACTA) which aims to prevent the proliferation of counterfeit goods. As explained in the chapter on TRIPS, the provisions of ACTA are confusing the people by blurring the distinction between generics and counterfeit drugs. It has been opined that ACTA’s provisions may lead to wrongful seizure of generic drugs and stringent actions against legal

\textsuperscript{30}According to the concept of ‘international exhaustion’ IP rights are exhausted once the product has been sold by the IP owner or with his consent in any part of the world. Source – http://www.wipo.int/sme/en/ip_business/export/international_exhaustion.htm.
generic suppliers could be carried out, thereby disrupting the medicine supply. *Medicins Sans Frontieres* is worried about the impact of ACTA on the supply of generics and hence has appealed in its briefing document to all Contracting States not to sign or ratify ACTA until all concerns related to access to medicine are fully addressed.  

This makes it evident that the developed countries under the influence of the pharmaceutical MNCs, are finding new ways to deny the developing countries a chance to protect the health of its people. The rules of TRIPS are a major hindrance for the developing countries in attaining the objective of public health.

5.4 Review of Article 27.3 (b)

The DMD instructed the TRIPS Council to review Article 27.3 (b) of the TRIPS Agreement and examine the relationship between the TRIPS Agreement and the CBD, the protection of traditional knowledge and folklore and any other relevant development raised by the member. The developing countries want the article to be amended to remove the patent protection for life forms, protect the rights of indigenous and local communities and prevention of practices that threaten the food security of people. The Communication from the Plurinational State of Bolivia regarding review of Article 27.3 (b) speaks in depth regarding the illegality of the patenting of life forms and calls for the amendment of the article. The representation draws attention to the misuse of the patent protection for life forms and its effect on the rights of the indigenous people. It says that the patent on life forms promotes the commodification of life (therefore antagonistic to the beliefs held by the indigenous people) and encourages bio-piracy. The representation calls for amendment of Article 27.3(b) to “prohibit all forms of patenting of life and parts thereof as an essential part of the mandate in the Doha Development Round and as

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an important contribution of the WTO to the development objectives.” This is the second such communication from Bolivia. It had placed the same demand in its earlier communication in February 2010.

The developing countries want the disclosure of the origin of the genetic material and traditional knowledge to be made mandatory in accordance with the provisions of the CBD and the Nagoya Protocol on Access and Benefit Sharing. The developing countries have therefore proposed an addition by way of Article 26 bis making the disclosure mandatory. They are of the contention that disclosure requirement enumerated in Article 26 should also include disclosure of the origin of genetic resources or traditional knowledge. This would be a first step in benefit sharing mechanism. As discussed in the chapter on TRIPS, there are several instances where the traditional knowledge and genetic resources from a developing country or a region have been used for commercial purpose without acknowledgement or sharing of benefits. But there has been no decision on the issue so far as because of unwillingness on the part of developed countries.33

These facts lead to a conclusion that the concerns of the developing countries are not being adequately addressed. On the contrary the developed countries are devising new methods of depriving the developing countries from pursuing policies to protect the public health. In case of Article 27.3(b) also the developed countries are reluctant to accept mechanisms to prevent bio-piracy.

6. The Singapore Issues

Trade and Investment, Competition Policy, Transparency in Government Procurement and Trade Facilitation are the four Singapore Issues. They are known by this term as they had been introduced in the Singapore Ministerial in 1996. The developed countries wanted negotiations to start on these issues during the Singapore Ministerial but owing to strong opposition from the developing countries,

they decided not to press for negotiations. Instead, Working Groups were formed to undertake study on the four issues. Inspite of opposition from the developing countries, the four Singapore Issues were included in the Doha Work Programme. Before going to the status of the negotiations, it would be useful to understand the nature of these issues and their potential impact on the developing countries.

6.1 Trade and Investment

Of all the Singapore Issues, investment is the most controversial and has attracted a lot of opposition from the developing countries. But investment is the most favourite issue of the developed countries and they are making all out efforts to get this issue on board. The negotiations for a Multilateral Agreement on Investment (MAI) first began in 1995 among members of Organization for Economic Co-operation and Development (OECD), who had planned to open it up for others, once they reach a consensus. The MAI and the Investment Agreement proposed to be introduced in the WTO are similar in objectives and content. Several developing countries have opened up their markets to foreign investment and, in fact have been trying to attract foreign investment for a variety of reasons. Foreign Direct Investment (FDI) brings the required capital which the developing countries are lacking. It creates employment and may lead to transfer of technology. The objective of developing countries while opening their markets to foreign investment is to leverage it for the development of their country. For this they need to carefully allow foreign investment in sectors which they think will be beneficial to their economy and impose conditions that will bring the desired results. Hitherto, developing countries have had the freedom to selectively allow FDI. Some of their freedom to regulate has been taken away by the Trade Related Investment Measures (TRIMS) and the GATS which impose certain restrictions upon the right to regulate. The developed countries, in fact, have been wanting to have a full fledged agreement on investment from the beginning but were unable to do so. Though the TRIMS and GATS impose

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certain conditions they are not ‘catch-all’ agreements.\textsuperscript{35} The main elements of the proposed agreement include the “right of entry and establishment of foreign investors and investments; the right to full equity ownership; national treatment; the right to free transfer of funds and full profit repatriation; protection of property from expropriation; and other accompanying measures such as national treatment rights in privatization.”\textsuperscript{36} If the agreement comes into being, it will severely curtail the right of the members to regulate foreign investment. What a government can do and cannot do would have been already decided by the agreement. Therefore the developing countries are not in favour of negotiating on the issue because it will further erode their policy space.

6.2 Competition Policy

The DMD mandated the Working Group to carry on the study on Competition Policy focusing on “core principles, including transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building.”

The relationship between competition policy and trade has different interpretations for the developed and developing countries. For developing countries, competition policy would include anti-competitive practices of foreign companies like mega mergers and acquisition, predatory pricing, and monopolistic and oligopolistic behavior, which are intended to destroy local competition. It has been opined that dumping and subsidisation are also anti-competitive practices which need to be eliminated. B L Das suggests that IPRs which hinder competition should also be considered as anti-competitive practice.\textsuperscript{37}

The developed countries have a completely different interpretation of the competition policy. For them, competition should include opportunities for foreign

\textsuperscript{35} Ibid., p.17.
\textsuperscript{36} Ibid., p.2.
\textsuperscript{37} Martin Khor, \textit{The WTO, the Post-Doha Agenda and the Future of the Trade System} (Penang, Third World Network, 2002) p 35.
firms to compete in a local market which should be based on the principles of transparency, non-discrimination and procedural fairness.\textsuperscript{38}

While it has been felt that competition law is necessary, each country should be allowed to have competition laws depending on the level of development and the developmental needs of the country. Imposing uniform laws which are definitely going to be heavily tilted in favour of the developed countries would not be in the interests of the developing countries. The principle of non-discrimination on which the competition law is to be based will be interpreted as prohibition of favourable treatment to the local industries. The developing countries have already lost much of their freedom to provide support to their industries as a result of various provisions of the WTO agreements. Competition policy would result in further restrictions on the developing countries to make rules to prevent anti-competitive practices.

6.3 Transparency in Government Procurement

Procurement by government is considered to be an ‘important aspect of international trade’ by the WTO, as the market size of government procurement is often 10-15% of the gross domestic product (GDP). There already exists a plurilateral agreement on Government Procurement and most of its members are developed countries. The issue under discussion is limited to transparency aspects of government procurement as it has been affirmed in the DMD, which also says, “\textit{negotiations shall be limited to the transparency aspects and therefore will not restrict the scope for countries to give preferences to domestic supplies and suppliers.}” Experts are of the opinion that what will begin as a transparency agreement will graduate into a full-fledged agreement on government procurement (the experience regarding the agreement on intellectual property rights should serve as a reminder). Given the size of government procurement market it is an important tool for achieving the developmental objectives by giving preference to the local industries or disadvantaged communities. But the WTO sees government procurement from a

\textsuperscript{38} Ibid.
different angle, which is brought out in the objectives of the plurilateral agreement on Government Procurement:

“Laws, regulations, procedures and practices regarding government procurement should not be prepared, adopted or applied to foreign or domestic products and services and to foreign or domestic suppliers so as to afford protection to domestic products or services or domestic suppliers and should not discriminate among foreign products or services or among foreign suppliers”.

It is likely that a multilateral agreement on government procurement will be based on the plurilateral agreement which has been formulated by the developed countries. This again will lead to infringement of policy choice for developing countries. The EU is eyeing the $150 billion per annum government procurement market of India by trying to include it in the EU- India Free Trade Agreement. India has refused to negotiate on the issue and has made it clear that it will not concede to EU’s demand that European companies be allowed to participate in procurements made by public sector enterprises in the country as part of a free trade agreement being negotiated.39

6.4 Trade Facilitation

Trade Facilitation has been considered as the next step in ensuring free trade after the removal of tariff barriers. Goods are subject to various rules governing importation and exportation and have to undergo customs inspection before entering a territory. It is held that too many rules and elaborate customs procedures are burdensome and hence are an impediment to free movement of goods. Therefore a Working Group was established during the Singapore Ministerial in 1996 to undertake a study on the issue.

According to WTO, easier access to information regarding customs procedure and cutting red tape at the point of entry of goods are two ways of facilitating trade.\footnote{www.wto.org, Understanding the WTO: Cross Cutting and New Issues.}

It was decided in the ‘July Package’ of 2004 that negotiations would be launched on trade facilitation with a aim to clarify and improve relevant aspects of Article V (transit of goods), Article VIII (fees and charges) and Article X (transparency in the publication and administration of trade regulations) of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit.

Negotiations are on for an agreement on trade facilitation and are based on the proposals submitted by members, as reflected in document TN/TF/W/43/Rev.4. If these proposals translate into rules for trade facilitation, it will result in onerous commitments for developing countries:

Some of the proposals which may have adverse consequences for developing countries are:

- Establishment of enquiry points for information on customs regulations and other publication requirements.

- Transparency requirements like prior consultation and commenting on new and amended rules, provision of advance rulings on formalities connected with importation and exportations. There is no clarity about advance ruling but it is opined that it could mean advance ruling issued to traders regarding tariff classification, applicable duties and valuation.\footnote{Goh Chien Yen and Martin Khor, “Trade Facilitation in WTO: Developing Countries Stress Need to Clarify Scope of Negotiations” Third World Network, 24 May, 2005, www.twn.org.}

- Use of International Standards and Uniform Customs Code.
• Reduction and elimination of number and diversity of fees and charges, acceptance of commercially available information and elimination of pre-shipment inspection.

It has been pointed out by developing countries that trading in developed countries constituted intra-firm trade and therefore the rules prevailing in developed countries would not be suitable to all. 42

It has also been felt that requirements like establishment of enquiry points will prove to be a strain on the financial resources of the developing countries. Advance ruling on tariff classification, applicable duties and customs valuation could be interpreted as binding commitments for the issuing nations. Reduction and elimination in fees and charges will result in loss of revenue for the developing countries. Proposals like acceptance of commercially available information and elimination of pre-shipment inspection could not only lead to evasion of customs duty but also infringement of the rights of the developing countries. Preshipment inspection is important to ascertain the transaction value in order to prevent the evasion of duties. Imposition of uniform standards (which will be the standards prevalent in the developed countries) will not be in the interests of developing countries, in view of the differences in trading patterns of developing and developed countries. The developed countries had wanted the introduction of rules which would have required members to accept the transaction values provided in the invoice of the exporters during the Tokyo Round (1973-79) but this was resisted by the developing countries. The same proposals are again being introduced under the heading of Trade Facilitation.43

This agreement, though seemingly less harmful, will result in irreversible and onerous commitments for developing countries, inspite of the proposals for technological assistance and capacity building that has been envisaged in the DMD. The proposals for trade facilitation aim at modifying the rules for exportation and

43 Ibid.
importation prevalent in the developing countries, to suit the requirements of the
developed countries. The developed countries are harping on simplifying the trade
rules prevalent in the developing countries but they themselves impose numerous
conditions which are trade restrictive. There are chances that if an agreement comes
into being it will be imbalanced. For instance, the developing countries consider
harmonization of rules of origin to be a part of trade facilitation. The developed
countries have created obstacles to the progress of the Work Programme on this
issue.44

6.5 Status of Singapore Issues

The developing countries were opposed to any sort of discussion on the Singapore
Issues from the beginning. They were introduced into the WTO as a result of
pressure exerted during the Green Room process which resulted in the establishment
of Working Group to study the issue so that the issues could be kept alive. During
the Doha Ministerial the issues were brought up again by including them in the
DMD. The DMD’s mandate regarding Singapore Issues was that “negotiations will
take place after the Fifth Session of the Ministerial Conference on the basis of a
decision to be taken, by explicit consensus, at that Session on modalities of
negotiations.” This implied that there was a consensus for the negotiations and only
modalities had to be decided upon. The developing countries took a stand that the
scope of the issues was not clear and hence negotiations were not to begin unless
they were made clear. They were of the opinion that consensus for negotiation could
be built only upon the clarification of the substantive issues. The EC however held
an opinion that the substantive issues were a part of modalities and should not be
laid as a pre-condition for negotiations to begin. However, owing to stiff opposition
from the developing countries, it was decided that three of the Singapore Issues
namely competition policy, trade and investment and transparency in government
procurement, would be dropped from the Doha Work Programme, and no work
pertaining to these issues would be carried on during the Doha Round of
negotiations. The developing countries rejected a suggestion that negotiations should

44 Ibid.
be launched on trade facilitation during the Cancun Ministerial in 2003 and opined that discussions could go on to clarify issues but not start negotiations for a legally binding agreement. Despite the dissent note by the developing countries on negotiations, it was decided in the July Framework that negotiations would be launched on trade facilitation.

Inspite of dropping the issues from the Doha Work Programme, attempts are on to revive the issues in Working Groups and move them to plurilateral negotiations. The EC has a different interpretation of the decision to leave out the three issues from the Doha Work Programme. It is of the opinion that they have been left out of the ‘single undertaking’ clause of the Doha Round but can be pursued in plurilateral discussions. These plurilateral agreements, if reached, could be converted into multilateral ones, as in the case of Tokyo Round codes like Subsidies and Countervailing Measures, Technical Barriers to Trade and Anti-dumping Measures which were plurilateral to begin with but later on became multilateral agreements. Plurilateral agreements are against the principle of MFN, which is the cornerstone of all WTO agreements. The plurilateral agreements confers preferential treatments to its adherents and as such creates panic among on non-members as they begin to feel that they are losing out on major concessions. When they are thrown open to others for accession it will be a conditional accession. This means that the members who wish to accede will have to abide by rules that have been already formed, even if they are not entirely beneficial for them. This is against the objectives of a multilateral organization which was formed to promote the interests of all.

7. Trade and Environment

During the Singapore Ministerial, trade and environment was another issue on which a Working Group was established. The DMD agreed for the launch of negotiations on trade and environment which would focus on the relation between WTO rules and specific trade obligations set out in the multilateral environmental agreement. The mandate also called for reduction or elimination of tariffs on environmental goods.
The subject of environment could be used as a double edged sword in trade negotiations. It could be used for reduction of tariffs for environmentally sound goods – the production of which is mostly concentrated in developed countries as they have the required technology. It could also be used as a protectionist device, to block the entry of goods, citing the reason that they are not compliant with environmental standards.

Developing countries will be the target of these policies as their goods may not match up to the standards of the developed countries. It will be hard for the developing countries to achieve the standards followed in the developed countries because of lack of technology. As discussed earlier in Chapter 4, TNCs owning the technologies which are environmentally friendly are not transferring them to the developing countries.\textsuperscript{45}

The EC wants to get an ex-ante approval for any measure taken under multilateral environment agreements. At present there is scope for ex-post approval and also scope for challenging measures taken for environmental purposes. However, an automatic approval for such policies will result in exemption from challenge in WTO. It is quite possible that environmental measures could be used to mask inherently protectionist measures.\textsuperscript{46}

The final draft of the 2012 Rio+20 Summit on Environment and Development consists of issues like Green Economy, which, if adopted will lead to environment being used for protectionist purposes. The draft contains a proposal that wants the rules of WTO to be changed so that restrictions could be imposed on the basis of how a product has been produced. One of the criteria is the level of emission during the production of the product, popularly known as ‘carbon footprint’. Many developing countries lack the financial resources and technology required to produce environmentally-sound goods. It is really unfair that the developed countries, who throughout their developmental stages did not care about emissions and have been responsible for the present situation of environmental degradation, are now asking...

\textsuperscript{45} See Chapter 4, p.15
\textsuperscript{46} Khor,n.29, p.21.
for rules to penalize those countries who are facing difficulties to adopt environmentally-sound technologies.

8. Real Developmental Issues

Amidst the heated debates over NAMA and Agriculture it needs to be said that there are some real developmental issues like trade, debt and finance, trade and technology transfer, small economies, LDCs, technical cooperation and capacity building and special and differential treatment that are also part of the Doha Work Programme. These issues are as important as market access for the developing countries. The DMD had mandated the establishment of Working Groups to study the relationship between trade, debt and finance and trade and transfer of technology. It instructed the Working Group on Trade, Debt and Finance to make recommendations for a durable solution to the problem of external indebtedness and to strengthen the coherence of international trade and finance. The Working Group on Trade and Transfer of Technology was instructed to make recommendations about the steps that could be taken within the mandate of the WTO to increase the flow of technology. Regarding the S&DT the DMD had mandated a review of all S&DT provisions with the aim of strengthening them and make them more precise, effective and operational.

It is clear that negotiations have been progressing at a faster pace on issues of interest to developed countries, like NAMA, agriculture and services, whereas there has been no real progress on the issues of importance to the developing countries.

If developing countries are to catch up with developed countries, it is very important to find a solution to the problem of external indebtedness and to ensure that there is a mechanism to ensure transfer of technology. As long as developing countries do not have access to technology and are immersed in debt (the details of which have been discussed in the first chapter) they cannot hope to create the infrastructure required to make their industries capable of competing with the developed countries’ industries in the world market.
8.1 Trade, Debt and Finance

Regarding the issue of trade debt and finance, the developed countries are of the opinion that it could not be construed that trade can lead to indebtedness or trade measures could lead to solution of the problems. For them the relationship between trade debt and finance is limited to giving preferential treatment to highly indebted countries, whereas the developing countries are of the opinion that discussions should lead to suggestions regarding avoidance of situations that lead to indebtedness. The developed countries do not value the studies conducted in Working Groups leading to recommendations, and only want it to continue as ‘long drawn study processes’. ⁴⁷

Developing countries face unfavourable terms of trade due to lower price of their export which comprise of primary products whose prices are falling and the higher price of their imports which are capital goods. The developing countries incur debts to pay for their imports. This situation could be remedied by increased market access for the developing countries and stabilization of commodity prices. Commodity agreement has been a long standing demand of the developing countries but which has been continuously ignored in the WTO.

8.2 Special and Differential Treatment

The developing countries are of the opinion that the current S&DT provisions are Best Endeavour clauses and should be made mandatory. Another demand of the developing countries regarding S&DT is that any new agreement should include S&DT provisions for the developing countries. The developing countries have put forward a Framework Agreement on Special and Differential Treatment.

Pursuant to the Doha Mandate on S&DT, 88 proposals were put forward by the developing and least developed countries. On 28 proposals, an in-principle draft

decision was reached during the Cancun Ministerial but has not yet been adopted.\textsuperscript{48} However, it looks like the emphasis is more on S&DT for the LDCs, as is evident from the Hong Kong Ministerial Declaration’s Annex F. The Report of the Committee on Trade and Development of 17 November 2011 says that the negotiations have gone into an impasse after April 2011.

Chakravarthi Raghavan has pointed out that the developed countries have been trying to divide the developing countries by saying that there is a need to differentiate between the developing, least developed and small economies, with reference to S&DT treatment.\textsuperscript{49} The developed countries are trying to deny several developing countries S&DT by invoking the ‘graduation principle’. Murray Gibbs says that it has been claimed that some developing countries have reached the “take-off” stage where the economy generates investment and technology required to make growth self sustaining and yet others are in the stage of ‘increasing sophistication of the economy’ and are ‘driving to maturity’. Using these criteria it has been demanded that the S&DT principle be withdrawn for those developing countries which have reached the “take-off” stage.\textsuperscript{50} It is definitely true that LDCs will require more flexibilities than other developing countries which may be slightly higher up in the ladder but this should not mean that some developing countries should be denied S&DT provisions.

9. Implementation Issues

Implementation issues have a history of neglect, from the GATT days. The developing countries have been demanding the resolution of implementation issues right from the First Ministerial Conference of the WTO but their demands were deliberately ignored and the focus of all the Ministerial Conferences has been on the issues of interest to the developed countries. The developing countries had given a
detailed proposal of their implementation concerns during the Seattle Ministerial in 1999. The implementation concerns fall into the following categories:\footnote{Chakravarthi Raghavan, Implementation Issues Again off WTO Radar Screens?, (Penang, Third World Network, 2003) p.12.}

a) Non-realisation of the expected benefits from the WTO agreements;

b) Imbalances in the WTO Agreements; and

c) Non-binding nature of the S&DT provisions in WTO agreements.

When it became clear to the developed countries that the developing countries would not agree to the new round of negotiations unless implementation issues were addressed they were included in the Doha Work Programme. The Doha Ministerial stated that it attaches utmost importance to the implementation issues and that it is an integral part of the Doha Work Programme. It has also been explicitly stated that the negotiations on these issues will be treated in accordance with Para 47 of the DMD. Para 47 states: “With the exception of the improvements and clarifications of the Dispute Settlement Understanding, the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking”. This implies that implementation issues are part of a single undertaking. A separate decision on implementation related issues was also adopted. (The important elements of the Decision are enumerated in the beginning of this chapter). Inspite of the importance attached to the implementation issues there has been little progress on the subject. The developing countries themselves are also not pursuing the issue seriously as they are occupied with other issues like NAMA and Agriculture.

The developing countries realised only after the conclusion of Uruguay Round that they had signed an agreement which would work against them. Therefore they wanted an immediate redressal of their concerns and correction of the imbalances of the Uruguay Round. The correction of wrongs done in the past is of paramount importance if the developing and least developed countries are to secure a share in
international trade, commensurate with the needs of their economic development as enunciated in the ‘Agreement Establishing the WTO’.

10. Implications of the Doha Round of Negotiations for the Developing Countries

The draft modalities of the Doha Round of negotiations are heavily tilted in favour of developed countries. The imbalances in the Doha Round of negotiations stems from three different points:

- The imbalances stemming from the Doha Work Programme;
- The imbalances in the modalities for negotiations; and
- The imbalances stemming from negotiating process.

10.1 The Imbalances Stemming from the Doha Work Programme

The Doha Work Programme has not taken into consideration all the concerns of the developing countries. The Work Programme did not take into cognizance the demand of the developing countries for the reduction of Green Box subsidies which are also trade-distorting in nature. The most important concern for the developing countries was Market Access, both agricultural and non-agricultural. The Doha Ministerial Declaration did not result in any immediate gains for the developing countries. The Market Access issues were left to be resolved during the negotiations. This means that they are subject to uncertainties. A new round of negotiations was launched for NAMA, even though it did not have an inbuilt mandate, inspite of opposition from the developing countries. The four Singapore Issues were included in the Work Programme and negotiations were mandated, inspite of the lack of clarity about the scope of the subjects. Trade and Environment was also included with a view to explore the relation between various MEAs and the WTO rules. The intention was to garner ex-ante approval for the measures taken in relation to the environmental issues. Though the Doha Ministerial did result in a decision on implementation-related issues, the decisions were largely related to giving the
developing countries respite from possible disputes arising from violation of the WTO rules and nothing in terms of market access. Therefore it could be said that the document which is the basis for further work has not addressed the concerns of the developing countries satisfactorily.

10.2 The Imbalances in the Modalities for Negotiations

The Doha negotiations have reached a deadlock over the modalities for the negotiations. The developing countries are unhappy with the draft modalities for NAMA and Agriculture because the proposed modalities will have adverse consequences for them. The tariff reduction formula proposed by the draft modalities will result in greater cuts for the developing countries than the developed countries. This is clearly against the principle of S&DT and ‘lesser than full reciprocity’ for the developing countries.

The draft modalities on agriculture have expanded the scope of the Blue Box so as to enable the developed countries to increase the allowed limits for overall trade-distorting subsidies. Nothing much has been done about the Green Box subsidies which are the actual ‘culprits’, apart from proposing amendments to the AoA in order to correct the anomalies in the rules, pertaining to the calculation of AMS for the developing countries. This removes the focus from the original issue of reduction of Green Box subsidies. The tariff reductions proposed for agricultural products will result in greater cuts for the developing countries. The developing countries are not satisfied with the rules for designation of ‘special products’ and the formulation of SSM.

10.3 The Imbalances Stemming from Negotiating Process

The negotiating process in the WTO has always been marred by controversies and the Doha Round is no exception. The developing countries have made known their displeasure about the lack of transparency in the negotiations. The main reason for the collapse of the Cancun Ministerial was the neglect of the views of developing countries over the Singapore Issues and Agriculture. Discussions over the Singapore
Issues were held in a Green Room meeting to which only 30 members were invited. The Agricultural Text did not reflect their concerns adequately. The conference ended abruptly due to lack of consensus over Singapore Issues. After the collapse of the Cancun Ministerial, the Derbez Text on NAMA was adopted as a basis for further negotiations, even though the developing countries had several reservations about it. As pointed earlier in the section on Services, the developed countries especially the US have been pressurizing (in a threatening way) the developing countries to further open their services’ sector.

The negotiating process is unfair as the developed countries are flouting the mandate of the Doha Declaration regarding the treatment of the issues of concern to developing countries. The negotiations on agriculture are being held ransom to further concessions from the developing countries in NAMA and Services. The whole point of the Doha Development Agenda is to place the concerns of the developing countries in the forefront of the negotiations. But the developed countries have made this contingent upon the concessions the developing countries give to them. With the unfolding of the negotiating process, it is becoming evident that the developing countries will end up making greater concessions (as demonstrated in the case of tariff reduction formula for NAMA and tariff reduction on agricultural products). The issue of agricultural subsidies remains unsolved as there is no talk of reducing the Green Box subsidies. Even where there is mandate for reducing the trade-distorting subsidies, it has become clear that the US and EC will not be actually reducing their subsidies as they have devised various mechanisms to retain most of their subsidies. The Declaration on TRIPS and Public Health has been diluted to protect the interests of the pharmaceutical majors by introducing several conditions on the grant of compulsory licensing. Attempts are being made by the developed countries to give a backdoor entry to the three Singapore Issues.

11. Summary

If the present modalities are accepted, the developing countries will end up in a position worse than that at the conclusion of the Uruguay Round. The Doha
negotiations have reached an impasse over the difference in the positions of the developed and developing countries. The developing countries have already given away too much by agreeing to the new round of negotiations, even as the old issues remain unresolved. We are witnessing the repeat of the Uruguay Round where developing countries were manipulated and made to sign agreements over which they had strong reservations. The Doha negotiations could end in a similar fashion as the negotiations are almost a decade old now, surpassing eight years of negotiations of the Uruguay Round. The developing countries are better informed now and are aware of the possible repercussions of the modalities. They have stuck to their ground on important issues. However, there is possibility that the developing countries may give in as negotiation fatigue sets in. Besides, there are fears of losing concessions that may accrue if the Doha Round is successfully concluded. But it is very important that the Doha Round comes to a fair and equitable conclusion.