DEVELOPING COUNTRY COALITIONS IN THE DOHA ROUND: THE LIBERAL TRADE AND DEVELOPMENT NEXUS

By

Rio Budi Rahmanto

A thesis submitted for the degree of Doctor of Philosophy of the Australian National University

MAY 2013
DECLARATION

I certify that the thesis entitled ‘Developing Country Coalitions in the Doha Round: The Liberal Trade and Developmental Nexus’ submitted for the degree of Doctor of Philosophy of the Australian National University is an original work. The interpretation and perceptions contained in this thesis are my construction of the world as I see it. Due acknowledgment is given where reference is made to the work of others.

I also certify that the substance of this thesis has not already been submitted for any degree and is not currently being submitted for any other degree or qualification.

Rio Budi Rahmanto
29 May 2013
This thesis investigates the variety of leadership within developing country coalitions that pursued developmental agendas during the Doha Round. It also evaluates the coalitions’ roles and strategies at different stages of negotiation. The thesis examines: (1) the Group of 20 (G-20) and Group of 33 (G-33) in agriculture negotiations; (2) the Core Group and Group of 90 (G-90) in the new ‘Singapore’ issues; and (3) the Coalitions on TRIPS and Public Health (CTPH), African Group (AG) and Coalition of Developing Countries (CDC) in TRIPS and public health negotiations.

The available literature often investigates coalitions in a partial manner. Consequently, it falls short in understanding the nature and role of negotiating coalitions related to their different development-oriented agendas at different stages of negotiation. This thesis argues that the nature and role of negotiating coalitions are a product of and endogenous to social interactions and the negotiation process. A coalition’s behaviour reflects the coalition’s internal and external dynamics. The internal coalition dynamic includes the way the coalition frames its core arguments and exhibits particular type of leadership. The external coalition dynamic includes strategies pursued by coalitions that can be viewed as a spectrum from distributive to integrative strategies, and the overall mode of negotiation. The coalition dynamics, however, cannot be detached from their institutional context, namely the instrumental framework (e.g. decision making processes and different stages of the rule-development process) and the normative framework (principles and norms in the trade regime). At the heart of the principles and norms of the trade regime is the nexus between the liberal trade and developmental principles under the trade regime.

Based on the case studies, the thesis found that, first, negotiating coalitions used a particular frame in their core argument reflecting the behaviour of the coalition and expected social behaviour of their negotiating counterparts based on the nexus between the liberal trade and developmental principles. However, the argument employed often evolves over time depending on the different negotiation stages. Second, negotiating coalitions exhibited a particular type of leadership, which often depended on the coalition’s core argument that in turn could adapt to the negotiation process itself. When the negotiation stage involved a discussion of specific rules or a final agreement, the coalition needed a leadership that could seek innovative political and technical solutions.
to find a common ground that took into account the diverse interests and preferences of its members (because members have clearer understanding of the trade agreement's distributive outcomes). And third, many negotiating coalitions attempted to influence the mode of trade negotiation, particularly to incorporate socio-humanitarian or socio-economic objectives. In doing so, they sought to expand the traditional trade negotiation agenda that used reciprocal concessions and primarily concentrated on liberal trade objectives. The broader perspective on trade negotiations that incorporated the developmental principle rested on the notion that liberalisation process must not generate economic, social, and even political adjustment costs that exceed the benefits of liberalisation itself. However, most negotiating coalitions were drawn into traditional modes of bargaining based on exchange of concessions, and consequently had to downgrade their original development-oriented objectives during the rule-making and near-deal-making processes.
SUMMARY

TITLE:
Developing Country Coalitions in the Doha Round: The Liberal Trade and Developmental Nexus

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1. Prof. Lorraine Elliot
2. Prof. Peter Drahos
ACKNOWLEDGEMENT

At the outset, I would like extend my deepest gratitude to Prof. John Ravenhill for his invaluable guidance, support, and patience. Regardless of my high and low points during my study, I was reassured by his support and guidance throughout this process. I also want to extend my thanks to Prof. Chris Reus-Smit, Prof. Lorraine Elliot, and Prof. Peter Drahos for providing me insight and direction in conducting my research. I also want to thank Greg Fry and Leonard Seabrooke for their recommendations and support throughout my study. I highly appreciate Prof. Ian McAllister’s assistance and guidance in finalising my work. I would like to thank the Australian Government for their sponsorship and support.

In developing my thesis, I received helpful comments and technical assistance at various stages of my drafts from my friends and colleagues: Alex Stephens, Lauren O’Neil, Michael O’Shannassy, Jeffrey D. Wilson, Matthew Davies, and Beverly Locke. I also want to thank my workmates, Obaidul Haque, and Wen-ti Sung for their insights and comments, and bearing with me throughout our times together.

I want to extend my thanks to the people who helped me during my fieldwork, such as Yasmi Adriansyah, Conakry Marsono, Judha Nugraha, Muh. Koba, Yanto, and all the relevant delegates in the Foreign Ministry in Jakarta, Indonesian Permanent Mission in Geneva, and the Indonesian Embassy in Brussels. I also want to thank the Indonesian Embassy in Canberra for their vital support.

To my friends, thank you for filling my life in Canberra: Kingston family (Lauren and Rommy), Campbell family (Momo, Bagus, Ian, Hanif, Agunk, Seti), and the entire Indonesian brigade (Nugo, Saud, Roudo, Lisna, and many more) in Canberra.

I also want to extend my gratitude to my parents and family for their support and prayers. Last but not least, my beloved wife, Rini, and newborn son, Navid, thank you for giving me this opportunity, for being patient with me, and for believing in me. I will be home very soon.
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LIST OF ABBREVIATIONS AND ACRONYMS

ACP  African, Caribbean and Pacific
AG   African Group
AGOA Africa Growth and Opportunity Act
AoA  Agreement on Agriculture
AOSIS Alliance of Small Island States
APU  Argentina, Paraguay, and Uruguay
ASCM Agreement on Subsidies and Countervailing Measures
BATNA Best Alternative to a Negotiated Agreement
CAP  Common Agriculture Policy
CDC  Coalition of Developing Countries
CPTech Consumer Project on Technology
CTPH Coalition on TRIPS and Public Health
DDA  Doha Development Agenda
DFQF Duty-Free and Quota-Free
DSM  Dispute Settlement Mechanism
DTPH Declaration on TRIPS and Public Health
EC   European Community
EFPUA European Federation of Pharmaceutical Industries and Associations
EU   European Union
FAO  Food and Agriculture Organization
FDI  Foreign Direct Investment
FIPs Five Interested Parties
G-10 Group of 10
G-20 Group of 20
G-33 Group of 33
G-77 Group of 77
G-90 Group of 90
G-110 Group of 110
GATS General Agreement on Trade in Services
GATT General Agreement on Tariffs and Trade
GDP  Gross Domestic Product
GSP  Generalized System of Preferences
HIV/AIDS Human Immunodeficiency Virus / Acquired Immunodeficiency Syndrome
IMF  International Monetary Fund
IPR  Intellectual Property Rights
IR   International Relations
IATP Institute for Agriculture and Trade Policy
ICTSD International Centre for Trade and Sustainable Development
ITO  International Trade Organization
LDCs Least Developed Countries
MDG  Millennium Development Goals
MNCs Multinational Corporations
MSF  Médecins Sans Frontières
NAM  Non-Aligned Movement
NAMA Non-Agriculture Market Access
NFIDCs Net Food-Importing Developing Countries
NGOs Non-Governmental Organisations
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>NGTF</td>
<td>Negotiating Group on Trade Facilitation</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<tr>
<td>OPEC</td>
<td>Organization of Petroleum Exporting Countries</td>
</tr>
<tr>
<td>PGE</td>
<td>Permanent Group of Experts</td>
</tr>
<tr>
<td>QUNO</td>
<td>Quaker United Nations Office</td>
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<tr>
<td>R&amp;D</td>
<td>Research and Development</td>
</tr>
<tr>
<td>RAMs</td>
<td>Recently Acceded Members</td>
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<tr>
<td>SDT</td>
<td>Special and Differential Treatment</td>
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<td>SP</td>
<td>Special Product</td>
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<tr>
<td>SPS</td>
<td>Sanitary and Phytosanitary</td>
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<td>SSG</td>
<td>Special Agriculture Safeguard</td>
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<td>SSM</td>
<td>Special Safeguard Mechanism</td>
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<td>SVEs</td>
<td>Small and Vulnerable Economies</td>
</tr>
<tr>
<td>TACB</td>
<td>Technical Assistance and Capacity Building</td>
</tr>
<tr>
<td>TFTACBSU</td>
<td>Trade Facilitation Technical Assistance and Capacity-Building Support Unit</td>
</tr>
<tr>
<td>TRQ</td>
<td>Tariff-Rate Quota</td>
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<tr>
<td>TBT</td>
<td>Technical Barriers to Trade</td>
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<td>TRIMS</td>
<td>Trade Related Investment Measures</td>
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<td>TRIPS</td>
<td>Trade Related Intellectual Property Rights</td>
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<tr>
<td>TWN</td>
<td>Third World Network</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
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<td>UNFCCC</td>
<td>United Nations Framework Convention on Climate Change</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>US</td>
<td>United States</td>
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<td>VRAMs</td>
<td>Very Recently Acceded Members</td>
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<td>WHO</td>
<td>World Health Organization</td>
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<tr>
<td>WIPO</td>
<td>World Intellectual Property Organization</td>
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<tr>
<td>WTO</td>
<td>World Trade Organization</td>
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</table>
"O my Lord! Advance me in knowledge."

(Qur'an 20:114)
Chapter 1. Introduction

The formation of coalitions by developing countries in multilateral negotiations is not a novelty. From the 1950s until the 1970s, coalitions of developing countries, such as the Non-Aligned Movement (NAM) and the Group of 77 (G-77), were mainly formed on an ideological foundation and were involved in a wide range of issues.\(^1\) Coalitions in this time period frequently used a confrontational approach and made assertive demands in the form of a shopping or wish list, rather than engaging in constructive dialogue through specific, well-articulated and technically viable arguments to support their demands.\(^2\) At the forefront of the economic agenda of these coalitions was the demand to establish a ‘new international economic order’ to fulfill the developmental rights of the newly independent developing countries.\(^3\) The role of these coalitions decreased in the 1970s partly due to the increasing diversity among members, which was too difficult to reconcile, and which gradually weakened the collective movement as a negotiating coalition.

By the 1980s until the mid-1990s, several coalitions involving developing countries in the General Agreement on Tariffs and Trade (GATT) Uruguay Round moved away from ideological-based coalitions into more pragmatic coalitions. Members were no longer bound to an exclusive common ideological platform and were not obligated to support other members within the coalition on other issues.\(^4\) Several pragmatic coalitions based on ‘real interest’ involving developing and developed countries engaged in a positive and proactive agenda rather than a negative and reactive agenda.\(^5\) Some of the examples include the ‘de la Paix’ group that supported the inclusion of the services sector and facilitated the launch of the Uruguay Round, as well as the Cairns Group that helped mediate rivalry between the United States (US) and

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5 Some observers urged that the creation of coalitions with ‘real interest’ could create breakthroughs during the Uruguay Round. See John W. Sewell and William I. Zartman, "Global Negotiations: Path to the Future or Dead-End Street?", *Third World Quarterly* 6, no. 2 (1984): 407.
European Community (EC) while at the same time elevating the interest of developing
countries in agriculture negotiations.

In 2001, the World Trade Organization (WTO) Doha Round (formally known as
the Doha Development Agenda, or DDA) was launched to reflect the demand by
developing countries to rebalance the development dimension in the trade regime. At
the launch, the political statements indicated that the round was aimed at achieving an
improvement in the trading prospects of developing countries and facilitating further
integration of developing countries into the trade regime.\(^6\) Many developing countries
perceived that the Doha Round was an opportunity to readdress their concerns and
needs within a ‘development round’.\(^7\)

The round marked a re-emergence of the development dimension as the central
theme of negotiations, but members had to substantiate what constitutes a development-
oriented agenda in viable and concrete forms. The re-emphasis on the development
dimension and the need to translate the Doha mandate into actionable development-
relevant proposals spurred coalition formations involving developing countries in
various issue areas.

This thesis investigates the nature and role of negotiating coalitions in pursuing
development-oriented agendas in the context of the nexus between the liberal trade and
developmental principles under the trade regime. The analysis focuses on several
negotiating coalitions during the Doha Round between 2000 and 2010. The negotiating
cohesions were involved in three issue areas: (1) the Group of 20 (G-20) and Group of
33 (G-33) were active in the agriculture negotiations, in which the G-20 advocated
efforts to discipline agriculture trade distortions and the G-33 created special trade

\(^6\) See for examples, World Trade Organization, "Ministerial Conference - Fourth Session - Doha, 9 - 14
November 2001 - Ministerial Declaration - Adopted on 14 November 2001," WT/MIN(01)/DEC/1
(November 20, 2001): Paragraph 2; World Trade Organization, "Ministerial Conference - Fourth Session -
Doha, 9 - 13 November 2001 - United Nations - Message of the UN Secretary-General, Mr. Kofi Annan
Delivered on His Behalf by Mr. Rubens Ricupero, Secretary-General of UNCTAD," WT/MIN(01)/13
(November 9, 2001): 1; World Trade Organization, "Ministerial Conference - Fourth Session - Doha, 9 -
13 November 2001 - Address by the Director-General, Mr. Mike Moore at the Inaugural Session,"
WT/MIN(01)/12 (November 9, 2001): 2.

\(^7\) T.N. Srinivasan, "The Future of the Global Trading System: Doha Round, Cancún Ministerial, and
http://siepr.stanford.edu/publicationsprofile/1259, (accessed February 1, 2013); Syed Javed Maswood,
"Developing Countries and the G20 in the Doha Round," in Developing Countries and Global Trade
Negotiations, ed. Larry Crump and Syed Javed Maswood (London: Routledge, 2007), 48-49; Celso
Amorim, "Making Room for Making a Difference: Developing Countries and the Multilateral Trading
System: The Case of Brazil," in The Doha Era and Beyond: The Coming of Age of Developing Countries
provisions for food security purposes; (2) the Core Group and Group of 90 (G-90) were involved in negotiations of the new ‘Singapore’ issues. The new ‘Singapore’ issues consisted of: trade and investment; trade and competition policy; transparency in government procurement; and trade facilitation. At the beginning, the Core Group and G-90 opposed the inclusion of new ‘Singapore’ issues considering the uncertainties of the cost of implementation for developing countries, but later, the Core Group and G-90 were willing to negotiate on trade facilitation and developed a new approach to WTO obligations and provision of technical assistance and capacity building (hereinafter TACB); (3) the Coalition on Trade Related Intellectual Property Rights (TRIPS) and Public Health (hereinafter CTPH), and later the African Group (hereafter AG) and Coalition of Developing Countries (hereafter CDC) were advocating for a developmental-friendly interpretation as well as effective and operational rules concerning flexibilities under the TRIPS Agreement related to public health issues. Table 1 gives an overview of the coalitions under investigation in this thesis, including their members and agendas.

These negotiating coalitions promoted particular development-oriented agendas in their respective issue areas. In evaluating the nature and role of negotiating coalitions, this thesis will individually evaluate the constant interaction between internal and external coalition dynamics within their institutional context. The internal coalition dynamic includes the nature of the coalitions’ core argument and types of leadership exhibited by negotiating coalitions. The external coalition dynamic relates to the role of negotiating coalitions in the rule-development process. The thesis will closely examine the strategy employed by negotiating coalitions and their negotiating counterparts, as well as the mode of trade negotiation reflecting the way a compromise or increasing convergence was achieved among negotiators or the way a deadlock occurred. By understanding the overall mode of negotiation, the thesis will examine the push and pull between the liberal trade and developmental objectives at different stages of negotiation.

The first section of this chapter highlights the significance of understanding the negotiating coalition in the Doha Round, and clarifies the contributions of the thesis to the subject. The subsequent section of this chapter will explain the methodology and case study selection. The final section will outline the overall structure of the thesis.
Table 1. The Coalitions Researched in this Thesis

<table>
<thead>
<tr>
<th>Coalitions</th>
<th>Members*</th>
<th>Main Agenda</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Group of 20 (G-20)</td>
<td>Argentina, Bolivia, Brazil, Chile, China, Colombia, Costa Rica, Cuba, Ecuador, Egypt, El Salvador, Guatemala, India, Mexico, Nigeria, Pakistan, Paraguay, Peru, the Philippines, South Africa, Thailand, and Venezuela</td>
<td>Advocate agriculture sector reform to reduce/eliminate trade distortions in major developed countries</td>
</tr>
<tr>
<td>The Group of 33 (G-33)</td>
<td>Barbados, Botswana, Cuba, Dominican Republic, Honduras, Indonesia, Jamaica, Kenya, Mongolia, Mauritius, Nicaragua, Nigeria, Pakistan, Panama, Peru, the Philippines, Tanzania, Trinidad and Tobago, Turkey, Uganda, Venezuela, Zambia, and Zimbabwe</td>
<td>Promote special trade provisions for food security purposes as part of market access flexibilities under the SDT</td>
</tr>
<tr>
<td>The Core Group</td>
<td>Bangladesh (on behalf of the LDCs Group), Botswana, China, Cuba, Egypt, India, Indonesia, Kenya, Malaysia, Nigeria, the Philippines, Tanzania, Uganda, Venezuela, Zambia, and Zimbabwe</td>
<td>Oppose the launch of negotiation on the Singapore Issues and later developed a new model for the SDT on trade facilitation</td>
</tr>
<tr>
<td>The Group of 90 (G-90)</td>
<td>The aggregate members of the Africa Group, African; Caribbean, and Pacific Group; and Least Developed Countries Group</td>
<td>Oppose the launch of negotiation on the Singapore Issues</td>
</tr>
<tr>
<td>The Coalition on Trade-Related Intellectual Property rights and Public Health (CTPH)</td>
<td>Barbados, Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, Honduras, India, Indonesia, Jamaica, Pakistan, Paraguay, the Philippines, Peru, Sri Lanka, Thailand, and Venezuela</td>
<td>Promote a developmental-friendly interpretation of the flexibilities under the TRIPS Agreement related to public health issues</td>
</tr>
<tr>
<td>The Coalition of Developing Countries (CDC)</td>
<td>Brazil, Bolivia, Cuba, China, Dominican Republic, Ecuador, India, Indonesia, Pakistan, Peru, Sri Lanka, Thailand, and Venezuela</td>
<td>Advocate an effective and operational rules for the use of compulsory licensing</td>
</tr>
</tbody>
</table>

Note: * The members in the table largely reflect the coalition at the early stage of their establishment
Chapter 1. Introduction

1.1 Thesis Rationale

1.1.1 The Significance of Understanding Negotiating Coalitions

The successful conclusion of the Uruguay Round and the establishment of the WTO in 1995 signalled the triumph of neoliberal economics. Several scholars suggested that the increasing number of developing countries in the WTO and increasing policy convergence of developing countries towards liberal economic principles indicated that cooperation by developing countries would be forthcoming and that they would be accommodative of a further liberalisation process. This optimism about a quick and relatively easy extension of trade liberalization, however, was short lived since developing countries soon encountered difficulties in implementing costly Uruguay Round obligations and were largely unable to realise the expected new trade opportunities that they hope would assist in achieving their developmental objectives.

Developing economies’ endeavours to re-emphasise development-oriented agendas in the Doha Round spurred new collective behaviour. At least 16 issue-specific coalitions emerged, with the majority involved in the agriculture negotiations. There were also six coalitions based on regional groupings and five coalitions based on common characteristics. In spite of the increasing role of negotiating coalitions involving developing countries in trade negotiations, there is only a limited amount of literature taking full account of the variety of negotiating coalitions in the Doha Round. To understand the variety of coalitions in the Doha Round, the thesis poses the question

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Thesis Rationale

"why and how did various coalitions of developing countries pursue different development-oriented agendas during the Doha Round?"

The research puzzle attempts to address some of the gaps in the literature. First, coalition studies often focus on a particular aspect or moment of a coalition, but seldom analyse the variety of coalitions, particularly the diverse developmental agendas pursued by developing country coalitions. As discussed in detail in Chapter 2, previous studies have noted particular aspects of a coalition, such as the reasons for its effectiveness\(^\text{10}\) and other researchers limit their analysis to a coalition active in one issue area or in a particular moment of negotiation.\(^\text{11}\) In the context of the Doha Round, negotiations could be divided into different negotiation stages and coalitions must be sustained through different stages of negotiation, such as agenda-setting, modalities-setting, rule-making, and deal-making processes. Once coalitions are formed, members need to participate in the rule-development process in order to maintain the validity of the coalition itself and to contribute substantively to the negotiation discourse.

The limited research scope of previous studies, however, tends to fall short of providing an analytical comparison of the variety of coalitions involving developing countries in the Doha Round. Furthermore, a narrow research scope particularly of a coalition at a particular moment of a negotiation stage would not be able to provide a comparative analysis of coalitions at different stages of negotiation. The proposed research for this thesis, which will examine the variety of coalitions at different stages of negotiation, will provide a richer analysis of the overall coalition dynamics, such as the formation and maintenance of coalitions. This analysis of coalition behaviour over time is particularly relevant to the Doha Round in that it is the longest global trade negotiation to date.

Second, existing coalition studies tend to focus on one theoretical approach. As discussed in detail in Chapter 2, the literature on coalitions focuses on one of three theoretical approaches: the power-based approach,\(^\text{12}\) the interest-based approach,\(^\text{13}\) or

\(^{10}\) See Bernal et al., "South-South Cooperation in the Multilateral Trading System: Cancun and Beyond."; Drahos, "When the Weak Bargain with the Strong: Negotiations in the World Trade Organization."


\(^{12}\) See Higgott and Cooper, "Middle Power Leadership and Coalition Building: Australia, the Cairns Group, and the Uruguay Round of Trade Negotiations."; Richard A. Higgott, Richard Leaver, and John Ravenhill, Pacific Economic Relations in the 1990s: Cooperation or Conflict? (Boulder, Colo.: Lynne
the cognitive-based approach. Very few studies used a combination of approaches. Most of the coalition studies tend to use a power-based or interest-based approach because the trade regime is traditionally a strategic bargaining environment. For this reason, constructivist approaches is seldom used to analyse coalition behaviour. A specific approach might be suited to explain coalition behaviour at a particular moment of the negotiation stage or a coalition active in one particular issue area whereas another approach might be more appropriate for different coalitions or circumstances.

The objective of the thesis is to understand the variety of coalitions, including the different nature of development-oriented agendas they emphasize, and how the role of coalitions varies at different stages of negotiation. The fact that the Doha Round places an emphasis on development is a good opportunity to better understand the developmental dimension in the trade regime. The emergence of agent-centred constructivist literature and endeavours to build bridges between different International Relations (IR) approaches could help provide a more comprehensive explanation to contemporary coalition dynamics.

Third, there is a tendency to generalise the ‘developmental agenda’, which leads to a lack of clarity with regard to the different development-oriented agendas pursued by developing countries. It is worth noting that there is neither a uniform nor convergent understanding of what constitutes the development dimension, even among developing countries. Consequently, the term “Global South” should be used with caution considering the diverse interests and priorities of developing countries in any given issue area. Before analysing a particular development-oriented agenda, it is important to understand the institutional context in which these coalitions operated, such as the

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15 See ibid; Amrita Narlikar and Diana Tussie, "The G20 at the Cancun Ministerial: Developing Countries and Their Evolving Coalitions in the WTO," *The World Economy* 27, no. 7 (2004).
relevant norms and principles, as well as the rule-development process in the institution. Nonetheless, few researchers to date have assessed negotiating coalitions in their particular institutional context. The different institutional contexts could provide an important explanation for the social behaviour among coalition members that derives from the norms, principles, and decision-making procedures in the institution itself. Often coalitions emerged through the negotiation process that is embedded in a particular institutional context.

In short, the available literature often investigates coalitions in a partial manner and consequently falls short in understanding the nature and role of negotiating coalitions related to their different development-oriented agendas at various stages of negotiation within a particular institutional context. The gap in the literature leads to the subsequent conundrum explored in this thesis: how can we explain the nature and role of negotiating coalitions involving developing countries pursuing development-oriented agendas in the context of the trade regime? The centrality of the nature of the coalition itself leads to the question: why coalitions adopted diverse forms of argumentation and how can we differentiate their development-oriented agendas? What types of leadership emerged from these coalitions? The role of coalitions at different stages of negotiation leads to the next question: how do negotiating coalitions affect the rule-development process? What is the extent to which negotiating coalitions rebalance the liberal trade and developmental nexus in a given issue area?

In addressing the above gaps in the literature, the thesis attempts to provide significant contributions at least in three ways. First, the thesis develops a conceptual framework to understand the different dimensions of coalitions’ roles and strategies in its particular institutional context. As discussed in more depth in Chapter 2, a single-sided approach to understanding coalitions has its own merits and constraints. The wide range of coalitions in the Doha Round provides a good opportunity to better understand the differences among these coalitions. Nonetheless, the variety of coalitions requires a more comprehensive and rounded conceptual framework that needs an adaptation of existing IR literatures. As discussed later in the methodology in this Chapter, this thesis suggests that rationalist and constructivist approaches provide a viable explanation to

17 See Patel, "New Faces in the Green Room: Developing Country Coalitions and Decision-Making in the WTO."; Yu III, "Unity in Diversity: Governance Adaptation in Multilateral Trade Institutions through South-South Coalition-Building."
the variety of coalitions during the Doha Round. There are advantages and disadvantages in applying this approach, as will be discussed later in the thesis, but the existing literature appears to be insufficient to comprehend the coalition dynamics in the Doha Round. The combination of rationalist and constructivist approaches proposed in this thesis is intended to enrich the bridge-building efforts by many scholars, and the conceptual framework would be directly applied to understanding contemporary coalition dynamics among developing countries.

Second, the thesis examines variations in the nature and roles of development-oriented coalitions during the Doha Round. As discussed in more detail in the discussion of methodology and case studies selection in this Chapter, the thesis chooses the ‘most important’ or ‘most typical’ case studies in order to generate ‘intra-case’ and ‘inter-case’ comparison and analysis. These case studies are intended to bring out the diversity of the range of coalitions in terms of their argument, leadership, and strategies, as well as their role in rule-development process. In addition to examining a variety of coalitions, the thesis examines the same coalitions at different stages of negotiation (agenda-setting, modalities-setting, rule-making, and deal-making processes).

Third, the thesis provides a significant empirical contribution to our existing knowledge through the insights it gives into the internal dynamics and strategies guiding the behaviour of negotiating coalitions, including their detailed arguments and proposals. Much of the existing literature lacks depth in analysing the arguments, internal dynamics, and strategies of coalitions. In reality, trade negotiations will most likely be determined by the details of the agreement itself, rather than the agreed principles and norms. It is therefore important to understand the different developmental agendas being pursued by different coalitions, rather than assuming what a developing country’s development agenda will be. In this regard, the thesis also examines whether coalitions evolve their arguments and strategies over time as negotiations proceed to the subsequent negotiation stages. These in-depth evaluations may be useful not only for scholars in understanding the variety of the developmental agendas advocated by these coalitions, but also might provide policy-makers with better understanding of the best practices and lessons learned in the coalition-building and coalition-maintenance processes during the Doha Round.
1.1.2 Negotiating Coalitions in the Context of the Liberal Trade and Developmental Nexus

At this early stage, I would like to clarify that the thesis will not provide an overall mapping or analysis of all coalitions in the Doha Round. The thesis does not specifically attempt to examine effective (or ineffective) models of coalitions. The thesis does however analyse the nature and role of negotiating coalitions involving developing countries in pursuing development-oriented agendas in the context of the nexus between the liberal trade and developmental principles under the trade regime.

This thesis begins from the hypothesis that the nature and role of negotiating coalitions are a product and endogenous to social interactions and negotiation processes. For this reason, I attempt to focus on microanalysis in coalition dynamics by closely evaluating the interaction between the internal and external coalition dynamics. This aspect is discussed in detail in Chapter 2. At this stage, it is sufficient to mention that the internal coalition dynamic relates to the nature of the argument (instrumental and normative frames) and leadership role of a negotiating coalition (structural-based, strategic-based, and normative-based leaderships). The external coalition dynamic relates to the role of negotiating coalitions in the rule-development process. The different rule-development process would relate to the strategies employed by a negotiating coalition and its negotiating counterparts (distributive and integrative strategies), as well as to the overall mode of negotiation (rhetorical action, communicative action, and rhetorical entrapment) in a given issue area.

However, in the process of researching this thesis, I came to understand that the internal and external coalition dynamics alone cannot capture the full depth of the new dynamism of coalitions in the Doha Round. This thesis therefore also suggests that negotiating coalitions involving developing countries were situated within particular instrumental and normative frameworks under the trade regime, which is discussed in detail in Chapter 2. The instrumental framework relates to the GATT/WTO decision-making procedures (informal, Single Undertaking) and negotiation environment at different stages of negotiation (agenda-setting, modalities-setting, rule-making, and deal-making processes). More importantly, the normative framework relates to the principles and norms under the trade regime (liberal trade and development principles).
At the heart of the principles and norms of the trade regime is the nexus between the liberal trade and developmental principles. The foundation of the liberal trade principle can be traced back to classical economic liberalism, and includes concepts such as comparative and competitive advantages. The liberal trade principle was translated into non-discrimination and reciprocity norms in the global trade regime. In parallel to the liberal trade principle, the developmental principle began with a flexibilities norm as an exemption, safeguard, or policy space, which was largely designed to accommodate the economic characteristics of the major developed countries. The developmental principle was later articulated in the norm of Special and Differential Treatment (SDT), which takes into account the economic characteristics of developing countries, and since the WTO’s establishment in 1995, included the norm of sustainable development. The acceptance of the developmental principle by the global community was slow and incremental over multiple rounds of negotiations and continued to evolve during the Doha Round. The push and pull between the liberal trade and development objectives in the trade regime appears to be central to coalition dynamics and negotiation process in global trade negotiations. Table 2 provides a general overview of the conceptual framework in the thesis.

Table 2. Conceptual Framework

Microanalysis of Internal and External Coalition Dynamics

<table>
<thead>
<tr>
<th>Internal Dynamic</th>
<th>Type of Leadership</th>
<th>External Dynamic</th>
<th>Mode of Negotiation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nature of Argument</td>
<td>Type of Leadership</td>
<td>Negotiation Strategy</td>
<td>Mode of Negotiation</td>
</tr>
<tr>
<td>Instrumental Frame</td>
<td>Structural-Based</td>
<td>Distributive Strategy</td>
<td>Rhetorical Action</td>
</tr>
<tr>
<td>Normative Frame</td>
<td>Strategic-Based</td>
<td>Integrative Strategy</td>
<td>Communicative Action</td>
</tr>
<tr>
<td></td>
<td>Normative-Based</td>
<td></td>
<td>Rhetorical Entrapment</td>
</tr>
</tbody>
</table>

Institutional Context of the GATT/WTO Regime

<table>
<thead>
<tr>
<th>Instrumental Framework</th>
<th>Normative Framework (Principles and Norms)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision-Making Process</td>
<td>Liberal Trade ←push and pull→ Development</td>
</tr>
<tr>
<td>Rule-Development Process</td>
<td>Non-Discrimination and Reciprocity</td>
</tr>
<tr>
<td>Informal Single Undertaking</td>
<td>Agenda-Setting Modalities-Setting Rule-Making Deal-Making</td>
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<tr>
<td></td>
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</tr>
</tbody>
</table>

The case studies in the three issue areas will illustrate the push and pull between the liberal trade and developmental principles. In this regard, this thesis proposes that rationalist and constructivist approaches provide a rounded and comprehensive understanding of negotiating coalitions in the Doha Round. As discussed in more depth
in Chapter 2, the rationalist approach tends to better explain when negotiating coalitions advocate commercial claims using an instrumental frame based on the liberal trade principle. Coalitions are more likely to bargain through rhetorical action by exchanging market access concessions. In comparison to the rationalist approach, the constructivist approach tends to better explain negotiating coalitions when advocating non-commercial objectives, such as socio-humanitarian and socio-economic claims, using a normative frame based on the developmental principle. Coalitions are more likely to argue through communicative action by developing new knowledge, or new normative interpretations to persuade or create an empathetic attitude of others with a better-reasoned argument. The case studies will also illustrate that often negotiating coalitions used mixed frames and adjusted their arguments as negotiations progressed. Negotiating coalitions also changed their types of leadership and strategies according to the negotiation stages, which in turn affected the overall mode of negotiation.

The thesis will begin with the assumption that each coalition advanced a particular frame of reference and exhibited particular types of leadership, as well as assumed different roles in establishing negotiation agendas, and developing modalities and new trade rules. The thesis will closely examine the individual negotiating coalitions in three clusters: agriculture, new ‘Singapore’ issues, and TRIPS and public health. First, negotiating coalitions in the agriculture negotiations demonstrated different development-oriented agendas between the G-20 and G-33. The G-20 pursued the reduction/elimination of agriculture trade distorting measures by major developed countries in order to ‘level the playing field’ between developing and developed members, and in turn, gain greater market share for competitive developing country agriculture exporters. This thesis suggests that the G-20’s strategic-based leadership developed innovative solutions to create mutual gains taking into account the diverse interests and preferences of WTO members. The G-20’s proposals encompassed both commercial (the liberal trade principle) and non-commercial claims (the developmental principle), and were therefore considered by various delegates and observers as middle ground solutions. In the end, the G-20’s chief contribution rested on its role in developing modalities and rules to discipline trade distortions; in particular, reductions in tariffs and subsidies in major developed countries. The efforts by the G-20 to reform the WTO, however, were scaled down during negotiations. The US and to some extent the EC engaged in hard bargaining by demanding concessions on several elements in
domestic support and tariffs protection for Sensitive Products, as well as significant exchange of manufacturing market access concessions from the G-20’s leading members, notably Brazil, India, and China.

In comparison to the G-20, the G-33 largely emphasised non-commercial objectives in agriculture negotiations. The G-33 advocated that developing countries should have sufficient flexibilities or policy space to maintain food security, livelihood security, and rural development that represented the ‘food security pillars’. The G-33 used a normative frame by highlighting the possible adverse humanitarian implications of agriculture liberalisation. For this reason, the G-33 believed that special trade provisions were needed to ensure that countries had sufficient flexibilities or policy space to protect their poorest and most vulnerable people in accordance with the norm of sustainable development. The G-33’s knowledge-based leadership that emphasised its socio-humanitarian claims succeeded to some degree in persuading or rhetorically entrapping other WTO members to include special trade provisions for food security purposes in the agriculture modalities. In developing specific rules for these special trade provisions, however, the G-33 was constantly challenged by agriculture exporters. Exporters were concerned that these special trade provisions would negatively impact their exports or commercial interests. As a result, the G-33 had to evolve into a strategic-based leadership in developing a solution of mutual gains. A compromise was achieved on one of the two special trade provisions by agreeing to a lowest common denominator by exchanging the socio-humanitarian claims of the G-33 and commercial claims of agriculture exporters. However, such compromise might in turn scale down the original purpose and effectiveness of the special trade provisions in achieving its developmental objective.

Second, the Core Group, often working together with the G-90—consisting of the AG; Least Developed Countries (LDCs) Group; and African, Caribbean and Pacific (ACP) Group—was active in negotiations on the new ‘Singapore’ issues. These coalitions adapted their argument at different stages of negotiation. Initially, the Core Group together with the G-90 and other developing countries opposed the launch of negotiations on the new issues and later the Core Group/G-90 were involved in negotiating rules on trade facilitation. The Core Group and G-90 used a predominantly instrumental frame by stressing the uncertain implementation costs for developing countries as a consequence of integrating the new issues into the trade regime. The Core
Group and G-90 together with other developing countries exhibited a structural-based leadership by using a coercive power to block and redirect negotiations to the coalition’s satisfaction. WTO members eventually agreed to continue negotiations on trade facilitation and dropped the other three new issues. Subsequently, the Core Group’s strategic-based leadership developed an innovative solution to create mutual gains accommodating the diverse interests and preferences among WTO members by balancing: obligations; members’ ability to implement their obligations; and provision of TACB. The balanced modalities between the liberal trade and developmental principles were well-received by the majority of WTO members. During the rule-making process, WTO members were surprisingly forthcoming in providing greater flexibilities for developing countries, and providing greater attention to the operationalization of TACB to assist developing countries with limited capacities to implement their obligations. The trade facilitation modalities and rules on SDT and TACB closely reflected the norm of sustainable development, which could be a new model or template for future SDT provisions.

Third, negotiating coalitions involved in TRIPS and public health negotiations were pursuing a developmental-friendly interpretation of flexibilities under the TRIPS Agreement. The CTPH, which consisted of the AG together with a number of developing countries, used a strong and persuasive normative frame by highlighting the urgency of the Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS) pandemic as a humanitarian crisis faced by some of the poorest developing countries. The persuasive knowledge-based leadership used a moral justification to seek a reasoned consensus and well-coordinated efforts by the CTPH, together with reinforcing non-state actors and exogenous factors, and succeeded in bringing forward the Declaration in TRIPS and Public Health (hereafter DTPH). The DTPH was a political statement indicating that public health objectives (the developmental principle) should be given priority over commercial interests (the liberal trade principle) under certain conditions. Subsequent negotiations focussed on a solution for paragraph 6 of the DTPH concerning the inability of developing countries with no or insufficient manufacturing capacity to make use of TRIPS flexibilities. At this stage of negotiation, the AG and CDC kept using a normative frame, but worked separately to seek a solution for paragraph 6. The lack of leadership and coordination among developing countries together with other exogenous factors were fully exploited by the US and EC.
As a result, the solution to paragraph 6 overturned the outcome to favour the commercial interests of pharmaceutical patent holders and scaled down flexibilities for developing countries to pursue their developmental objectives.

By critically evaluating and comparing the above case studies, the thesis will demonstrate three main findings. First, the core argument of negotiating coalitions used a particular frame reflecting the behaviour of the coalition and expected social behaviour of their negotiating counterparts, which could and did evolve over time, often depending on different negotiation stages. Negotiating coalitions presented problems based on certain norms and expectations in the context of the nexus between the liberal trade and developmental principles under the trade regime. A coalition using an instrumental frame prescribed material incentives-based arguments, which relates to the norms of non-discrimination and reciprocity under the liberal trade principle, while a coalition using a normative frame advocated normative values-based arguments, which relates to the flexibilities, SDT, and sustainable development norms under the developmental principle.

Second, negotiating coalitions exhibited a particular type of leadership often depending on the coalitions’ core argument that could adapt to the negotiation process itself. Negotiating coalitions could adopt: a structural-based leadership relying on its material resources as bargaining leverage that used a predominantly instrumental frame, a strategic-based leadership relying on its ability to develop innovative solutions for mutual gains that often used mixed instrumental-normative frames, and a knowledge-based leadership relying on its persuasive ability and a better-reasoned argument to stimulate empathy/sympathy that uses a normative frame. As negotiations progressed to rule-making and deal-making processes, negotiating coalitions frequently had to evolve to a strategic-based leadership since negotiations involved clearer distributive implications and binding commitments; hence the diverse interests and preferences among WTO members became more salient.

Third, many negotiating coalitions attempted to influence the mode of trade negotiation, particularly to incorporate socio-humanitarian or socio-economic objectives; thus expanding the traditional trade negotiations that used reciprocal concessions and primarily concentrated on liberal trade objectives. The broader perspective on trade negotiations using the developmental principle suggests that the
liberalisation process should not generate economic, social, and even political adjustment costs that exceed the benefits of liberalisation itself. The thesis will demonstrate that negotiating coalitions during the Doha Round ‘episode’ were relatively successful in re-emphasising the developmental objectives during agenda-setting and modalities-setting processes. However, most negotiating coalitions were drawn into traditional bargaining through exchange of concessions and consequently had to downgrade their original development-oriented objectives during rule-making and near deal-making processes.

1.2 Thesis Methodology and Case Study Selection

1.2.1 Thesis Methodology

Chapter 2 will closely examine different IR approaches and their strengths and weaknesses in explaining the nature and role of negotiating coalitions in the context of the liberal trade and developmental principles. This thesis proposes that rationalist and constructivist approaches provide a viable explanation to the coalition dynamics during the Doha Round. The development of ‘both/and’ propositions provide a more rounded and comprehensive understanding of negotiating coalitions since each approach provides a better explanation under the particular scope of conditions. A pragmatic methodology will be used to bridge contending approaches in a constructive manner. The thesis uses a process known as an ‘abduction’ which develops an intermediate level of reasoning using both inductive and deductive approaches.

The process requires two steps. The first step involves a deductive process by using available IR literature to develop the conceptual framework of the thesis. The

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19 The authors suggested another two alternatives of pragmatist methodology, namely ‘theory synthesis’ which tests empirical facts with the combination of research perspectives but keeping them separately (e.g. domain of application or sequential application), and ‘analytic eclecticism’ which uses different research perspectives and interprets them into ‘mutually compatible vocabularies’ before re-joining those perspectives in a new way. See Jörg Friedrich and Friedrich Kratochwil, "On Acting and Knowing: How Pragmatism Can Advance International Relations Research and Methodology,” International Organization 63, no. 4 (2009).
deductive process begins with a microanalysis of negotiating coalitions by evaluating the internal and external coalition dynamics using rationalist (power-based and interest-based approaches) and constructivist (cognitive-based approaches) literature. It is worth noting that there are constant interactive relations between the internal and external coalition dynamics throughout the negotiation process. Additionally, the thesis examines the institutional context in which these coalitions operated, taking into account the specific instrumental framework during the Doha Round and long-term tradition of the normative framework under the GATT/WTO regime. The institutional context would serve as the scope of conditions or negotiation environment under which rationalist and constructivist approaches might provide better explanations. For instance, constructivist approaches might better explain negotiations during agenda-setting and modalities-setting processes since negotiations involve discussions on principles and parameters with the focus on the long-term objective of the regime, while rationalist approaches might better explain negotiations during rule-making and deal-making processes since negotiations involve discussions on specific rules and binding commitments with clearer distributive implications as discussed in detail in Chapter 2.

The second step involves an inductive process by using the empirical evidence and conceptual framework to develop an intermediate reasoning. The thesis explores the implications of each approach and compares them with the empirical facts. A microanalysis will be undertaken to evaluate each coalition at different stages of negotiation: agenda-setting and modalities-setting processes, as well as rule-making and deal-making processes. For each stage of negotiation, the microanalysis will examine closely the internal coalition dynamic (nature of coalitions’ argument and leadership within the coalitions) and the external coalition dynamic (strategies employed by the coalitions and their negotiating counterparts, as well as the mode of negotiation during the particular stage of negotiation). The way a compromise or increasing convergence was achieved among negotiators or the way a deadlock occurred would characterise the mode of negotiation. For this reason, the thesis will highlight important events—often high level or ministerial meetings—when negotiators achieve a compromise or reach greater levels of convergence or even encountered an impasse. Should there be overlapping explanations, the thesis observes closely whether these overlaps are comparable or distinctive. This approach would hopefully provide a more rounded and
comprehensive understanding of the nature and role of negotiating coalitions in the Doha Round.

This thesis traces the processes of coalition-formation and coalition maintenance in different stages of negotiation. The validity of the research data is maintained through a triangulation approach. The triangulated research data uses: (1) qualitative content analysis of official statements/documents; (2) semi-structured interviews; and (3) qualitative content analysis on major media and specialist publications.

First, the research adopted a qualitative content analysis on official documentary records focussing on WTO official documents, such as statements and proposals by members or coalitions, meeting minutes, summary reports, and working documents.

Second, semi-structured interviews of national delegates were conducted by focussing on leading countries within each coalition, such as Brazil, India, Indonesia, and the Philippines, as well as major negotiating counterparts, such as the US and EC. In addition, interviews focussed on a wide variety of members related to the coalitions, including countries with multiple coalition memberships. The interviews were also conducted with staff and representatives from international institutions, such as the WTO Secretariat and the Food and Agriculture Organization (FAO). Staff and representatives from relevant non-governmental organisations (NGOs) and inter-governmental organisations were interviewed, especially those who had assisted developing countries in providing research-based analysis in formulating their position and proposals, such as the South Centre and the International Centre for Trade and Sustainable Development (ICTSD).

Third, the research undertook a qualitative content analysis of media (internet publications, and newsletters) and specialist publications (books, and journals). All three types of data are equally essential to trace the process of the nature and role of each coalition as well as the social interaction and negotiation processes. More importantly, the three types of data were used to cross-check the validity of the data through a triangulation approach.
Chapter 1. Introduction

1.2.2 Case Study Selection

The selection of case studies was determined by the ‘most important’ or ‘most typical’ case studies in order to generate ‘intra-case’ and ‘inter-case’ comparison and analysis. There are three controlled variables that reflect the similarity across the case studies. Firstly, coalitions engaged in a particular development-oriented agenda shared by many developing countries. Secondly, coalitions had a substantial impact on the negotiation process, such as the Doha Ministerial Conference in 2001, the outcome of the July Package in 2004, and the mini-ministerial meeting in 2008. Thirdly, the coalition’s developmental-oriented agenda could potentially impact the long-term trajectory of the trade regime.

The case studies are divided into three clusters based on a given issue area: (1) unfinished issue (or built-in agenda) relating to an ongoing global trade reform; (2) new issues relating to the expansion of the WTO agenda; and (3) an implementation issue relating to an established WTO agreement.

The first cluster represents coalitions addressing an unfinished issue or built-in agenda notably agriculture. The agriculture negotiations are the most politically sensitive and technically complex issue area. The 1994 Agreement on Agriculture (AoA) in the Uruguay Round was the first step for a global agriculture reform. The case study will investigate the G-20 and G-33, as mentioned earlier. These coalitions engaged in developing modalities and new rules on agriculture as part of the long-term and ongoing process of global agriculture reform. Due to the sensitivity of agriculture negotiations, the push and pull between the liberal trade and developmental principles was extremely severe, not only between developed and developing countries, but also among developing countries.

The second cluster represents coalitions negotiating the new issues. The discussion of the inclusion or exclusion of certain agendas in the trade regime provides an invaluable insight into the filtering process of proposing a new agenda in the trade regime. The fact that there were neither legal nor customary guidance on what constitutes a WTO agenda made the negotiation process even more important. The case study will focus on the Core Group and G-90 that negotiated against the inclusion of the

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20 Ibid.
new ‘Singapore’ issues, but later agreed to negotiate trade facilitation. The Core and G-90 helped develop new innovative modalities and rules that took into account both the liberal trade and developmental principles. This new model could be used as a future SDT model or template.

The third cluster represents coalitions negotiating institutionalised rules, namely the TRIPS Agreement and public health. The TRIPS Agreement placed greater emphasis on commercial interests and rights of patent holders, but proved detrimental to the provision of available medicines to the poorest people of the world during the HIV/AIDS pandemic. The crisis provided the momentum to reinterpret TRIPS flexibilities. The push and pull between the liberal trade and developmental principles was extremely severe between the rights of pharmaceutical patent holders and rights to medicine/public health.

1.3 Thesis Structure

The thesis is divided into six chapters beginning with this introductory chapter. Chapter 2 elaborates the conceptual framework for the thesis. The first section examines the definition of negotiating coalitions in this thesis followed by a section that evaluates the position of this thesis within existing literature. The following section elaborates the microanalysis of negotiating coalitions resting upon the internal coalition dynamic, namely nature of argument, and types of leadership; as well as external coalition dynamic, namely negotiation strategy and overall mode of negotiation. The next section evaluates the institutional context in which these negotiating coalitions operated by unpacking the instrumental and normative frameworks of the trade regime.

The next three chapters examine several case studies, which will be divided into three clusters as discussed earlier. Chapter 3 examines negotiating coalitions in the agriculture negotiations. The first section provides a background to the AoA. The following sections separately investigate the nature and role of the G-20 and G-33 at identical negotiation stages. It will focus on negotiations during agenda-setting and modalities-setting processes: nearing the Cancún Ministerial Conference in 2003 and nearing the conclusion of the July Package in August 2004. It will then be followed by discussions of the G-20 and G-33 regulatory drafting role as well as their role during and after the Geneva mini-ministerial meeting in 2008.
Chapter 4 investigates coalitions surrounding new ‘Singapore’ issues. The first section provides a brief background to the new issues and efforts to include them in the trade regime. The following section stresses the nature and role of the Core Group and G-90 on (or against) the new ‘Singapore’ issues nearing the Cancún Ministerial Conference in 2003. The following section emphasises the Core Group and LDCs Group in the trade facilitation modalities-setting process and later the Core Group together with the G-90 in the trade facilitation rule-making process.

Chapter 5 investigates negotiating coalitions related to the TRIPS Agreement and public health issue. The first section provides a background of the TRIPS Agreement. Further, the thesis investigates the CTPH nearing the Doha Ministerial Conference in 2001 as it negotiated for the DTPH. Afterward, the thesis will examine the AG and CDC during the negotiations for a solution to paragraph 6 of the DTPH, which achieved a temporary solution in 2003 and concluded a permanent solution in late 2005.

Chapter 6 provides an overall analysis and comparison of the nature and role of negotiating coalitions involving developing countries during the WTO Doha Round.
Chapter 2. Conceptual Framework

This chapter develops a conceptual framework for understanding the nature and role of the negotiating coalitions of developing countries in the WTO Doha Round. The first section will define a negotiating coalition in this thesis. The second section will evaluate the existing literature on coalitions and locate the position of this thesis within the existing literature. The third section examines the microanalysis of coalitions focusing on the internal management and external relations of coalitions. However, the microanalysis of those internal and external coalition dynamics alone cannot sufficiently comprehend the nature and role of coalitions. The activism of coalitions cannot be detached from its institutional context in which these coalitions operated. For this reason, the fourth section examines the GATT/WTO regime, particularly its instrumental and normative frameworks.

2.1 Definition of Negotiating Coalitions

A coalition was defined by Hamilton and Whalley as a “group of decision-makers...who agree to act in concert to achieve a common end” or by Odell as “a set of governments that defend a common position in a negotiation by explicit coordination”. Both definitions entail the important elements of coordination and a shared common purpose. A broader understanding of a coalition includes “cross-coalition” or “clubs” as “a group of nations that are united or associated for a particular purpose”. Other scholars consider this type of cross-coalition as “representative groups” that consist of countries with a variety of interests to overcome an impasse.

This thesis defines a negotiating coalition as a group of countries undertaking coordination and working on a common platform based on a consensual understanding of a specific issue(s) in pursuing a common purpose. The definition entails four important elements on how this thesis views negotiating coalitions. First, the definition

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emphasises the term ‘negotiating’ coalition rather than ‘bargaining’ coalition.\textsuperscript{25} A negotiation process is often located between the logic of consequentialism reflecting rationalist approaches in which individual and collective actions are mainly based on consequential cost-benefit calculations, and the logic of appropriateness reflecting cognitive-based approaches in which individual and collective actions are defined by their identity and rule-guided behaviour.\textsuperscript{26} The term ‘bargaining’ tends to limit the process of an actor behaving solely in a strategic manner based on a changing power configuration or distributional cost-benefit structures. The definition in this thesis does not neglect the process of a coalition engaging in strategic behaviour, because arguably, bargaining is definitely an important part of a negotiating coalition. The definition of a negotiating coalition emphasises a continuous social learning process of coalitions throughout the negotiation process. An actor defines its interests and preferences based on the development of ideas and knowledge within a discourse because an actor inherently acknowledges the limits of its own ideas and knowledge.\textsuperscript{27} This process is particularly important in negotiating a modern agreement, which is not only concerned with cost-benefit calculations, but also entails a learning process of one’s own national position and the national position of its negotiating counterparts. Negotiations of modern agreement tend to involve a more deliberative process with a view of their long-term interests and values.\textsuperscript{28} In this vein, members within a negotiating coalition often collectively define interests and preferences as well as collectively re-conceptualise the problem based on available ideas and knowledge throughout the negotiation process. In other words, members would gradually define collective interests and preferences by developing a shared understanding of meaning and events as a negotiation progresses. The main point of the term negotiating implies “a process of discovery not creation; a

\textsuperscript{25} In one of the earliest studies on coalitions in the GATT negotiation, the term ‘negotiating coalition’ is used to describe a genuine negotiating coalition that involves an exchange of concessions by providing a certain request (benefit) and offer (cost). The term ‘negotiating coalition’ in this thesis implies a broader understanding, which relates to the understanding of the negotiation process. A negotiating coalition therefore encompasses different roles and functions at different processes of negotiation, including agenda-setting, modalities-setting, rule-making and even deal-making processes. See Hamilton and Whalley, "Coalitions in the Uruguay Round," 555.


\textsuperscript{27} Ernst B. Haas, \textit{When Knowledge is Power: Three Models of Change in International Organizations} (Berkeley: University of California Press, 1990), 9.

process of trying to move out from the solid ground of current law to incorporate new problems within the existing normative framework".29

Second, the definition provides a broader interpretation of the level of coordination within a coalition. Some coalitions might have a regular and explicit coordination with a designated coordinator or a focal point. However, a coalition might also be formed based on a looser coordinative arrangement, such as indirect coordination through the exchange of information among members involved in several coalitions, or ‘islands’ of coalitions working on a common platform based on a consensual understanding of a specific issue(s) on a temporary basis. Despite the different levels of coordination, this thesis stresses that a coalition should work on a common platform in pursuing a common purpose. For this reason, the definition excludes ‘cross-coalition’ or ‘clubs’ or ‘representative groups’ that are associated with groups or clubs assembled for breaking a deadlock or deal-making process.30 Such groups or clubs consist of countries working on different platforms and often involve antagonist principal countries.

Third, the definition implies that members within a coalition should work on a common platform based on a consensual understanding. A consensual understanding means that negotiators share the same understanding of the cause and effect relations of a specific issue(s) in a given domain that is developed within the community of negotiators.31 A coalition might develop a consensual understanding on a very specific policy instrument or a whole issue area of negotiations. Coalitions working on a single issue or very specific issues tend to be more effective rather than coalitions working on a wide variety of issues.32 Members could simply sideline their divergent understanding of other issues outside the realm of the coalition. A multi-purposed coalition working on a wide variety of issues might therefore find it difficult to agree on a common platform.

30 The formation of ‘clubs’ were relatively common during the multilateral trade negotiation. The Quad that consisted of the US, EU, Japan and Canada was active during the Uruguay Round. The Five Interested Parties (FIPs) or ‘new Quad’ that consisted of the US, EU, Australia, Brazil, and India sometimes included additional countries was active during the Doha Round.
based on a consensual understanding, particularly when the coalition is involved with two or more contradictory issues.³³

Fourth, related to the first point, the definition suggests that a negotiating coalition is more than often embedded in the negotiation process, and the negotiation process itself is endogenous to the institutional context. A coalition active at any stage of a negotiation is “usually a product of negotiation process of the earlier stage rather than a structure exogenous to the process”.³⁴ Further, the internal and external dynamics of a negotiating coalition are similar to the dynamic of the negotiation process itself. Dupont argues that “it is legitimate... to consider coalition building and dynamics not only as a special case of the negotiation process and outcome, but as either a basic ingredient of negotiation or a valuable metaphor of negotiation itself, embodying concepts and factors that mirror or mimic negotiation dynamics”.³⁵ Negotiating coalitions were often engaged in the substantive discourse of a negotiation in a given issue area. Odell suggests that the trade regime is a product of “…negotiation in the first place and also may influence later negotiations... institutions are endogenous to the negotiation process and subsequent negotiations are endogenous to the institutions under which they occur”.³⁶ When a negotiating coalition is formed for a specific issue(s) in a given issue area, the negotiation content within the given issue area is often not a one-off event, but a continuation of previous negotiations or even previous rounds of negotiations. For this reason, negotiating coalitions should be examined with a view to their given issue area and their particular institutional context.

2.2 Overview of Existing Literature

This section will review existing IR literature related to coalitions involving developing countries such as: power-based approaches; interests-based approaches; cognitive-based approaches; and other specific literature on coalitions. It will also evaluate their arguments in explaining coalitions, and their shortcomings in addressing the main

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³³ For instance, the Cairns Group focussed on a single issue, avoided ideological conflicts and didn’t pursue other non-tangible objectives, while the Group of 77 (G-77) engaged in a broad variety of issues based on a common ideology, but found it difficult to achieve a common platform as negotiations became more specific. See Higgott and Cooper, "Middle Power Leadership and Coalition Building: Australia, the Cairns Group, and the Uruguay Round of Trade Negotiations," 625; Rothstein, Global Bargaining: UNCTAD and the Quest for a New International Economic Order: 198-202.
³⁶ Odell, "Introduction," 11.
research question. With the overview, this section will clarify the approach or contribution of the thesis to the existing literature.

Power-based approaches, such as neorealism, emphasise the central role of a hegemonic power and structural configuration of material power in the anarchical global system. In the context of global economic governance, a hegemonic power is needed to establish and maintain provision of public goods as well as discipline free riders.\textsuperscript{37} The balance of power between the hegemonic power and developing countries is central in evaluating the collective behaviour among developing countries or secondary states. Developing countries, as weaker states, could balance against the hegemonic power; bandwagon with the hegemonic power;\textsuperscript{38} align with a contending power against the hegemonic power;\textsuperscript{39} or hedge between competing powers to maintain open options and to limit commitment as a precautionary measure to the possible future changing power constellation.\textsuperscript{40}

In line with power-based approaches, the activism of the Cairns Group during the Uruguay Round prompted several literature sources to investigate the concept of middle power leadership and its non-hegemonic role in world politics. The Cairns Group, which was led by Australia and consisted of both developed and developing countries, was active in promoting a liberal-oriented agenda in the agriculture negotiations. Proponents of the middle power concept argue that the increasing role of the Cairns Group was possible partly due to the changing global power constellation. The US and EC, as the major powers, were unable to either provide political leadership or give direction to the negotiation process. The intellectual leadership, technical capacity, and political mediator role by the leaders within the coalition were able to fill this leadership void and served as a ‘third force’.\textsuperscript{41} In analysing coalitions in the Doha


\textsuperscript{41} The concept of middle power was mainly developed to portray the Australian and Canadian internationalist role, and not intended to describe the role of developing countries. The activism of the middle power also depended on the domestic political orientation in those countries. Nevertheless, one of the attributes of middle power behaviour is the formation of coalitions with other weaker states, notably
Round, Singh argues that global power configuration had shifted from a hierarchical and concentrated power distribution into a flattening distribution of power or diffusion of power. The diffused distribution of power provides greater leverage and opportunity for developing countries to form coalitions in a particular issue area because weaker countries might have greater material power in those particular issue areas. The power configuration in particular issue areas could therefore provide a viable explanation for the creation of coalitions within a given issue area. For instance, a country’s market size or share in world trade (in a particular issue area) could provide an indicator of relevant material power. Moreover, Wolfe suggests that the new collective activism of developing countries was possible due to, first, the declining compulsory power of the hegemon, and second, increasing institutional power of developing countries. The former refers to the inability of the hegemonic power or any single country to provide sufficient public goods, namely an open market and new multilateral trade rules, which constrained the hegemonic power’s ability to use coercive power against other WTO members. The latter implies that the decision-making procedures in the WTO regime enable emerging developing countries to challenge the established order and exercise their institutional power. Further, Efstathopoulos argues that South Africa as co-leader of the G-20 exhibited a middle power that used a combative diplomacy (rather than accommodative diplomacy) to pressure the major powers (hegemonic powers) to assume greater responsibility to agriculture reform in exchange for expanding the WTO agenda. The middle power leadership triggered the G-20’s formation and shifted the balance of power during the 2003 Cancún Ministerial Conference.


43 Dráhos, "When the Weak Bargain with the Strong: Negotiations in the World Trade Organization," 82.
Chapter 2. Conceptual Framework

power and weaker countries, whereby alliances are associated with actual or potential material power configuration shifts. Notwithstanding the importance of material power relations, the alteration of power relations between the hegemonic power and weaker actors do not always induce collective behaviour among weaker states. Moreover, the overemphasis on a material explanation might undermine a possible non-material explanation for collective behaviour among developing countries. Second, neorealism’s description of a structural explanation for state behaviour tends to discount the ‘black box’ of the interaction processes among actors. The approach does not adequately account for the range of microanalysis and substantive discourse through informal social interactions and negotiation processes, such as cost-benefit calculations or the possibility of collective identity development. The variety of interests, ideas and social communication in the discussions among developing countries and the broader negotiation counterparts bears little significance to the collective behaviour of developing countries. And third, power-based approaches provide a limited account of the role of a regime in determining an actor’s behaviour. For instance, neorealism downplays the facilitating or constraining quality of a regime on an actor’s behaviour\(^{46}\) and dismisses the possibility of agent-structure intersubjective relations, whereby an agent might be able to alter the structure in which it operates.\(^{47}\) The reliance of the hegemonic power and major powers on the regime’s sustainability provides little room to analyse the role of coalitions in promoting different development-oriented agendas and rule-development processes in the Doha Round.

In comparison to power-based approaches, neoliberal institutionalism and rational choice theory—as interests-based approaches—provide relatively extensive tools for analysis of the activism of coalitions in the context of a regime. The basic assumption of interests-based approaches is that actors are utility maximising entities, whereby behaviour is conditioned by short-term and long-term cost-benefit calculations. Pertinent to the institutional context of these coalitions, neoliberal institutionalism emphasises the role of a regime in facilitating negotiations to overcome collective action problems, reducing transaction costs, reducing uncertainty, and addressing


information deficits or asymmetries.\textsuperscript{48} Moreover, successful repetitive cooperative scenarios among actors within a regime could stimulate future cooperation since actors seek long-term payoffs and shadow of the future.\textsuperscript{49} Furthermore, the compartmentalisation of issues through trade-offs and issue linkages could induce cooperation as the regime broadens the range of issue areas in order to seek a balanced cost-benefit distribution.\textsuperscript{50} In regard to the role of regime, neoliberal institutionalism acknowledges that a regime "acts as catalyst for coalition–formation and as arenas for political initiatives and linkage by weak states",\textsuperscript{51} but does not provide a specific theory about the nature and role of coalitions.

In line with interests-based approaches, coalition studies driven by rational choice theory provide the microanalysis for the management within and the effectiveness of a coalition. One of the earliest works on a coalition examined the necessary size for a successful coalition or 'minimum winning coalitions'\textsuperscript{52} and minimum resources required to form and to join coalitions as well as pay-off distribution among members.\textsuperscript{53} Another study concentrated on the role of bargaining and compromise between 'equality' and 'equity' within a coalition.\textsuperscript{54} Subsequent studies moved away from a pure game-theory model to take into account structural and historical aspects of the organisation.\textsuperscript{55} Studies have also examined coalitions using interests-based approaches in various real life situations, such as coalitions in multilateral negotiations.\textsuperscript{56} Dupont gave a relatively comprehensive account of the


formation of a coalition stressing several aspects, such as cost-benefit analysis of membership; opportunity cost of organising, joining or quitting a coalition; effective size of a coalition; the leadership role and its interaction with members; and level of proximity or compatibility among members.\(^{57}\)

Pursuant to interests-based approaches, Hamilton and Whalley investigated coalitions in the Uruguay Round negotiations and argue that negotiating coalitions are more difficult to form and maintain because they are engaged in bargaining by requesting demands (benefit) and offering concessions (cost) on behalf of their members. Other coalitions are relatively simpler to form because they convey demands (benefit) but do not have to agree on collective concessions (cost), such as an agenda-moving coalition, a proposal making coalition, and a blocking coalition.\(^ {58}\) In addition, a similar question was put forward with regard to coalitions in the Doha Round focussing on the challenges of internal management within a coalition using an interests-based analysis. Birkbeck and Harbourd suggest that there are several elements within a coalition that need to be analysed, such as range of interests among members whereby asymmetrical relations within a coalition might marginalise the interests of smaller countries or sub-groups; the appropriate size of a coalition which could determine possible concessions made by the coalition; and the type of leadership that plays a vital role in determining the relative benefits and impacts on the coalition’s members.\(^ {59}\)

Diego-Fernández uses an interest-based approach to analyse pragmatic coalitions that focus on a single task and suggest that a country should identify the costs (logistical costs, giving excessive concessions, losing credibility) and benefits (representation, advancing one’s position, pooling resources) of joining a coalition.\(^ {60}\) Some scholars even attempted to search for hypothetical coalitions based on members’ interests and positions during the Doha Round agriculture negotiations in which they found eight to ten clusters of potential coalitions.\(^ {61}\)

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\(^{58}\) Hamilton and Whalley, "Coalitions in the Uruguay Round," 550-55.

\(^{59}\) Birkbeck and Harbourd, "Developing Countries in the WTO: Strategies for Improving the Influence of the WTO’s Weakest and Poorest Members," 8-11.

\(^{60}\) Diego-Fernández, "Trade Negotiations Make Strange Bedfellows," 448-49.

Interests-based approaches also encompass several shortcomings in addressing the thesis research question. Firstly, assessing the cost-benefit analysis of the activism of coalitions might be difficult to measure. A coalition might not only be concerned with the demands (benefits) and concessions (costs) calculations of tangible goods by purely assessing the strategic distributive outcome, but at certain levels coalitions might be engaged in a rule-making process in which the after-effect of the outcome will be "uncertain, long-range and universal".62 The variety of development-relevant agendas might entail non-trade or non-commercial objectives, which may not be easily estimated in terms of commercial cost-benefit calculations. Secondly, and related to the first point, the utility maximising nature of actors is taken as given because interests and preferences are exogenous to social interactions and negotiation processes. Although interests-based approaches have incorporated the notion of non-material factors in world politics, it does not go so far as to recognise that ideas and social communication could profoundly alter an actor's identity, interests and preferences. The notions of a road map and focal point,63 bounded rationality,64 and rhetorical action65 imply that non-material factors, such as ideas and norms, are only used to determine the best strategic choice in order to maximise an actor's fixed interests and preferences. Thirdly, neoliberal institutionalism perceives the role of a regime in a limited way, such as facilitating cooperation among actors and constraining actor's behaviour. It does not account for the possibility of the constitutive role between agent and structure. It neither comprehends how ideas and norms within a regime could alter an actor's identity, interests and preferences; nor how an actor could change the normative framework within a regime.

In addition to power-based and interests-based approaches—as rationalist IR approaches—constructivists or cognitive-based approaches provide some explanation of coalitions' activism by focussing on non-material factors, such as ideas, norms, and

social communication. Some scholars point out the centrality of ideas and norms in the initial creation of a coalition and in the aftermath of maintaining a coalition. Narlikar, for instance, argues that an actor might define its interests and preferences based on ideas and norms during the initial formation of a coalition, which serve as an advisory function produced by a particular actor or coalition, especially under a condition of uncertainty and when the preferences structure is not well defined. After a coalition is formed ideas and norms could also strengthen solidarity and sustain unity within the coalition. In comparison to power-based and interests-based approaches, constructivist approaches emphasise the importance of agent and structure constitutive relations. Agent-centred constructivism, for instance, emphasises the ability of an agent to use argumentative persuasion or deliberation to achieve normative structural change. Deliberation refers to an attempt to contest the validity of a causal or normative framework and to achieve a reasoned consensus based on the better argument through a dialectic communicative interaction. According to Risse, deliberation would most likely occur during issue creation and the agenda selection process in a negotiation context. A successful deliberation implies that actors are willing to change their worldview or interests and preferences in the direction of the better argument. In this vein, a coalition could serve as a consensus building mechanism when a coalition challenges an established normative framework by providing a new normative interpretation or assimilating another normative framework or developing a new normative framework within a regime. Consensus building requires a certain type of leadership, namely a ‘norm entrepreneur’, who actively develops a normative frame through deliberation using technical analysis and information expertise in order to be accepted by a sufficiently large number of countries within the regime until it reaches a ‘critical mass’.

In answering the thesis research question, constructivist approaches also possess shortcomings. The trade regime is traditionally a strategic bargaining environment and for this reason strong constructivist approaches might be difficult to use to understand

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the behaviour of coalitions. In this vein, rationalist approaches criticised the overemphasis of ideas, norms and social communication at inter-state relations by constructivist approaches because rationalist approaches consider that ideas and norms do not necessarily influence a state’s behaviour. Neorealism nullifies the role of norms and structures in world politics. Norms and social communication at the level of international society have a very limited impact on a state’s behaviour. Krasner argues that the hegemonic power and powerful states more often than not undermined weaker states’ sovereignty and discarded international norms and rules in world politics.\(^70\)

Moreover, rational choice theorists provided a softer critique by arguing that the notion that actors are shaped by principles and norms does not necessarily contradict with actors as the utility-maximisers. Keohane implies that the social interactions and negotiation processes among actors do not “necessarily depend on altruism, idealism, person honor, common purpose, internalized norms, or shared beliefs in a set values embedded in a culture. At various times and places any of these factors of human motivation may indeed play a role in processes of international cooperation: but cooperation can be understood without reference to any of them.”\(^71\)

Rationalists and constructivists view actors in world politics working in different modes of action, but there are recent efforts that try to use these approaches in a complementary manner. Rationalists use the logic of consequentialism in which individual and collective actions are mainly based on consequential cost-benefit calculations, and constructivists use the logic of appropriateness in which individual and collective actions are defined by their identity and rule-guided behaviour.\(^72\) The former views the interaction of utility maximising actors within the system, while the latter views the role played by actors within a community. Although a synthesis would be more difficult between rationalists and ‘strong’ constructivists, bridge building endeavours might be possible between rationalists and ‘weak’ constructivists in which each approach is willing to develop a complementary explanation to understand world politics.\(^73\) The complementary explanation might be useful for developing a scope of conditions under which particular approaches might be better suited to explain the

\(^72\) March and Olsen, "The Institutional Dynamics of International Political Orders," 949-52.
\(^73\) Andreas Hasenclever, Peter Mayer, and Volker Rittberger, Theories of International Regimes (Cambridge, New York: Cambridge University Press, 1997), 216-9.
collective behaviour of actors. In the context of a regime, for instance, rationalist approaches could explain short-term cooperation based on strategic calculation whereby constructivist approaches could explain the medium and long-term cooperation as the bargaining is transformed into agreed norms and rules for future communal cooperation.74 Further, coalitions engaging in short-term bargaining of market access concessions might be explained by rationalist approaches, but deliberation of developmental values, such as non-commercial values concerning domestic stability and humanitarian objectives, might be explained by constructivist approaches.

In addition to the above IR approaches, specific coalition literature investigated various aspects of a coalition. Narlikar provides an elaborate understanding of coalitions’ typology and effectiveness using a combination of IR approaches.75 Narlikar argues that coalitions could be defined in two spectrums, on the one hand, ‘bloc-type’ coalitions that are formed based on like-mindedness, ideational and normative foundations; and, on the other hand, ‘alliance-type’ coalitions, such as issue-based coalitions, formed on the basis of rationalist approaches of power and interests relations. During the Doha Round, a new breed of coalition emerged as a ‘smart’ coalition in which the coalition could shift between bloc-type and alliance-type coalitions.76 These typologies, however, were built upon coalitions during the Uruguay Round. Two main coalition models emerged, namely ideological-based coalitions, using blocking diplomacy, and interests-based coalitions, using proactive diplomacy. As a consequence, when a coalition simultaneously employed blocking diplomacy and proactive diplomacy, the blended typology merely reflected the coalition’s mixed negotiation strategy, but it would be difficult to distinguish the variety of development-oriented agendas and strategies in the Doha Round. The changing nature of coalitions therefore is seen as a behavioural adaptation, a simple learning process from past experience. Using a similar approach, Quinsaat argues that the Philippines used a coalition building strategy as an adaptation and simple learning process based on bounded rationality, or in other words, a strategic behaviour.77 The analysis falls short

of understanding the broader aspect of a coalition’s activism in pursuing development-relevant agendas and their role in the rule-development process in the trade regime.

Other literature analyses various methods to increase the effective participation of coalitions involving developing countries in the WTO. Some observers suggest that developing countries through coalitions should be able to intensify regular interaction and coordination, and if possible, establish a formal structure for a bargaining coalition. Moreover, some analysts propose the possibility of increasing the effectiveness of coalitions by developing prior consensual positions based on technically viable and well-researched proposals on specific issues. Further, coalitions could enhance their effectiveness by engaging with southern and northern civil societies to acquire technical and policy research and advice, as well as to gain broader communal support through the dissemination of the coalition’s position. Furthermore, Wolfe gave an alternative perspective of viewing the effectiveness of a coalition. The formation of a group or club should not be limited to a group or club with common interests, but must also take into account groups or clubs consisting of members with divergent and contradictory interests because a heterogeneous group or club is more likely to be effective in achieving breakthroughs for more complex issues. These analyses, however, are limited to managerial matters within coalitions, but fall short of providing a more rounded understanding of the various development orientations and roles in the rule-development process in the Doha Round.

Complementary to coalition literature using particular IR approaches and studies on specific aspects of coalitions (e.g. effectiveness), this thesis would be associated with efforts by some scholars in analysing the activism of coalitions in the context of the trade regime. Several literature sources considered that the role of coalitions of developing countries is embedded and became an integral part of the WTO decision-

78 See for example Bernal et al., "South-South Cooperation in the Multilateral Trading System: Cancún and Beyond."; Drahos, "When the Weak Bargain with the Strong: Negotiations in the World Trade Organization."
80 See for example Odell and Sell, "Reframing the Issue: The WTO Coalition on Intellectual Property and Public Health, 2001."
making process. Patel argues that the WTO decision-making mechanisms, including its negotiation sessions and dispute settlement body, should be modified to incorporate the role of coalitions. The integration of coalitions into the WTO regime may facilitate a consensus building process, and address problems of transparency and accountability.\textsuperscript{82} Further, Srivastana suggests that the ability of a coalition to adapt or to maintain cohesion among members within a coalition cannot be determined by the internal coalition characteristics alone, but must be placed in the institutional and legal framework of the WTO.\textsuperscript{83} Moreover, Yu provides a deeper account of the activism of coalitions involving developing countries in the context of the nexus between the liberal and developmental principles. He argued that the novel collective behaviour among developing countries during the Doha Round should not be recognised as merely a strategic behavioural adaptation, but viewed as a profound ideational change in the way “developing countries view the WTO, its role in their respective development processes and their role in its governance” and further maintained that “the development implications of trade concessions should be considered as part and parcel of the philosophical moorings and values underlying the multilateral trade system”.\textsuperscript{84} In other words, the nature and role of coalitions of developing countries in the Doha Round were not merely engaging in reciprocal market access exchanges for a more liberalised global economy, rather they have moved to take into account the broader developmental function of the WTO regime. I would like to follow Yu in focussing the thesis on efforts to comprehend the nature and role of coalitions in the broader context of the development implications within the trade regime.

In sum, the literature indicates that each IR approach provides particular insight in explaining negotiating coalitions but tends to dismiss the emphasis of other approaches. The combination of rationalist and constructivist approaches could provide a more rounded and comprehensive understanding of the nature and role of the negotiating coalitions in the Doha Round. Under a specific scope of conditions, a particular IR approach might be more suited to explain the nature and role of

negotiating coalitions. The thesis therefore proposes investigating the nature and role of negotiating coalitions by taking a microanalysis of the internal and external coalition dynamic within the institutional context in which these coalitions operated.

2.3 Microanalysis of Internal and External Coalition Dynamics

The following sections consist of two steps. The first step is to evaluate the microanalysis of the coalition by examining the internal and external coalition dynamics in this section. The second step is to evaluate the institutional context in which these coalitions operated as discussed in detail in the next section.

In the first step, the microanalysis involves: (1) internal coalition dynamic related to the nature of the argument and leadership role within a coalition; and (2) external coalition dynamic related to the role of a coalition within the negotiation process itself in particular strategies employed by a coalition and its negotiating counterparts, as well as the overall modes of negotiation on a given issue area. As mentioned above, coalitions' dynamics are products and endogenous to the social interaction and negotiation processes and for this reason there are constant interactive relations between the internal and external coalition dynamics throughout the negotiation process.

2.3.1 Internal Coalition Dynamic

2.3.1.1 Nature of Argument: Instrumental and Normative Frames

Negotiating coalitions typically develop a frame of reference to solidify the coalition's argument. Framing and reframing involves developing a set of arguments that clarifies the situation (facts) and the expected appropriate behaviour in such a situation based on interests and norms. Framing and reframing is determined “by the manner in which choice problem is presented as well as by norms, habits and expectancies of the decision maker”. Once an actor develops and uses a particular frame or reframing, the actor will behave in a particular way, strive to achieve a particular objective, assume

particular causal relations, and at the same time abide by certain norms. Framing and reframing involves a strategic construction of argument in order to shape the views and sometimes interests of the audience. Framing and reframing follows "the logic of consequentialism but is embedded in collective understanding of appropriateness".

The development of a collective frame in coalitions involves the process of synthesising or combining individual frame components within the group and developing a single dominant frame of the coalition. Even within a coalition, members might possess different frames of reference. The more diverse and heterogeneous members within the group the more difficultly the group would have developing a single dominant frame. Any member within the group may change its frame in the course of negotiations without any substantial reason. Leadership within the coalition therefore must seek a balance between the different frames within the coalition and try to advance a dominant collective frame. As a result, members within a negotiating coalition must continuously interpret the situation and redevelop a consensual understanding in the course of the negotiation process.

Negotiating coalitions in trade negotiations would develop a stronger and more persuasive frame when they are supported by proposals or policy options based on sound and well-researched technical analysis. Scholars have identified cases in which technical analysis played a significant role in developing consensual understanding. The widespread use of technical proposals on a specific issue(s) by negotiating coalitions of developing countries is a relatively new phenomenon. Developing countries became more aware of the need to develop technical proposals based on either in-house or external research analysis.

Table 3. Nature of Argument

<table>
<thead>
<tr>
<th></th>
<th>Basis of Argument</th>
<th>Desired Objective</th>
<th>Expected Appropriate Social Behaviour</th>
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</thead>
<tbody>
<tr>
<td>Instrumental Frame</td>
<td>Material incentive</td>
<td>Efficiency and procedural fairness</td>
<td>Exchange of concessions based on non-discrimination and reciprocity norms</td>
</tr>
<tr>
<td>Normative Frame</td>
<td>Normative values, socio economic or socio-humanitarian purposes</td>
<td>Basic human rights (e.g. protection against death and suffering, protection for the most vulnerable people)</td>
<td>Empathy, altruism, ideational commitment to the normative value adhering to the norms of flexibilities, SDT, and sustainable development</td>
</tr>
</tbody>
</table>

As indicated in the Table 3, conceptually, negotiating coalitions could develop at least two types of frame: (1) an instrumental frame; and (2) a normative frame. First, an instrumental frame corresponds to rationalist approaches in which arguments are framed based on material incentives. The instrumental frame is appealing for stronger and more competitive members in the trade regime, in which they would rely on the argument for efficiency and procedural fairness. For instance, large or emerging developing countries and leading developed countries would appeal for liberalisation in sectors in which they are competitive or possess a comparative advantage. The instrumental frame would call for the creation of global public goods by opening greater opportunities and expanding the ‘pie’ through bargaining or exchange of market access concessions. In the context of the trade regime, an instrumental frame would uphold the norms of non-discrimination and reciprocity under the liberal trade principle as discussed later in this chapter.

Second, a normative frame corresponds to constructivist approaches in which arguments are framed based on normative values, such as fairness in trade as well as socio-economic and socio-humanitarian purposes. The normative frame would be appealing for weak, small or marginalised members within the trade regime. The activism of developing countries, particularly middle powers and small democracies, in advancing a certain normative frame were often engaged in close relation with civil society movements. The normative frame might empower weaker actors, such as

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91 Ibid., 12.
developing countries with no material resources, by employing a persuasive and better argument that might outweigh the material power of the stronger actor.  

In relation to a normative frame, actors typically develop such frames by constructing a ‘common lifeworld’. The creation of a common lifeworld often corresponds to issues related to basic human rights, such as equity, equality, protection against death and suffering, and protection for the most vulnerable people. Such issues would be hard to dismiss and could transcend national boundaries and most world cultures. A normative frame is aimed at stimulating empathy in which negotiating counterparts could appreciate the feelings of others; stimulating altruism wherein the negotiating counterpart will accept personal loss for the common good; and promoting ideational commitment referring to ideals and values of the claimed norms. These attitudes could prompt a form of self-restraint on the part of negotiating counterparts, such as relaxing their demands or giving up reservations.

In promoting a normative frame, the everyday issues of equity, equality, human suffering, and protection of the most vulnerable people have to be exaggerated to receive wider public attention and, if possible, generate immediate political actions. The power of persuasion therefore rests on the strength of the normative argument (as oppose to material resources) and the ‘power of facts’ to reinforce and sensationalise the argument. Price suggests that development of a normative frame would be more effective under a crisis or shock situation as the sense of emergency could influence a community to alter or seek a fundamental normative change. Price further suggests that a normative frame would be easier to comprehend when the issue has a clear, simple and direct cause and effect relation. The acceptance of a normative frame is likely to be effective if the issue is easier to communicate to the wider public. In the context of the trade regime, the normative frame would refer to the norms of

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95 Finnemore and Sikkink, "International Norm Dynamics and Political Change," 898.
flexibilities, SDT, and sustainable development under the developmental principle as discussed later in this chapter.

In reality, a problem could be framed or reframed in different ways, while various frames of reference might also be at work. The instrumental and normative frames in the trade regime are often contradictory, in which the conflicting frames often relate to the nexus between the liberal trade and developmental principles. For instance, the socio-humanitarian/socio-economic claims by the G-33 for policy space to lessen the adverse impact of agriculture trade liberalisation for subsistence farmers contradicts with the commercial claims of agriculture exporters (to be discussed in Chapter 3). Additionally, the humanitarian claims by the CTPH to use a loose interpretation of flexibilities under the TRIPS Agreement for access to affordable medicine contradicts with commercial interests of pharmaceutical patent holders (as discussed later in Chapter 5).

2.3.1.2 Type of Leadership: Structural, Strategic, and Knowledge

In addition to coalitions' frame of reference, the leadership within coalitions often plays a significant role in establishing and maintaining the coalition. The leadership and coordination arrangements may vary from one coalition to another. A coalition might have an assigned coordinator, a designated focal point for an issue area, a rotational coordinator system, or loose and ad hoc coordination. In general, the negotiating coalitions of developing countries often consisted of divergent and heterogeneous members in terms of their economic size, level of economic development, political-economic-cultural backgrounds, trade exporting and importing interests, as well as human and financial resources. The leadership and coordination role in a coalition with greater heterogeneity tends to have more difficulty in developing a common platform among members. Nonetheless, a heterogeneous group might be more suited to address more complex issues rather than a homogenous group because a consensus by a heterogeneous group, if and when reached, tends to be more persuasive and durable.¹⁰⁰

The leadership within a coalition could typically be differentiated into three types of leadership: (1) structural-based leadership; (2) strategic-based leadership; and

(3) knowledge-based leadership. These leadership conceptions are taken from the leadership conceptions by Young as well as Finnemore and Sikkink, but they have been modified to reflect types of leadership within negotiating coalitions. In practice, these conceptual types of leadership might change over time or exist in a combined form depending on the response of negotiating counterparts or different negotiation stages. There might even be a lack of or an absence of leadership within the coalition. Table 4 provides an overview of the possible types of leadership within a coalition.

Table 4. Type of Leadership

<table>
<thead>
<tr>
<th>Leadership Approaches</th>
<th>Means</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Structural-Based Leadership</strong></td>
<td>Threat, stalling, walking out or blocking negotiation</td>
</tr>
<tr>
<td>Use available material resources for bargaining leverage</td>
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<tr>
<td><strong>Strategic-Based Leadership</strong></td>
<td>Technical expertise or technical analysis in developing policy options to achieve an optimal outcome</td>
</tr>
<tr>
<td>Use negotiating skills to develop frames to promote integrative bargaining or create deals of mutual gains</td>
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<tr>
<td><strong>Normative-Based Leadership</strong></td>
<td>Construct a common lifeworld (e.g. human rights, development related issues) to create a sense of empathy, altruism, and solidarity</td>
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<tr>
<td>Use knowledge or normative interpretation to persuade and redefine a perspective with a better argument</td>
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First, structural-based leadership refers to a type of leadership that uses available material resources and translates them into bargaining leverage at an appropriate time during negotiations. In the context of negotiating coalitions, members within a coalition pool material resources among themselves to overcome their lack of individual material resources. The coalition would rely on its numerical advantage and aggregate political-economic weights. The leadership would likely come in the form of threats by stalling, walking out or blocking a negotiation process until a breakdown, or until the negotiations are resolved to the coalitions’ satisfaction. A structural-based leadership in negotiating coalitions therefore resembles a “coercive power of trade union”. The leadership is viable given the consensus decision-making procedures and single undertaking rule as part of the instrumental framework under the trade regime.

A structural-based leadership could simply come in the form of an autocratic or non-democratic leader, which could be effective in addressing a simple and

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102 See for example Hamilton and Whalley, "Coalitions in the Uruguay Round," 555.
straightforward problem rather than complex issues. Further, the coalition might only require a relatively loose and temporary coordination usually with a large number and heterogeneous members. Furthermore, the coalition would develop broad and general common platforms acceptable to all members. For this reason, the coalition does not require high technical expertise or the ability to develop well-researched proposals because often it does not need to verify cost distribution or develop detailed proposals on specific issues. However, the coalition would be less flexible and convergence among members would become more difficult to attain when the negotiation progresses into more specific and clearer distributional implications.

A structural-based leadership, however, could not be used frequently because it requires particular timing and ability within a negotiation process. The leadership would commonly be used during critical moments of negotiations, such as the deal-making process or ministerial level meetings as the highest decision-making structure in the WTO. Negotiations on regulatory frameworks tend to favour dialogue and persuasion based on technically viable proposals rather than coercion among members. Further, a structural-based leadership in the form of veto or blocking power requires a substantial capacity to withstand immense peer pressure because members could easily be isolated or alienated. A good example of a structural-based leadership was when six Latin American countries walked out during the mid-term review in Montreal in 1988 because they were dissatisfied with the progress in agriculture negotiations and succeeded in postponing the negotiations until negotiations progressed to their satisfaction. Similarly, the Core Group and G-90 blocked the negotiations during the 2003 Cancún Ministerial Conference because they would not commence negotiations on the Singapore Issues and afterward succeeded to redirect negotiations to their liking as discussed in Chapter 4.

108 See for example Hamilton and Whalley, "Coalitions in the Uruguay Round," 555.
Second, strategic-based leadership refers to a type of leadership that uses negotiating skills to develop particular frames of reference to promote integrative bargaining and create deals of mutual gains.\textsuperscript{109} In contrast to using material power in a coercive manner, a strategic-based leadership tends to increase awareness of the significance of the specific issue, develop innovative policy options, and attempt to make deals among members.\textsuperscript{110} In other words, the leadership should have the intellectual ability to seek the lowest common denominator among the diverse interests and preferences of members or sub-groups within a coalition.

A strategic-based leadership therefore requires a democratic type leadership, which is able to analyse competing alternative policy options and evaluate them to achieve an optimal outcome.\textsuperscript{111} The leadership would likely require a high level of technical expertise or possess access to technical analysis, which might describe clearer distributional implications among members. The consensus on the lowest common denominator might be easier to find within a group working on a single issue rather than multiple issues. Moreover, the different levels of economic development among members might disproportionately affect the distributional outcome of certain policy options.

A successful strategic-based leadership means that it is able to identify acceptable mutual gains to achieve cooperation. The leadership is able to develop cost-sharing arrangements to provide sufficient public goods.\textsuperscript{112} Cost-sharing arrangements within a coalition means that members must determine the distribution of collective market access concessions. The cohesion among members within a coalition could be developed in the form of a rational exchange of trust, in which trust depends on utility maximising logic and cost-benefit calculations.\textsuperscript{113} A strategic-based leadership is particularly important during the rule-making and deal-making processes wherein distributional outcomes become more salient and better defined. As an example, the

\textsuperscript{109} I use the term strategic-based leadership to portray an 'entrepreneurial leadership' by Oran Young, which is able to lead and develop cooperation among members based on strategic and instrumental reasoning. See Young, "Political Leadership and Regime Formation: On the Development of Institutions in International Society," 293-98.

\textsuperscript{110} Ibid., 294.


\textsuperscript{112} Young, "Political Leadership and Regime Formation: On the Development of Institutions in International Society," 294.

\textsuperscript{113} V. A. Braithwaite and Margaret Levi, Trust and Governance (New York: Russell Sage Foundation, 1998), 52.
intellectual leadership by the Cairns Group as a 'third force' could be considered as a strategic-based leadership. An additional example, the G-20 innovative solutions to create mutual gains that accommodated the diverse interests and preferences among its members and broader WTO members could also exemplify a successful strategic-based leadership as discussed later in Chapter 3.

Third, knowledge-based leadership refers to a type of leadership that uses new knowledge or new normative interpretation to persuade and redefine the perspective of negotiating counterparts with the better-reasoned argument. The knowledge-based leadership synthesises the conception of 'intellectual leadership' by Young and 'norm entrepreneur' by Finnemore and Sikkink. The conception emphasises leadership that uses knowledge or normative capital as opposed to power or interests structures. A knowledge-based leadership often attracts attention, constructs the significance of the new knowledge or new normative interpretation, and even dramatises it to the wider audience. The promotion of particular knowledge or norms is not conducted in a vacuum environment but more than often competing knowledge and normative interpretations will also be at work. The reframing of an issue could be considered as an inappropriate behaviour because it tends to contest the conventional knowledge or norms. A knowledge-based leadership is appealing for a weaker actor or a group of weaker actors with limited coercive power and material resources. The promotion of a particular new knowledge or new normative interpretation could provide a negotiating leverage for weaker actors.

However, the reputation of a knowledge-based leadership is an important factor in determining the validity of its knowledge or normative interpretation claims. Self-interested or biased actors would be less persuasive compared to neutral or morally motivated actors. As an example, the US Government effort to promote core labour standards was considered to represent a strong actor pursuing instrumental interests

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116 Ibid., 897.
117 The original literature referred to weaker actors that did not command material resources, but had credible knowledge or normative interpretation, such as international non-governmental organisations (e.g. advocacy coalitions) and transnational actors (e.g. epistemic community). This thesis posits that developing countries, particularly poor and small countries, could also qualify as weaker actors with credible authority, particularly when negotiating in the name of the most poor and vulnerable people in their respective sovereign territory. See Risse, "Let's Argue!: Communicative Action in World Politics," 20.
rather than engaging in persuasion because the US would only focus on substandard labour conditions in developing countries, but neglected substandard working conditions in developed countries, such as urban sweatshops, unequal pay for women, and poor working conditions for migrant workers.\textsuperscript{118} The leadership therefore should possess credible knowledge or legitimate moral authority in order to be more persuasive.\textsuperscript{119} As discussed later in Chapters 3 and 5, the G-33 and the CTPH exhibited a form of knowledge-based leadership that used a moral justification as the better-reasoned arguments to stimulate empathy/sympathy and in turn change the behaviour of their negotiating counterparts.

A knowledge-based leadership might develop a common lifeworld using a normative frame, which would in turn develop a sense of solidarity. Traditionally, a social identity trust, in which individual self-identity becomes a collective identity in a psychological sense, might develop among members with similar cultural or religious backgrounds.\textsuperscript{120} Conceptually, social identity trust might also be constructed by developing a common lifeworld with shared experience, and values or norms among actors in which actors could communicate in a sensible atmosphere.\textsuperscript{121} The construction of an artificial common lifeworld in negotiations is more common than expected. Albeit there are differences among developing countries, many share a similar perspective on developmental-related issues or share a relatively common experience in multilateral negotiations and implementation of WTO obligations compared to their developed country counterparts.\textsuperscript{122} In my interviews, I found that negotiators from developing countries found it easier to work with delegates from developing countries with closer cultural values rather than working with delegates from developed countries.\textsuperscript{123}

\textsuperscript{119} Deitelhoff and Müller, "Theoretical Paradise - Empirically Lost? Arguing with Habermas," 175.
\textsuperscript{121} Risse, "Let's Argue!": Communicative Action in World Politics," 14.
\textsuperscript{123} WTO delegates from developing countries, interviewed by author, March 1, 2011.
2.3.2 External Coalition Dynamic

As the internal coalition dynamic reflects the nature of argument and leadership within a coalition, the role of negotiating coalitions in the rule-development process reflects their external relations. The external coalition dynamic focusses on the strategy of a negotiating coalition and its negotiating counterparts, as well as the overall mode of negotiation.

2.3.2.1 Negotiation Strategy: Distributive and Integrative Strategies

The strategies of negotiating coalitions and their negotiating counterparts should be viewed in a spectrum between: (1) distributive strategy; and (2) integrative strategy. The two strategies relate to the concepts of value claiming and value creating in the context of a negotiation. The creation of new value implies the process of expanding the 'pie' that would be beneficial for all negotiators. However, negotiators must also divide the benefits among themselves, which involves the process of competition and value claiming among negotiators that tends to undermine value creation.\textsuperscript{124} Table 5 shows the strategies that could be employed by parties within a negotiation.

<table>
<thead>
<tr>
<th>Table 5. Negotiation Strategies</th>
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<tr>
<td><strong>Conceding/Refusing Value Claim</strong></td>
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<tr>
<td><strong>Distributive Strategy</strong></td>
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<tr>
<td><strong>Integrative Strategy</strong></td>
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</table>

Firstly, a distributive strategy refers to actors claiming their own value without conceding any of their own value to the other negotiating counterparts. A distributive strategy considers a negotiation as a zero-sum game or relative advantage in which gains will be acquired at the expense of other negotiating counterparts.\textsuperscript{125} A negotiating


coalition employing a purely or strict distributive strategy implies that the coalition vigorously pursues demands without giving or conceding any concessions to its counterpart. Negotiating coalitions could use a variety of tactics, such as refusing to provide concessions to a negotiating counterpart; manipulating information to their advantage; exaggerating the needs and priorities of coalitions; imposing threats by stalling, walking out or blocking the negotiations; and worsening the best alternative to a negotiated agreement (BATNA).

Secondly, integrative strategy refers to actors accepting the value claim of their negotiating counterparts to achieve a certain level of mutual gain or to develop a consensual collective preference. An integrative strategy considers a negotiation as a positive-sum game or absolute advantage in which actors may acquire mutual gains or achieve consensus adhering to a collective preference. Integrative strategy usually involves informal and candid negotiations in which actors relax or sometimes sideline their value claim. A negotiating coalition and its negotiating counterparts, for instance, would likely undertake an integrative strategy in finding a common solution to a collective problem or developing consensual understanding on a particular issue. Negotiating coalitions could use various tactics, such as information sharing, openly exploring common problems or common threats, proposing an exchange of concessions, and reframing the issue space itself to break a stalemate.

In practice, negotiators seldom engage in a purely distributive or integrative strategy but employ simultaneous or sequential mixed distributive-integrative strategies. A negotiating coalition, for instance, might initially position itself at its maximum position and gradually reduce its demand towards the direction of its negotiating counterpart.

128 Lewis, "Institutional Environments and Everyday EU Decision Making: Rationalist or Constructivist?," 109-10.
An integrative strategy generally induces convergence within a coalition or among negotiators. At a low end, reflecting a rational choice approach, integrative strategy could reach an optimum outcome, in which cooperation is possible when actors achieve cooperation by exchanging the value claims without giving up much of their own value claim by reaching a near bottom line position or a lowest common denominator. At a high end, reflecting a constructivist approach, cooperation is aimed at consensus seeking and developing a collective preference. For instance, the negotiations could develop a ‘coordination reflex’ among negotiators, which in turn form consensual collective preferences beyond or above individual interests and preferences.\textsuperscript{131} In such situations, an actor’s value claim would be subsumed into the value of the community. The notion closely corresponds to the notion of arguing through communicative action wherein interests and preferences are endogenous and sometimes subsumed to the better argument within the negotiation process itself.

However, an integrative strategy might be prone to exploitation by other negotiating counterparts.\textsuperscript{132} A weaker actor might have to accommodate or integrate the value claim of the stronger actor in order to achieve cooperation, but the lost value would cost disproportionately more for weaker actors. For instance, the acceptance of the Uruguay Round agreements means that developing countries must accept domestic regulatory harmonisation, such as TRIPS, Sanitary and Phytosanitary Agreement (SPS), and Technical Barriers to Trade (TBT), which cost disproportionately more for poorer countries because most developed countries already have a harmonious regulatory system in place with the institutions and policy mechanisms to integrate and enforce decisions made. This argument would be exemplified with regard to the compromise on special trade provisions for food security purposes in Chapter 3, and the compromise on the solution to paragraph 6 of the DTPH in Chapter 5.

\subsection*{2.3.2.2 Mode of Negotiation: Bargaining, Arguing, and Rhetorical Entrapment}

In addition to the strategies of negotiators, the mode of negotiation would likely determine the role of negotiating coalitions in the rule-development process. As


\textsuperscript{132} Odell, "Breaking Deadlocks in International Institutional Negotiations: The WTO, Seattle, and Doha," 277.
mentioned earlier, negotiations are a process of social learning, particularly in multilateral trade negotiations with complex and highly technical issues in which negotiators need time to absorb the content of negotiations and learn about the different negotiation positions. Negotiators gradually articulate a shared understanding of meaning and events throughout the process of negotiation. The process of exploring a shared understanding of meaning and events is an intersubjective process in which “...state behavior within regimes is interpreted by other states, the rationales and justifications for behavior which are proffered, together with pleas for understanding or admissions of guilt, as well as the responsiveness to such reasoning on the part of other states, all are absolutely critical component parts of any explanation involving the efficacy of norms”. The mode of trade negotiation therefore reflects the way negotiators put forward their arguments and the response of the negotiating counterpart, which could only be discovered in the negotiation process as part of a social learning process. The way a compromise or increasing convergence is achieved among negotiators or the way negotiators encountered a deadlock would be a good indicator of the mode of negotiation.

Table 6 provides an overview of the possible mode of negotiation. Conceptually, there are three types of negotiation that could be at work during negotiations: (1) bargaining through rhetorical action; (2) arguing through communicative action; and (3) rhetorical entrapment. The first mode of negotiation is bargaining through rhetorical action which refers to negotiators driven by cost-benefit calculations in which negotiators provide a set of arguments as an attempt to maximise their own fixed interests and preferences. Bargaining is not limited to the exchange of promises, threats, side-payment, issue linkages, or misinformation about facts, but also involves the use of a set of arguments or technical analysis in order to convince other actors to change their interests and position. A rhetorical action could lead to cheap talk or the

exchange of information concerning preferences rather than costly signalling that requires actual resources or payoffs, such as offering side-payments.  

### Table 6. Mode of Negotiation

<table>
<thead>
<tr>
<th>Basis of Interaction</th>
<th>Social Behaviour</th>
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<tbody>
<tr>
<td><strong>Bargaining</strong></td>
<td>Maximising own fixed interests and preferences; Cost-benefit calculations</td>
</tr>
<tr>
<td><strong>Arguing</strong></td>
<td>Achieving a reasoned consensus based on the better argument</td>
</tr>
<tr>
<td><strong>Rhetorical Entrapment</strong></td>
<td>Changing behaviour in favour of the better argument without actually conceding the argument</td>
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In a bargaining mode, the level of trust or loyalty among members rest not only on the potential benefit they might receive, but also depends on the repetitive game scenario. Negotiators learn about each other through a repetitive game scenario in which negotiators reciprocate cooperation and there is a sufficiently large shadow of the future (or possible future gains) in a bargaining situation.  

In such a situation, negotiators are less likely to engage in dialectic dialogue and higher level of discourse. Although negotiators do not necessarily lead to blocking or coercive action, negotiators would likely engage in more cheap talk by requesting an exchange of concessions and incentives rather than trying to provide a counter-argument with a better-reasoned argument or justification. Negotiators tend to provide a trivial justification or do not feel obligated to explain their position. As a result, a rhetorical actor would unlikely admit or be convinced by the better-reasoned argument which is put forward by other negotiating counterparts during negotiations.

The second mode of negotiation is arguing through communicative action which refers to negotiators that are open to the better arguments to achieve a reasoned consensus within the negotiation discourse, in which preferences and sometimes interests as well as identity tends to be endogenous to the negotiation process itself.

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138 Lewis, "Institutional Environments and Everyday EU Decision Making: Rationalist or Constructivist?," 106.

behaviour of negotiators is shaped by the validity claim of causal or normative statements in the negotiation discourse rather than negotiators' material structures.\textsuperscript{140} A negotiating coalition promoting a normative frame, such as socio-humanitarian and socio-economic issues, might induce communicative action among negotiators, in which negotiators could take the moral point of view as opposed to strategic or instrumental interests. In such a situation, negotiators could develop an authentic social identity trust and create empathy among negotiators. Negotiators might engage in communicative action under a condition of \textit{inter alia}, an acceptance of a common lifeworld (e.g. socio-humanitarian and socio-economic issues); uncertainty of interests and lack of knowledge; and non-hierarchical relations among actors.\textsuperscript{141} The condition of an ‘ideal speech situation’ is almost non-existent in reality; however, Deitelhoff and Müller argue that a negotiation condition is closer to a speech situation rather than a neorealist power distribution image.\textsuperscript{142}

Arguing through communicative action could occur in both closed and open settings. On the one hand, communicative action could occur under a closed setting, in which negotiators could engage in honest and candid discourse with a relative symmetrical relation.\textsuperscript{143} In a closed setting, the G-20 and G-33 in Chapter 3, and Core Group and G-90 in Chapter 4 exemplify sympathetic behaviour among members within these coalitions, in particular in accommodating the interests and preferences of less progressive or weaker coalition members. The compromise caused a degree of tactical or distributional loss for stronger or progressive developing countries. On the other hand, communicative action might be possible under an open setting with a public audience. Negotiators would be accountable to public opinion as an external or third party authority to legitimise the validity claim of negotiators.\textsuperscript{144} The open setting would be exemplified by the intense public scrutiny as an external or third party authority during negotiations for the DTPH as discussed in Chapter 5.

\textsuperscript{140} Ibid., 6-7; Risse, "Constructivism and International Institutions: Toward Conversations across Paradigms," 603.
\textsuperscript{141} Risse, "Let's Argue!: Communicative Action in World Politics," 19.
\textsuperscript{142} Deitelhoff and Müller, "Theoretical Paradise - Empirically Lost? Arguing with Habermas," 173.
\textsuperscript{143} Checkel, "International Institutions and Socialization in Europe: Introduction and Framework," 813.
\textsuperscript{144} Deitelhoff and Müller, "Theoretical Paradise - Empirically Lost? Arguing with Habermas," 174.
In a real life situation, these conceptual distinctions are relatively difficult to measure and confirm, particularly in isolating arguing from bargaining. There are, however, situations in which a hard rhetorical actor meets a strong communicative actor. In the context of the trade regime, for instance, a rhetorical actor uses an instrumental frame to maximise its commercial gain (and minimise its loss), while a communicative actor uses an instrumental frame using a moral justification in seeking a reasoned consensus. In such a situation four scenarios might occur. First, the communicative actor does not understand the rhetorical actor and, as a result, the rhetorical actor wins and the communicative actor loses. Second, the communicative actor fails to convince the rhetorical actor and subsequently cooperation fails and all sides lose. Third, the communicative actor fails and moves into rhetorical action followed by bargaining through rhetorical arguments. And fourth, the rhetorical actor moves into communicative action because the rhetorical actor considers this move is the only alternative to achieve future cooperation.

The third mode of negotiation, and in relation to the last scenario, negotiators might be socially forced into a ‘rhetorical entrapment’, which means negotiators may initially engage in rhetorical action but eventually be forced to engage in communicative action. Risse argues that a rhetorical actor needs to respond to the argument of a communicative actor. If a rhetorical actor does not respond with a higher level of discourse and maintains its position, then the actor is in danger of losing its reputation as a genuine negotiating partner. A genuine negotiating partner would not use bargaining threats or promises. The rhetorical actor therefore needs to come up with a more sophisticated argument or justification, in which the rhetorical actor becomes entrapped into communicative action. Moreover, rhetorical entrapment might be more effective under the scrutiny of a public audience as an external or third party authority. In such situations negotiators must engage in communicative action that

145 A study found that both arguing and bargaining were simultaneously at work in all of the negotiations. Bargaining tends to be used to justify negotiator’s demands, whilst arguing tends to be used to persuade others of the negotiator’s validity claim. The lack of empirical data on the sequencing of speech act made it difficult to prove the authenticity of a ‘persuasion conversion’. See ibid., 171-2. Another study found that genuine persuasion is truly rare and arguing occurs ‘almost always’ under a strategic condition. See Holzinger, 2001a, 415, 433 cited in Harald Müller, "Arguing, Bargaining and All That: Communicative Action, Rationalist Theory and the Logic of Appropriateness in International Relations," European Journal of International Relations 10, no. 3 (2004): 407.


reflects the belief of the public audience.\textsuperscript{148} Rhetorical entrapment leads into a mode of negotiation between rhetorical and communicative actions. The negotiation outcome would favour the better-reasoned argument, tends to outweigh material power and interest configuration among negotiators, and sometimes undermine the interests and preferences of the rhetorical actor. As a result, a rhetorical actor might show self-restraint or even concede some material loss and behave according to the better-reasoned argument. Nevertheless, the rhetorical actor does not necessarily internalise the value of the normative claim.\textsuperscript{149} The rhetorical actor accepts the argument in the discourse as an exit strategy to end the debate, while maintaining its reputation as a genuine actor and seeking future benefits.\textsuperscript{150} The G-33 succeeded in including special trade provisions for food security purposes in the agriculture modalities in Chapter 3, and the CTPH was successful in achieving a development-friendly interpretation of TRIPS flexibilities with the DTPH in Chapter 5 which could be characterised as rhetorical entrapment.

In sum, bargaining through rhetorical action tends to involve conflicts of material interests, such as commercial interests, while arguing through communicative action tends to involve other divergent issues, such as moral or humanitarian or social issues. In the middle of bargaining and arguing, the mode of trade negotiation could represent rhetorical entrapment in which a rhetorical actor accepts the value claims of the communicative actor in order to maintain the rhetorical actor’s reputation and to achieve future gains.

\section*{2.4 Institutional Context of the GATT/TWO Regime}

After undertaking the first step of overviewing the internal and external dynamics of negotiating coalitions, the second step is to explore the institutional context in which these negotiating coalitions operated. This thesis uses a regime analysis in evaluating the institutional context, which serves as the scope of conditions to analyse negotiating coalitions.

\textsuperscript{148} See, for example Margaret E. Keck and Kathryn Sikkink, \textit{Activists Beyond Borders: Advocacy Networks in International Politics} (Ithaca: Cornell University Press, 1998), 17; Price, "Reversing the Gun Sights: Transnational Civil Society Targets Land Mines," 628.


\textsuperscript{150} Ibid., 579.
Before moving to the evaluation of the institutional context, it is imperative to clarify the definition and elements of a regime in this thesis. The consensual definition of an international regime is “sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area of international relations”. The definition could be differentiated into two major elements: (1) normative framework consisting of principles and norms; and (2) instrumental framework consisting of rules and decision-making procedures. The normative and instrumental frameworks should be used as a dynamic analytical tool rather than a static description. These frameworks construct the trade regime in which each element is analytically significant and where change in one element could change the other element. Nevertheless, these frameworks are interdependent and their relationship is non-hierarchical and does not necessarily have a causal relation.

The distinction between the normative and instrumental frameworks within the trade regime is important when we observe a regime in at least two different timeframes. First, a conjunctural timeframe portrays a basic unit of social time in cycles and focusses on the process that motivates actors, property and events. The analysis is concerned with a broader, deeper and more abstract socio-economic relation. The analysis of conjunctural timeframe involves “uncertainty about cause and effect relationship” as a consequence of a particular decision. For instance, the analysis could be interested in the long-term consequences of trade liberalisation or reduction of policy space to a country’s future socio-economic structures. The changing socio-economic structures could in turn affect a country’s ability to achieve its developmental objectives, such as poverty alleviation and sustainable development.


152 The definition was considered a middle ground that provides a balance between lean and complex definitions. The former views a regime that is to be governed by explicit rules, order and explicit commitment, while the latter views a regime that is governed by normative consensus. For a more detailed discussion on the definition of a regime see Stephan Haggard and Beth A. Simmons, "Theories of International Regimes," International Organization 41, no. 3 (1987): 493-5; Hasenclever, Mayer, and Rittberger, Theories of International Regimes: 8-22.

153 The conventional understanding implies a hierarchical and causal relation between the normative and instrumental frameworks. A change in the rules and decision-making procedures is considered a change within regimes, while a change in principles and norms is considered a change of the regime itself. See Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," 4-5.


Second, the incremental timeframe divides social time into a series of separate independent units, and analysis focusses on “separate and distinctive actors, palpable property, and discontinuous events”.156 The analysis is concerned with a narrower, shallower, and more concrete socio-economic relation. The analysis of incremental timeframe concerns the question of possible gains or losses. For instance, an analysis could question the immediate distributional outcome as a result of exchange of market access concessions or the immediate impact of safeguard rules on market access.

These different timeframes of analysis are significant to understanding the periodic rounds of negotiations under the GATT/WTO regime. The sustainability of the trade regime could correspond to the bicycle analogy whereby a cyclist must keep on pedalling in order to keep the bike standing with a view to achieving its destination.157 The analogy implies that the trade regime must periodically be negotiated to provide new trade liberalisation initiatives (the liberal trade principle) and, I would add, new ways to maintain socio-economic stability (the developmental principle) in order for the regime to remain effective and valid to attain its long-term objectives. The periodic rounds of negotiations could also make adjustments to the instrumental framework (rules and decision-making procedures) of the trade regime depending on the changing power, interests and knowledge at the time with a view of the regime’s normative framework (principles and norms).

After examining closely the definition and key elements within a regime, the following sub-section will examine the instrumental framework of the trade regime, which could be viewed under a single round of negotiations or an incremental timeframe. The instrumental framework would reflect the specific institutional conditions during the Doha Round even though it represents a certain tradition of past rounds of negotiations. The next sub-section will examine the normative framework, which represents cycles of periodic rounds of negotiations based on a longer timeframe or conjectural timeframe.

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2.4.1 Instrumental Framework: Decision-Making Procedures and Rule-Development Process

The instrumental framework relates to two main factors: (1) decision-making procedures; and (2) the rule-development process during the Doha Round. In this subsection, the thesis will clarify how negotiating coalitions play a significant role in the decision-making procedures on informal negotiations. Subsequently, this thesis suggests that the rule-development process could typically be categorised into: agenda-setting, modalities-setting, rule-making, and deal-making processes. Each process of negotiation brings about a different scope of conditions under which coalitions tend to operate.

2.4.1.1 Decision-Making Procedures: The Role of Coalitions in Informal Negotiations

The decision-making procedures in the trade regime compel members to develop a consensual understanding on various issues through informal negotiations. Although each member formally has one vote, informal negotiations are imperative because decisions are typically made on a consensus basis and decisions have been taken based on a single undertaking rule since the Uruguay Round. Traditionally, consensus means an absence of any objection when a decision or agreement is being considered and single undertaking means that members must agree on a package deal (rather than multi-tiered agreements). The consensus and single undertaking rules continue to be implemented in the Doha Round with a possibility of an early harvest.

In the trade regime, negotiators rely heavily on informal interaction and an ‘English club’ institutional culture. Negotiators rely on the discourse developed during informal negotiations through intense and extensive interpersonal relations;

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158 The formal decision-making implies “each Member of the WTO shall have one vote” including members within the EC. The exception to the decision making procedures apply if decisions are made for: (1) interpretation of the agreements requires % majority of members in the Ministerial Conference and General Council; (2) grant temporary waiver of a member requires % of members in the Ministerial Conference; (3) amendments requires unanimous consensus or 2/3 members in the Ministerial Conference depending on the which agreement is being amended. See General Agreement on Tariffs and Trade, "Marrakesh Agreement Establishing the World Trade Organization," (1994): Article IX.

159 ibid., Article IX paragraph 1.


remote negotiations setting; and the highly technical nature of negotiation substance. Müller suggests that seasoned diplomats tend to be socialised and groomed in the ‘diplomat lifeworld’ rather than in their respective capitals.

Negotiating coalitions of developing countries play a significant role in the informal negotiations at least in three ways. First, members pool resources within a coalition to increase leverage in informal negotiations. Informal negotiations call for open and well-scrutinised discussions whether submitting a proposal or refuting a proposal. In an informal negotiation setting, a single developing country might fear consequences of lining against a stronger member, but the absence of an objection would be seen as accepting the consensus. Consequently, developing countries might not pursue a subject despite having reservations on the subject. A developing country could gain negotiation leverage as a member of a coalition by relying on the political-economic weights of its members and create a less asymmetrical relation with larger negotiating counterparts.

Further, members with a limited number of delegates and technical expertise may tap into the intellectual-technical capital of members within a coalition. The sharing of research and technical expertise within a coalition and among developing countries is therefore imperative in developing collective proposals. Based on WTO proposals in 2003, a study indicated that developing countries tended to work and submit collectively rather than individually.

Second, representation of a coalition in informal meetings could address the issue of participation and transparency. Typically, key players among developing countries, such as coordinators of a coalition, emerging economies, or influential countries, would be invited to participate in informal meetings. As a result, the participation of representatives of a coalition could make their specific issue heard and

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163 Similarly, the institutional context of the EU’s Committee of Permanent Representatives (COPERER) enabled a more deliberative atmosphere (rather than bargaining atmosphere), partly due to the relatively longer tenure of permanent representatives (career diplomats and civil servants) and the relatively insulated environment from domestic politics. See Lewis, "Institutional Environments and Everyday EU Decision Making: Rationalist or Constructivist?," 101.


even influence decisions of the meeting. Further, transparency within these informal negotiations could be addressed using an "expanding-and-contracting-concentric-circle" approach, in which representatives of a coalition attending the informal negotiations report to other coalition members as a transmission belt.\textsuperscript{168} The peer mechanism might develop a form of internal or horizontal accountability among members of a coalition attending the meetings.

Third, and most importantly, coalitions help build the internal and external consensual understandings through an informal process. Internally, all decisions within a coalition were normally taken based on unanimity. Each member therefore possesses a veto right in any collective decision that creates a relatively symmetrical relation among members. However, on the downside, lack of consensual understanding within a coalition would weaken the coalition, particularly if a member or a number of members submit another proposal without the consensus of the coalition. Externally, overlapping membership between coalitions creates a ‘noodle bowl’ or complex networking. The networking could induce coordination among coalitions, thus helping to build a broader consensual understanding and even prompting ‘inter-coalition’ relations.\textsuperscript{169} As a consequence, both direct and indirect coordination might occur between members of different coalitions.

2.4.1.2 Rule-Development Process

After explaining the important role of coalitions as part of the decision-making procedure, this thesis proposes to use the rule-development process as a \textit{scope of conditions} in investigating negotiating coalitions. Scholars investigated negotiation processes from “getting into the table”\textsuperscript{170} to “getting it done”.\textsuperscript{171} Multilateral negotiations typically involve both regulative and distributive negotiations, in which negotiations would first handle regulative issues until a framework is established and


then negotiations would be followed by discussion about distributive issues.\textsuperscript{172} According to Hoekman and Kostecki, multilateral trade negotiations could be differentiated into: catalyst, pre-negotiation, negotiation and post-negotiation stages.\textsuperscript{173} In this relation, Wolfe divided the activism of coalitions and linked their functions with the different negotiation environmental contexts. Coalitions tend to engage in agenda-setting under a condition of low interdependence (similar conditions to the catalyst and pre-negotiation stages), while a coalition could participate in proposal making and negotiating/blocking as the level of interdependence increases (similar conditions to the negotiation stage).\textsuperscript{174}

From an overview of negotiation literature and from the actual development during the Doha Round, one can conclude that a round of negotiations could be divided into four stages of negotiation: (1) agenda-setting, (2) modalities-setting; (3) rule-making; and (4) deal-making processes. The different negotiation stages usually encompass different levels of cooperation, levels of commitment, and levels of normative discourse. The following will examine closely the four negotiation stages as shown on Table 7.

First, the agenda-setting process involves members attempting to identify and determine specific issues or agendas for future negotiations, such as a continuing problem, a new problem, or a new normative interpretation of the current rules, based on the outcome and implementation of the previous round. At this stage, negotiators attempt to evaluate the intentions of negotiators and develop a broad shared commitment for cooperation as well as attempt to reduce uncertainty and manage complexity by specifying a particular agenda for negotiations.\textsuperscript{175} The exercise is considered a less risky exercise with relatively low levels of cooperation and commitment. In situations of uncertainty and complexity, rational choice proponents argue that actors construct 'focal points' and 'shared belief' within the institution to guide actors. There are multiple paths of cooperation with multiple distributional

\textsuperscript{175} Stein, "Getting to the Table: The Triggers, Stages, Functions, and Consequences of Prenegotiation," 493.
outcomes. In other words, the logic of appropriateness becomes more important under conditions in which preferences and expected consequences are unclear.

### Table 7. Rule-Development Process

<table>
<thead>
<tr>
<th>Process</th>
<th>Negotiation Objective</th>
<th>Negotiation Characteristics</th>
<th>Task within a Coalition</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Agenda-Setting</strong></td>
<td>Identify specific issues for future negotiation (e.g. continuing problem, new problem, new normative interpretation)</td>
<td>Greater uncertainty and lack of knowledge, vague distributional outcome</td>
<td>Identify problems and policy options, develop shared commitment based on particular norms and principles with a view of the long-term objectives</td>
</tr>
<tr>
<td><strong>Modalities-Setting</strong></td>
<td>Constructing a modality or framework of an agreement by developing consensual understanding of specific policy options</td>
<td>Less uncertainty, abstract distributional outcome, evaluate future trade-offs</td>
<td>Develop consensual understanding on policy options as part of the framework of an agreement</td>
</tr>
<tr>
<td><strong>Rule-Making</strong></td>
<td>Developing detailed rules on a specific issue(s)</td>
<td>More certainty, higher level of interdependence and commitment, clearer distributional outcome</td>
<td>Agree on specific rules of a particular policy option</td>
</tr>
<tr>
<td><strong>Deal-Making</strong></td>
<td>Finalising an agreement with a view of the overall issue linkages and package deal</td>
<td>Greater certainty, very high level of interdependence and binding commitment, clear distributional outcome</td>
<td>Agree on demands (gains) and concessions (costs) as well as cost-sharing arrangements</td>
</tr>
</tbody>
</table>

This process often involves greater attention to normative discourses or high levels of institutional density. Agent-centred constructivists argue that negotiators under a condition of uncertainty and lack of knowledge might engage in arguing through communicative action in search for a reasoned consensus to developing common knowledge about the situation and underlying principles and norms for negotiations. In doing so, negotiations might place emphasis on the organisational culture or "collectively held assumptions, ideas and beliefs that prescribe how a group should


177 March and Olsen, "The Institutional Dynamics of International Political Orders," 952.

adapt to its external environment and manage its internal structure". \(^{179}\) The regime’s culture could refer to the liberal trade and/or developmental principles as discussed later in this chapter.

During the agenda-setting process, the activism of negotiating coalitions would be aimed at identifying problems, developing good policy options, and developing a shared commitment based on particular norms and principles with a view to the long-term objectives of the regime. Negotiating coalitions would attempt to reframe the policy debate, form public opinion, and influence discussions by policy makers. \(^{180}\) The formation of a coalition would be relatively easier because it calls for a broad shared and relatively non-binding commitment and unforeseen distributional consequences.

Second, the modalities-setting process involves constructing a modality or framework of an agreement by developing a consensual understanding of specific policy options and their parameters. In this process, cooperation tends to involve a moderate level of interdependence and increasing level of commitment. The process further reduces uncertainty and complexity as negotiators receive more information on the policy options and their parameters, and develop an abstract conception of the distributional outcome. Moreover, negotiations could evaluate the size of the overall package agreement, which is crucial for future trade-offs. The larger the number of agendas the greater the uncertainty and risk, and vice versa. \(^{181}\) A relatively small package, however, might not create sufficient ‘pie’ to satisfy the wide variety of interests among negotiators. During the Uruguay Round, negotiators calculated the overall ‘pie’ with the expansion of new issues to include agendas of interest to developed countries (e.g. TRIPS, services) and agendas of interest to developing countries (e.g. agriculture, textile and clothing). Similarly, negotiators calculated the inclusion of new ‘Singapore’ issues as part of the overall ‘pie’ or package deal of a Doha agreement as discussed in Chapter 4.

This process often involves decreasing attention on normative discourses. Negotiations are directed towards developing definitions and ‘property rights’ because

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\(^{180}\) Birkbeck and Harbord, "Developing Countries in the WTO: Strategies for Improving the Influence of the WTO’s Weakest and Poorest Members," 10.

\(^{181}\) Stein, "Getting to the Table: The Triggers, Stages, Functions, and Consequences of Prenegotiation," 490.
they provide a legitimacy to continue cooperation. Although the regime’s normative framework is still important, negotiators would acquire a clearer understanding of the possible distributive outcomes of particular policy options and their parameters. It also calls for a greater commitment of negotiators by locking down the negotiation agendas, which would be difficult to roll back in the future.

During the modalities-setting process, the activism of negotiating coalitions could be aimed at developing a consensual understanding on policy options and their parameters as part of the framework of an agreement. The formation or maintenance of coalitions becomes more complex. Members would still share a broad commitment, but must also engage in developing specific policy options and their parameters. Members within a coalition might have an abstract distributional understanding, but do not necessarily have to determine cost-sharing arrangements among them.

Third, the rule-making process involves developing detailed rules on specific issue(s). Cooperation relies on a higher level of interdependence and higher level of commitment. The process of refining and narrowing rules would provide negotiators with clearer distributive implications. The problem of cooperation would involve coordination among actors to overcome the dilemma of common aversions. Although negotiators acknowledge the need to cooperate, negotiators might have preferences to a particular type of rules. The choice of a particular regulative framework would have different distributional consequences for each country. The issue of distribution therefore becomes more salient. In addition, the process gives lower attention to normative discourses. The negotiation environment closely relates to a neoliberal institutionalism image, in which the regime mainly serves to facilitate the negotiator by overcoming the collective action problem, reducing transaction costs, reducing uncertainty, and addressing information deficits or asymmetries.

During the rule-making process, the maintenance of negotiating coalitions becomes more difficult. Members within a coalition must agree and negotiate specific rules on a particular policy option, which, if possible, negotiate on precise quantitative and numerical disciplines. The regulatory framework might produce different

182 Wolfe, Farm Wars: The Political Economy of Agriculture and the International Trade Regime: 37-38.
distributional outcomes and implications for each member. The rational and utility maximising exchange of trust becomes more dominant. The role of a strategic-based leadership with technical knowledge and well-researched arguments could play a key role in maintaining the cohesion within a coalition. The lack of leadership or inability to achieve consensus could induce a spin-off or break-off to a smaller group of countries with more compatible interests and preferences.

Fourth, the deal-making process typically involves finalising an agreement with a view of the overall issue linkage and package deal. Cooperation involves a very high level of interdependence and a very high level of commitment. Negotiator preferences and distributional consequences become clearer; thus the logic of consequences dominates. In other words, the use of “a clear logic dominates an unclear logic”185. Negotiators must work together to achieve cooperation through collaboration to overcome the dilemma of common interests.186 It means that negotiators need to collaborate to achieve an optimum outcome, but each actor is always tempted to cheat or defect for a sub-optimum gain. Similar to the previous negotiation process, rational and utility maximising exchange of trust dominates the scene. Moreover, issue linkages and reciprocity become more salient and integrated in the overall equation because negotiators tend to calculate the overall distributional balance of the package agreement. The repetitive negotiations may constrain or deter actors from defecting because they are lured by possible future collective gains.187

During the deal-making process, the maintenance of a coalition becomes even more difficult because in addition to negotiating coalitions’ demands (benefits), members within the coalition often must provide concessions (costs). In some cases, concessions or trade-off (cost) might rely on a small number of members within the coalition. Disproportionate cost-sharing arrangements might create dissatisfaction among members. In this relation, cost-sharing arrangements might lead to issue linkages outside the competence of the negotiating coalition. As a result, tactical issue linkages or issue linkage of no substantive correlation might be common occurrences.188 A strategic-based leadership would be preferable as it may take into account the diverse

185 March and Olsen, "The Institutional Dynamics of International Political Orders," 952.
188 Haas, When Knowledge is Power: Three Models of Change in International Organizations: 77.
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interests and preferences among members within a coalition and among broader negotiating counterparts in order to seek innovative solutions towards mutual gains.

After overviewing the rule-development process, it is worth noting that the above processes are neither rigid sequences nor exact timeframes. Some of these processes could be conducted simultaneously or very close from one to another. In some cases, a convergence could be reached on some aspects and move into the next process of negotiation, but divergence remained on other aspects. The experience in the Doha Round suggested that agenda-setting and modalities-setting processes tend to be closely linked and could move back and forth. Similarly, the rule-making and deal-making processes tend to be closely linked and could move back and forth. However, it is highly unlikely the negotiation process will be rolled-back once the modality of an agreement is set. Further, negotiations on a more institutionalised issue area might begin with modalities-setting or rule-making processes because the agenda or modality was previously set.

2.4.2 Normative Framework: Liberal Trade and Developmental Principles

In addition to the institutional framework of the regime, the normative framework is another important part of the institutional context in which negotiating coalitions operated. Principles and norms may guide behaviour but they do not necessarily generate a causal relation. One instance of irregularity does not falsify the principles and norms of the regime. Norms in the regime “serve to guide behaviour in such a way as to produce collective outcomes which are in harmony with the goals and shared convictions that are specified in the regime principles”. Norms could further be translated into specific rules as “specific prescriptions or proscription for action”.

The normative framework in the GATT/WTO regime rests upon the liberal trade and developmental principles. The nexus between the liberal trade and developmental principles has been at the heart of negotiations throughout periodic rounds under the trade regime. The liberal trade principle was translated into norms of non-discrimination

190 Hasenclever, Mayer, and Rittberger, Theories of International Regimes: 9.
and reciprocity, while the developmental principle was translated into norms of flexibilities, SDT, and sustainable development as subsequently discussed in detail.

2.4.2.1 Liberal Trade Principle

The liberal trade principle of the trade regime was founded based on classical economic liberalism. The roots of classical economic liberalism derive from the concepts of absolute and comparative advantages: a country should specialise in goods it could produce most efficiently to achieve greater economic growth and development for all. The reliance on market mechanism and minimum government intervention in economic activities will in turn increase the overall wealth and standard of living.¹⁹² By the 1980s and 1990s, neoliberal, and neoclassical economics became reminiscent of the classical economic liberalism with Reaganomics in the US and Thatcherism in Britain advocating free markets.¹⁹³ The neoliberal economics doctrine became the dominant paradigm of the World Bank and International Monetary Fund (IMF). The Washington Consensus applied a checklist of structural adjustments, which was intended to fundamentally reduce the role of government in various economic activities.¹⁹⁴ By the end of the Cold War, the neoliberal economics doctrine was consolidated with, among other things, the successful creation of the WTO in 1995.¹⁹⁵

Historically, the liberal trade principle in the GATT regime was translated into two norms: (1) non-discrimination; and (2) reciprocity. These norms were developed in the post-war era to encourage countries to undertake trade liberalisation and to restrain mercantilist behaviour, particularly tariffs war or a beggar-thy-neighbour policy during the interwar period. The norms were designed particularly for trade in goods and aimed

at tariffs reduction. The following will examine more closely the two norms under the liberal trade principle.

First, the non-discrimination norm is manifested into the notion of the most-favoured-nation (MFN) and national treatment (NT). MFN implies that an import product must receive unconditional treatment no less favourable than a similar product from any other country.\(^{196}\) NT implies that an imported product must be extended no more than the internal tax and regulation compared to a similar domestic product.\(^{197}\)

Non-discrimination gives a ‘universal’ benefit to all members within the trade regime. The norm would reduce the transaction cost of acquiring individual MFN from each member. In theory, non-discrimination should benefit smaller countries in the regime because if a large principal supplier (main exporter) agrees to extend a favourable treatment with any other country, then smaller countries would automatically and unconditionally be extended the same treatment. The norm would also ensure no reversal to a less favourable or more protectionist treatment. Although non-discrimination was the ‘general rule’, various exceptions were permitted based on the economic, fair competition, and non-economic purposes under the developmental principle. However, non-discrimination was mainly designed to expand global trade in goods. The application of the non-discrimination norm became more complex with the expansion of new issues under the trade regime, such as investment and competition, as discussed in Chapter 5.

Second, the reciprocity norm implies a function for an ‘equivalent’ or ‘balanced’ responsibility of all members within a trade regime in the process of trade liberalisation.\(^{198}\) The WTO provisions call for members to engage in ‘reciprocal and mutually advantageous’ arrangements with a view to expanding international trade. The rationale behind reciprocity is similar to a Prisoner’s Dilemma situation.\(^{199}\) The concept implies that two countries would be better off pursuing free trade policies. Nonetheless, each country is tempted to impose protectionist measures to receive greater benefit from the other country. Non-cooperation in which both countries impose protectionist

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\(^{196}\) General Agreement on Tariffs and Trade, "Marrakesh Agreement Establishing the World Trade Organization," Article I paragraph 1.

\(^{197}\) Ibid., Article III paragraph 2.

\(^{198}\) In negotiating free trade agreements, the US insisted on using reciprocity in tariffs concession negotiations in which tariff cuts must be paid with similar or equivalent tariff cuts based on the 1934 Reciprocal Trade Agreements Act rather than an across-the-board formula.

measures would lead to losses for both countries. Moreover, the reciprocity norm is
designed to limit the problem of free riders that would gain benefits from MFN tariff
reductions without conceding their own tariff reductions. The reciprocity norm therefore
imposes members to pay their fair share of market access concessions\textsuperscript{200} or imposes
newcomers to pay their ‘admission fee’.\textsuperscript{201}

Developing countries were marginalised for most of the GATT due to the
reciprocity norm that corresponds to the principal supplier rule. Traditionally, major
developed countries as principal suppliers would extend concessions based on their
competitive sectors (e.g. manufacturing) and exclude sensitive sectors (e.g. agriculture,
textile and clothing) that were largely of interest to developing countries. As a result,
the principal supplier rule tended to exclude non-principal suppliers—mainly
developing countries—from negotiations and important decision-making processes.\textsuperscript{202}
Wilkinson and Scott found that in contrast to the conventional wisdom that developing
countries seek to free ride, developing countries were unable rather than unwilling to
extend reciprocal concessions and more than often participated in reciprocal
concessions when they were able to participate.\textsuperscript{203} Although the principal supplier rule
was dropped in favour of the Swiss Formula (a formula using a certain coefficient to
harmonise all tariffs towards a relative equivalent maximum ceiling level causing
deeper cuts for higher tariffs) in the Tokyo Round, decision-making procedures in the
Uruguay Round still resembled the principal supplier rule ‘mentality’, in which key
decisions were made by ‘principal’ countries or the Quad (the US, EC, Japan, and
Canada) and largely excluded developing countries.

The reciprocity norm is an abstract and vague concept in comparison to the non-
discrimination norm. None of the GATT/WTO agreements provide a clear definition or
the specific requirement of what constitutes ‘reciprocal’ or ‘mutually advantageous’.
During the GATT Working Party in 1955, a proposal was made to measure the value of
reciprocal concessions, but the proposal was terminated.\textsuperscript{204} Keohane argues that
members in the trade regime are not confined to ‘strict reciprocity’ related to exchange

\textsuperscript{200} Gilpin, \textit{The Political Economy of International Relations}: 72-80.
\textsuperscript{201} Hoekman and Kostecki, \textit{The Political Economy of the World Trading System}: 40.
\textsuperscript{202} Alan Winters, "The Road to Uruguay," \textit{The Economic Journal} 100, no. 403 (1990): 1291.
\textsuperscript{203} Rorden Wilkinson and James Scott, "Developing Country Participation in the GATT: A
\textsuperscript{204} J. Michael Finger, "Implementation and Imbalance: Dealing with Hangover from the Uruguay
of equal value concessions, but members may accept ‘diffuse reciprocity’ related to the recognition of a broader societal obligation to accept an agreement in spite of possible short-term loss, such as free riders, with a view of the long-term benefit and periodic negotiation process. It is important to note that the lack of clarity to measure reciprocal concessions leaves it open to individual interpretation, which is prone to hard bargaining and power politics.

In sum, strong proponents of the liberal trade principle perceived that a country must undertake policy reform and institutional adjustments towards trade liberalisation in order to expand market access among members and in turn promote overall growth and development. The Washington Consensus, for instance, insisted that trade policies should commit to a liberalisation process by all countries regardless of their level of economic development. In the context of the trade regime, the norms of non-discrimination and reciprocity are perceived to ensure members gain universal benefit from trade liberalisation and impose obligations for members to pay a ‘fair’ share in the provision of public goods. Deviation from the reciprocity norm would create different levels of rights and obligations among members and even undermine the non-discrimination norm. The non-discrimination norm should be strengthened by all members, including poorer developing countries. Developing countries should restrain themselves in requesting preferences and use the MFN to suppress the domestic protectionist movement. Further, demands for special treatment would constrain developing countries from acquiring the benefits of trade liberalisation, demands for more government intervention in the private sector might generate rent seeking behaviour, and demands for non-reciprocal treatment might in turn hinder economic

development and growth as well as impede efforts to alleviate poverty. Some observers argue that the special treatment for developing countries “has arguably not been an effective instrument to promote development” in which market access reduction should be universal (regardless of level of economic development) with temporary exemptions for only very small and low income countries and better efforts (non-binding) to extend assistance in accordance to development priorities. In other words, the liberal trade and developmental principles are considered non-conflicting and harmonious. Strong liberal trade proponents argue that the infusion of a development-oriented agenda, such as requesting non-reciprocal treatment or greater policy space, does not provide any additional value and could even hinder growth and development. Special treatment might only be extended towards very small and low income economies with relatively minimum impact to global trade.

2.4.2.2 Developmental Principle

In parallel to the liberal trade principle, this thesis suggests that the developmental principle is also an important part of the normative framework of the trade regime. The notion of the developmental principle in this thesis chiefly refers to sustainable development. In terms of the definition, the United Nations (UN) Brundtland Commission in 1987 defined sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. One of the key elements of the definition is “the concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given”. Further, the Rio Declaration and Agenda 21 specified the international principles and norms in attaining sustainable development objectives. The principles include the recognition to the right of development to achieve equitable developmental

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216 Ibid., Chapter 2, paragraph 1.
and environmental needs of current and future generations.\textsuperscript{217} It further acknowledges that there is a great need to eradicate poverty and reduce disparity between the rich and poor countries with special attention to the conditions and needs of developing countries, in particular LDCs.\textsuperscript{218} A global partnership between developed and developing countries must be developed with the same but differentiated responsibilities, in which developed countries should bear more responsibility considering the pressure being placed by their societies to the global environment and the financial and technological resources they possess.\textsuperscript{219} In relation to the trade regime, Agenda 21 recognises that this global partnership is essential to develop "an efficient and equitable global economy".\textsuperscript{220} It also details specific strategies in global trade including: freezing or reducing protectionism that negatively impacts developing countries; reducing subsidies that causes unfair trade, and ensuring public participation in trade policies formation, negotiations and implementation.\textsuperscript{221} The 1994 Marrakesh Agreement re-emphasised the need to prioritise the developmental principle. Sustainable development in the regime implies that a trade liberalisation process must be undertaken in a sustainable manner with a view to ensure the preservation of environment and ensure that the liberalisation process is consistent with the different levels of economic development among WTO members.\textsuperscript{222}

However, the developmental principle had evolved over time and initially it was not intended in the contemporary sense of sustainable development. The post-war Bretton Woods architecture was highly influenced by Keynesian economics.\textsuperscript{223} The Havana Charter gave the basic design of the International Trade Organization (ITO) that placed more comprehensive and balanced rules between markets to enhance global

\begin{itemize}
\item \textsuperscript{218} Ibid., Principle 5.
\item \textsuperscript{219} Ibid., Principle 7.
\item \textsuperscript{221} Ibid., Chapter 2.
\item \textsuperscript{222} General Agreement on Tariffs and Trade, "Marrakesh Agreement Establishing the World Trade Organization," Preamble.
\item \textsuperscript{223} John Keynes criticised the over-reliance of classical economics on market forces. He emphasised that individual decisions and pure market forces cannot maintain a social objective, particularly full employment. State intervention is needed to overcome or alleviate economic crisis by stimulating long-term state-planned investment. A degree of state intervention therefore is necessary to maintain overall economic stability and economic development. See Adam Zwass, \textit{The Strengths and Weaknesses of the Two World Economic Systems}, trans. Michel Vale (New York: M.E. Sharpe, 1987), 104-5.
\end{itemize}
trade (the liberal trade principle) and state intervention to maintain domestic stability (the developmental principle).\textsuperscript{224} However, the Havana Charter was never ratified by US Congress and for this reason the ITO was never realised. The US and Britain reached a compromise of an ‘embedded liberalism’, which rested upon a legitimate social purpose to support a liberal economy as long as they were able to impose unilateral measures to ensure domestic social and economic stabilities.\textsuperscript{225} The GATT was basically Chapter IV on Commodity Policy in the Havana Charter, which came into operation without the ratification of the full charter. As a result, the GATT allowed a limited exception and safeguard for developmental purposes.

The developmental principle under the trade regime was translated to the norms of flexibilities, and later through a slow and incremental process translated to SDT, and recently to sustainable development. The following will illustrate how these norms were developed into the trade regime and main ideas in the norms of flexibilities, SDT, and sustainable development.

\textit{a) Flexibilities}

The flexibilities norm implies that members would be extended policy space and safeguards in confronting adverse impacts of trade liberalisation. In contrast to an ITO holistic approach, the GATT was primarily designed to promote trade liberalisation and the development context was referred to as “safeguards, exemptions, exceptions, and restrictions - all designed to protect...a variety of domestic social policies”.\textsuperscript{226} Ferrarini conceptually differentiates flexibilities into: ‘absolute flexibility’ referring to a full autonomy by national authority to determine its national policy, and ‘relative flexibility’ referring to the optimum or maximum flexibility that could be acquired within the scope of a multilateral agreement.\textsuperscript{227}

\textsuperscript{226} Ibid., 212.
\textsuperscript{227} In the original study, the conceptual distinction of absolute and relative flexibilities were used to analyse flexibilities on investment, but this thesis views the conceptual distinction could also be used to analyse flexibilities in general and in other issue areas. See Benno Ferrarini, "A Multilateral Framework for Investment," in \textit{The Singapore Issues and the World Trading System: The Road to Cancun and Beyond}, ed. State Secretariat of Economic Affairs and Simon J. Evenett (Bern: State Secretariat of Economic Affairs, 2003), 22.
The GATT allowed various flexibilities to the liberal trade principle for various purposes. Flexibilities are permitted to achieve non-economic purposes, such as security consideration, as well as public morals, human, animal or plant life or health protection, and conservation purposes. Further, deviations to the liberal trade principle are allowed to establish a ‘fair’ market competition or levelling the playing field, such as countervailing duties on subsidised imports and antidumping on dumped imports (price sold below the price in home market). Moreover, flexibilities were allowed to counter adverse impacts of trade liberalisation (economic purpose), such as safeguards to balance of payment problems and protection of industries from serious injury by imports. In addition, flexibilities were permitted to protect infant industries. The provisions concerning flexibilities under the GATT largely fall under a relative flexibility rather than an absolute flexibility.

b) Special and Differential Treatment

Even with the norm of flexibilities as part of the GATT 1947, the trade regime did not recognise 23 developing countries as a distinctive group. As a result, the GATT provisions did not take into consideration the different levels of economic development among its contracting parties nor did it provide specific provisions for developing countries. In fact, the GATT was never created nor claimed to be designed for “facilitating economic development in the periphery”. The SDT norm implies that the integration process of developing countries into the trade regime needs specific rules taking into account their level of economic development and socio-economic conditions. The SDT therefore should not be confused with the broader developmental principle because SDT is merely one of the aspects of the developmental principle.

The integration of the SDT into the regime was a slow and incremental process. In the 1950s, developing countries increased the awareness of the problems associated with their participation in the regime. The efforts lead to the Haberler Report in 1958.

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230 Ibid., Annex 1A, Article XX.
231 Ibid., Annex 1A, Article VI.
232 Ibid., Annex 1A, Article XII.
233 Ibid., Annex 1A, Article XIX.
234 Ibid., Annex 1A, Article XVIII.
and follow-up reports. These reports found that protection of several manufactured products in developed countries were extremely high which in turn impeded market access expansion for developing countries. Further, continuous quantitative restrictions discriminated products from several developing countries, such as cotton products, jute products, vegetable seeds and oil, cocoa, coffee, and copper.\textsuperscript{237}

In 1965, Part IV on Trade and Development was added to the GATT to accommodate the demand for greater market access by developing countries. It formalised the principle of non-reciprocity that relieved developing countries of the requirement to offer reciprocal concessions.\textsuperscript{238} It is worth noting that the concept of non-reciprocity was developed in the United Nations Conference on Trade and Development (UNCTAD). Low income developing countries were perceived to suffer cost disadvantages (or supply side constraints) due to the lack of economy of scale and unfair competition. The preferences would therefore provide additional economy of scale in order to increase productivity in the preferential areas.\textsuperscript{239} The Generalised System of Preferences (GSP) was adopted in 1968 in the UNCTAD to provide the generalised, non-reciprocal, non-discriminatory system preferences in favour of developing countries. The GSP was adopted into the GATT as a temporary waiver, but was finally adopted as the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries or Enabling Clause in 1979. The Enabling Clause institutionalised the categorisation of members within the regime into: developed countries, developing countries, and LDCs.

As a result, the GATT Part IV and Enabling Clause provided the legal foundation to extend non-reciprocity treatment as a variation to the norm of reciprocity under the liberal trade principle as discussed earlier. Another variation of the norm of reciprocity would also be created during the Doha Round with the new conception of 'less than full reciprocity', as discussed in Chapter 3, which implies that developed countries should extend full reciprocity, developing countries should extend less than full reciprocity, and LDCs do not need to extend reciprocity (non-reciprocity).

\textsuperscript{237} Niels Blokker, \textit{International Regulation of World Trade in Textiles: Lessons for Practice a Contribution to Theory} (Dordrecht: Kluwer Academic Publisher, 1989), 70.
\textsuperscript{239} The Danish Institute for International Studies and the Food and Resource Economic Institute, \textit{Special and Differential Treatment and Differentiation between Developing Countries in the WTO} (Copenhagen: Danish Institute for International Studies, 2005), 65.
It is important to note that SDT consisted of three types of measures. First, measures related to foreign market access for developing countries, such as trade preferences and duty-free-quota-free for LDCs. Second, measures related to the domestic market of developing countries, such as flexibilities in terms of transitional periods and a lower obligation threshold. Third, measures related to TACB, which were introduced under the SPS Agreement, and TBT Agreement. The first and third measures had become a widely accepted SDT norm, but measures related to flexibilities or greater policy space for the domestic market of developing countries remained debatable and sometimes a contentious issue.240

Despite the introduction and institutionalisation of the SDT norm into the trade regime, critiques of the SDT by various liberal trade proponents remained strong as previously mentioned. However, other observers pointed to the reasons of the ineffectiveness of past SDT provisions. The main critique is that SDT provisions are based on ‘best endeavour’ and are not legally binding. Finger argues that the implementation by developed countries relies on the “weight of the moral suasion” and the provisions were designed to “influence behaviour without going so far as to regulate it” .241 This is particularly true related to the expanding market access in developed countries of export interests of developing countries. In reality, developed countries tended to provide preferences on selected products and countries that do not have much export capacity.242 Preferences are also extended to countries with linkages to multinational corporations (MNCs) and the processing and production networks of developed countries. Further, the Uruguay Round actually limited the scope of SDT. Developing countries were expected to provide the same market access concessions, but with different levels of threshold and longer implementation periods. The traditional non-reciprocal norm was only extended towards LDCs.243 In other words, developing countries (except LDCs) regardless of their level of economic development and socio-

241 Finger, "Implementation and Imbalance: Dealing with Hangover from the Uruguay Round," 455 (emphasis in original).
economic structure were subjected to the same rules, obligations and commitment as developed countries. The similar rules and obligations would create several problems, especially the implementation of expensive harmonisation of standards, regulations, and enforcement.

c) Sustainable Development

As mentioned earlier, the definition of sustainable development in the trade regime implies that trade liberalisation process must be sustainable with a view to ensure the preservation of environment and be consistent with the different levels of economic development among WTO members. In the beginning of the millennium, the impetus to advancing the developmental-relevant agendas, in particular sustainable development into the trade regime reflected: (1) learning experiences of developing countries undertaking liberalisation; (2) emergence of ‘heterodox’ economics challenging neoliberal economics; and (3) global political agenda to mainstream sustainable development into global governance.

First, many developing countries undertaking liberalisation in the 1980s and 1990s experienced the negative impacts of market volatility causing adverse socio-humanitarian and socio-economic impacts, and in the worst cases, severe political instability. One of the most devastating impacts of liberalisation is the issue of food security and livelihood security in many developing countries. A United Nations Development Programme (UNDP) report indicated that the subsidised agriculture products in the US and EC threatened the livelihood and employment of small, resource-poor and subsistence farmers, such as in the Philippines, Mexico, and Jamaica, as a consequence of unilateral trade liberalisation or their participation in a free trade agreement. For this reason, many developing countries wanted to ensure the liberalisation process would not create negative socio-economic implications for the most vulnerable and poorest population.

Second, the emergence of ‘heterodox’ economics challenged the overemphasis of the market force by neoliberal economics. Rodrik argues that the implementation of market reforms without appropriate institutions could result in devastating impacts and

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even prompt economic crises. Market reforms in Latin America were disappointing in terms of growth and poverty alleviation outcomes because it did not take sufficient account of social insurance and social safety net; and financial liberalisation in Asia preceded the development of adequate financial regulations that spurred the Asian financial crisis. Stiglitz criticises the Bretton Woods institutions for imposing mandatory one-size-fits-all structure adjustments by the World Bank and IMF. He and his colleague argue that liberal trade proponents' economic model assumptions do not seriously consider the conditions of developing countries, such as the high unemployment rate, weak social safety system, and highly imperfect risks market. As a result, the implementation and adjustment costs of trade liberalisation would often be disproportionately higher for developing countries. The process of liberalisation therefore should be gradual, sequential, and tailor-suited for each country. Moreover, non-traditional critiques began to intensify. Environmentalist and gender advocates argue that there is an insufficient account of the non-economic aspects to global economic activities, such as price of environmental degradation, value of sustainable indigenous cultures, or gender discrimination.

Third, the re-emphasis of the development dimension could not be separated with the broader global political agenda to enhance international cooperation for sustainable development at the start of the millennium. The Jubilee 2000 called for the cancellation of debt of developing countries and the Millennium Development Goals (MDGs) in 2000 called for eight development-oriented objectives to be attained by 2015. Moreover, the Johannesburg Declaration called for the world's commitment on sustainable development and cautioned the increasing disparity between rich and poor countries which posed a threat to global prosperity, security and stability. The Doha 'Development' Round was part of this broader global political agenda, which focusses primarily on efforts to reinvigorate the developmental dimension in particular the integration of the norm of sustainable development in the trade regime.

248 Ibid., 39-40.
In the following chapters, this thesis will demonstrate some of the efforts by negotiating coalitions in developing and merging the norms of SDT and sustainable development. The Core Group and G-90 in Chapter 4 developed an innovative approach to SDT related to TACB by balancing: obligations, implementation capacity, and provision of TACB. In Chapter 3, the G-33 was involved in developing special trade provisions to ensure food security for the poorest and vulnerable population as part of SDT.

In sum, proponents of the developmental principle perceived that the process of trade liberalisation should be viewed in a broader and more comprehensive developmental context. The main characteristic of developmental-proponents is that they stressed greater consideration to social or other non-economic objectives as part of the developmental process. They opposed a simplistic notion that trade liberalisation and free markets would automatically lead to growth and development. The liberal market does not have to be "self-creating, self-regulating, self-stabilising and self-legitimizing". Trade negotiations should no longer limit discussions based on the traditional issue of achieving efficient allocation of resources, but trade negotiations must include issues such as fairness, equity, and sustainable development. Specific provisions for non-trade concerns are crucial considering "market forces have no particular conscience or willingness to pursue fairness and quality of life". Trade rules therefore should permit diversity in national institutions and standards, but should not be directed towards harmonisation. For instance, poor countries should be permitted policy space to implement developmental policies no longer required by developed countries. The pursuit of economic activities and trade liberalisation therefore should be in tandem with the maintenance of social-economic stability as well as recognition of the different levels of economic development.

2.4.2.3 Liberal Trade and Developmental Nexus

After overviewing the liberal trade and developmental principles, it is important to acknowledge that the nexus between the two principles have been present since the establishment of the trade regime. In the GATT, the liberal trade principle was "translated into such norm as non-discrimination, which in turn suggested the most-favoured-nations rule...", while at the same time, the developmental principle referred to "responsibility of governments to stabilize their domestic economies on through the norms of safeguarding...[by developing] rules defining specific GATT safeguarding provisions". The nature of the trade regime therefore depends on the relation between "transaction flow and shared purposes". After several rounds of negotiations, the nexus between the liberal trade and developmental principles was enshrined in the 1994 Marrakesh Agreement, which stipulates that the purposes of the trade regime were:

"...to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different level of economic development." \[258\]

On the one hand, reflecting the liberal trade principle, the regime encourages the expansion of market access for international trade and promotes efficient allocation of the world’s resources. On the other hand, reflecting the developmental principle, the trade regime should conduct the liberalisation process in a sustainable manner with a view to preserving the environment and to take into account the differing levels of economic development among members. Historically, the GATT placed the liberal trade principle as the ultimate objective of the regime, while the developmental principle was considered as a secondary element. The developmental principle tended to be marginalised and even treated as an ‘optional extra’ or ‘nice thing to do’ in the

\[257\] Wolfe, Farm Wars: The Political Economy of Agriculture and the International Trade Regime: 36.
\[258\] General Agreement on Tariffs and Trade, "Marrakesh Agreement Establishing the World Trade Organization," Preamble.

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Chapter 2. Conceptual Framework

negotiation discourses. For instance, the Director-General of the WTO, Pascal Lamy, stated that the WTO is not a development agency. Qureshi argues that the statement was misleading and concluded that the WTO actually has a function as a development institution although it is focussed primarily on trade related developmental attributes.

The more balanced relation between the liberal trade and developmental principles became more important with the increasing level of global economic integration and interdependence. The expansion of issue areas under the trade regime, particularly during the Uruguay Round, brought new and often unexpected implementation consequences, particularly for developing countries. The multilateral discipline shifted from a negative regulation (referring to what government must not do) into a positive regulation (referring to what government must do). In other words, the Uruguay Round agreement brought both shallow and deep integrations. Shallow integration refers to disciplining border measures, in which implementation requires a relatively low adjustment cost, such as changing tariff levels in custom offices. Deep integration refers to disciplining beyond border measures. This involves a relatively high adjustment cost depending on a country’s available infrastructure. Implementation could involve trade reform and institutional reform that might require creating a domestic regulation, a new legal system, and additional investment, such as facilities, equipment and staff training. The implementation of disciplines related to harmonisation of standards and enforcement was relatively easier and cheaper for many developed countries, but proved much more difficult and costly for many developing countries. Further, deep integration involves institutional harmonisation that might not necessarily relate to the trade interests of developing countries. Moreover, past WTO obligations gave little attention to their implementation process and

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260 The statement was made in the Emile Noel Lecture, New York University, Law School on 30 October 2006.
264 Finger, "Implementation and Imbalance: Dealing with Hangover from the Uruguay Round," 444.
implementation costs as well as the development priorities of developing countries.\textsuperscript{265} As a result, members might misallocate invaluable resources for their development into areas, which neither helps exports nor a part of their developmental priorities. Deep integration would decrease policy options that were previously a domestic domain\textsuperscript{266} or even make it difficult to maintain a government’s legitimacy on sensitive policy issues.\textsuperscript{267}

The push and pull between the liberal trade and development principles often create ambiguity. Wade uses interesting terms to describe the liberal trade and developmental nexus by suggesting there are two types of moralities in the WTO: (1) ‘a-bit-better-than-the-jungle morality’ representing the norms of reciprocity or a tit-for-tat situation, and (2) ‘all-men-are-brothers morality’ representing strong moral duty to refrain themselves to help the weak.\textsuperscript{268} In his analysis, the WTO rules, such as TRIPS, TRIMS, GATS, overemphasise reciprocal market access concessions with hard laws (the former morality), while the WTO has weak rules related to ‘development space’ for developing countries (the latter morality).\textsuperscript{269} Further, Young argues that contemporary trade negotiations involve traditional, commercial, and social trade policies, but the implications of these trade policies remain unexplored. The deep integration of trade policies means that negotiations should take a broader perspective to trade policy analysis.\textsuperscript{270} Similarly, Collier argues that developing countries were seeking a form of ‘policy coherence’ in both Organisation for Economic Co-operation and Development (OECD) countries and developing countries with a view to reducing poverty and promoting development. This means that appropriate trade policy objectives should be directed towards the promotion of development rather than purely (commercial) self-interests. He further argues that the GATT bargaining model through reciprocal concessions was no longer suitable with the notion of policy coherence, in which OECD

\textsuperscript{266} Stiglitz and Charlton, Fair Trade for All: How Trade Can Promote Development: 103-05.
\textsuperscript{269} Ibid., 639-40.
countries must also share some of the reform burden even if it is not in their best self-interests. Policy coherence between OECD and developing countries in reducing poverty and promoting development could be conceived within the GATT under the SDT. As discussed in the following chapters, the developmental principle would not only entail traditional SDT, but also encompass developing new rules related to the norm of sustainable development.

In sum, the activism of negotiating coalitions advocating development-oriented agendas should be viewed under the nexus between the liberal trade and developmental principles. The narrower perspective on trade negotiation suggests that the primary objective of the regime is to promote trade liberalisation because it would efficiently allocate global resources, which serves as an engine of global economic growth, regardless of the level of economic development. In achieving the liberal trade value, countries traditionally negotiate through reciprocal market access concessions. As mentioned earlier, trade negotiators or negotiating coalitions pursuing an instrumental frame would adhere to the liberal trade principle. However, the narrow perspective often “confuses means with ends... [because] trade serves at best as an instrument for achieving the goals that societies seek: prosperity, stability, freedom and quality of life”. The deep integration process could induce unexpected and unintended adjustment costs. The adjustment costs are not limited to direct costs, but also must take into account the multiplier effects that are often greater than direct costs. The broader perspective on trade negotiation suggests that the liberalisation process should not generate economic, social or even political adjustment costs that exceed the benefits of liberalisation itself. For this reason, trade negotiations should go beyond traditional instrumental reciprocal concessions with a view of simply achieving a liberalisation objective. Trade negotiations should regulate global trade as it undergoes the liberalisation process. As mentioned earlier, trade negotiators or negotiating coalitions advocating a normative frame, such as socio-humanitarian or socio-economic claims, would adhere to the developmental principle. It emphasised that the trade liberalisation process should also seriously take into account other non-trade objectives. There is increasing evidence of the trend to re-configure the conceptualisation of the liberal trade

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272 Rodrik, Borosage, and Faux, "What Next for the WTO?" 18.
and developmental principles in which trade liberalisation should not be pursued for the sake of trade expansion alone, but must be developed into an effective vehicle to achieve concrete development goals. 274 Negotiations in the trade regime should "regulate and develop good policy on the actual process of liberalisation with a view to achieve and maintain the broader objectives of growth, employment and development". 275

The conceptual framework in this thesis would provide tools of analysis in order to understand the nature and role of coalitions in a more rounded and comprehensive manner. The following three chapters will critically evaluate negotiating coalitions in different issue areas.

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274 Qureshi, "International Trade for Development: The WTO as a Development Institution?", 176.
Chapter 3. Negotiating Coalitions on Agriculture

This chapter examines the nature and role of negotiating coalitions in the agriculture negotiations. The agriculture sector remains politically important in many developed and developing countries, and for this reason, the agriculture trade negotiations remain the most technically complex and politically contentious issue in the Doha Round. Although there were many coalitions active in the agriculture negotiations, this thesis focuses on two coalitions, namely the G-20 and the G-33. The G-20 largely strived to reduce/eliminate trade distortions, particularly in developed countries, to acquire greater market access for competitive agriculture exporters, while the G-33 focussed primarily on promoting and developing special trade provisions for food security purposes, namely Special Products (hereinafter SP) and Special Safeguard Mechanism (hereinafter SSM), as market access flexibilities for developing countries.

The Doha Round agriculture negotiations could be differentiated into several stages of negotiation: agenda-setting and modalities-setting processes, which identify the agenda and discuss the specific policy options and their parameters; and rule-making and deal-making processes, which discuss detailed rules and, if possible, agree on a new agriculture agreement.

This chapter will demonstrate the different development-oriented agendas advocated by the G-20 and G-33. The G-20 used mixed instrumental-normative frames, but largely focussed on its instrumental frame. The mixed frames were often considered as middle ground solutions. At the same time, the G-33 focussed on a normative frame by highlighting its socio-humanitarian claims as it promoted special trade provisions for food security purposes adhering to the norm of sustainable development.

This chapter will also illustrate the different types of leadership employed by the G-20 and G-33. The G-20 constantly portrayed a strategic-based leadership, taking into account the position of G-20 members, in particular less-ambitious and more-ambitious positions on market access. In comparison to the G-20, the G-33 initially exhibited a knowledge-based leadership to persuade its negotiating counterparts using its socio-humanitarian claims as a moral justification during the agenda-setting and modalities-setting processes. As negotiations moved into rule-making processes, however, the
G-33 adapted towards a strategic-based leadership to accommodate the diverse interests and preferences among sub-groups within the G-33.

This chapter will also demonstrate the strategies and mode of negotiation related to the G-20 and G-33. Both coalitions and their negotiation counterparts began with a distributive strategy and moved to an integrative strategy. At different stages of negotiation the mode of negotiation between the G-20 and the major powers could be characterised as bargaining through rhetorical action in which they engaged in the traditional exchange of market access concessions. In comparison to the G-20, the G-33 and agriculture exporters engaged in a rhetorical entrapment during the modalities-setting process, in which agriculture exporters accepted the G-33’s humanitarian claims to maintain their reputation, and to obtain future benefits. During the rule-making and near deal-making processes, however, the mode of trade negotiation resembled a rhetorical action between competing frames: the G-33 maintaining its normative frame versus agriculture exporters maintaining their instrumental frame.

In the context of the nexus between the liberal trade and developmental principles, both the G-20 and G-33 could not achieve their original objectives since the compromises or increasing convergences were mainly achieved by establishing the lowest common denominator. The G-20 succeeded in disciplining bound tariffs and subsidies in the major developed countries, but major developed countries kept sufficient policy space to continue subsidising their agriculture production and to impose complex tariff protections. Meanwhile, the G-33 requested absolute flexibilities for the special trade provisions for food security purposes, but would likely have to accept stricter flexibility conditions to accommodate the agriculture exporters.

In regard to the structure of this chapter, the G-20 and G-33 will be analysed in this chapter because both coalitions played a complementary role in the agriculture negotiations despite pursuing different development-related agendas. The following will consist of six sections. The first section begins with a brief background of agriculture negotiations during the Uruguay Round, which serves as the foundation of renegotiating agriculture in the Doha Round. The second section will examine the G-20 negotiating for an ambitious agriculture reform during the agenda-setting and modalities-setting processes, while the third section will analyse the period during the rule-making and near deal-making processes. Similar to the G-20 case study, the fourth section will
investigate the G-33 negotiating for special trade provisions for food security purposes during the agenda-setting and modalities-setting processes, and the fifth section, during the rule-making and near deal-making processes. The sixth section will present the key findings in this chapter, including an analytical comparison between the G-20 and G-33.

3.1 **Background: Agreement on Agriculture and Its Outstanding Issues**

Agriculture was mostly exempted from the GATT disciplines. The exclusion began with a temporary US waiver in 1955 permitting the US to restrict imports. The waiver encouraged the EC to establish the Common Agriculture Policy (CAP) by providing export subsidies to protect European farmers. The US and EC subsidy war caused a long-term trend of commodity price depreciation. In 1986, a World Bank study warned that this negative trend would adversely impact the growth rate of rural incomes, and efforts to alleviate poverty and hunger, particularly affecting very poor people who depend on agriculture for their livelihood.

The adverse impacts of the US-EC subsidy war pushed for the need to discipline trade in agriculture. During the Uruguay Round, the Cairns Group emerged as a third force in agenda-setting and rule-making processes. The coalition was led by Australia and consisted of both developed and developing countries. The formation of this coalition was only possible because developed countries within the Cairns Group softened their position on flexibilities for developing countries. The main objectives of the Cairns Group were to: convert non-tariff barriers to tariffs (or tariffication), reduce tariffs, reduce domestic support, eliminate export subsidies, and extend

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279 By the end of the Uruguay Round, the Cairns Group consisted of 19 members: Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Pakistan, Paraguay, Peru, Philippines, South Africa, Thailand, and Uruguay.

flexibilities under SDT for developing countries.\textsuperscript{281} As a result, the Cairns Group became the voice of developing countries. The coalition, however, had limited influence in the final deal-making process because a deal was struck between the US and EC known as the Blair House accord. The accord substantially scaled down the level of ambition of the final AoA.\textsuperscript{282}

The AoA focused on three agriculture pillars: market access, domestic support, and export subsidy. With regard to market access, some countries undertook the tariffication process and tariffs were disciplined using a simple average tariff cut-formula. Moreover, domestic support uses a technically complex concept distinctive to the trade regime. The concept distinguishes domestic support into a system of ‘boxes’ similar to a traffic light. ‘Amber Box’ (or Aggregate Measures of Support) represents subsidies that cause trade distorting effects, often subsidies related to agriculture price or production. These subsidies were subject to an average cut, but members were allowed to allocate a minimum amount or \textit{de minimis} level of subsidies based on a total agriculture production value and centered on the value of each supported product. ‘Blue Box’ signifies subsidies with less trade distorting effects. These subsidies would commonly be highly trade distorting, but they were considered ‘less’ trade distorting because they require farmers to limit their production. ‘Green Box’ represents subsidies with minimum or no trade distorting effects, such as research and infrastructure. Further flexibilities were provided by the Peace Clause which shielded the US and EC from dispute settlement on subsidies until the end of 2003. Regarding export subsidy, the agreement identified export enhancing programmes, which were subject to reduction commitments based on their budgetary outlay and quantity.

As indicated in Table 8, SDT in the AoA was extended to developing countries in all three agriculture pillars in the form of lower thresholds and longer transition periods. Non-reciprocal treatment was only accorded to the LDCs with total tariff and subsidy cut exemptions. Other developing countries were subject to the same discipline

\textsuperscript{281} Anwarul Hoda and Ashok Gulati, \textit{WTO Negotiations on Agriculture and Developing Countries} (Baltimore: Johns Hopkins University Press, 2007), 190.
\textsuperscript{282} Maswood, "Developing Countries and the G20 in the Doha Round," 52.
as developed countries with slightly lower reciprocal concessions and specific SDT provisions on domestic support.283

Table 8. The Agreement on Agriculture Tariffs and Subsidy Commitments

<table>
<thead>
<tr>
<th>Implementation period</th>
<th>Developed countries</th>
<th>Developing countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average cut for all agriculture products</td>
<td>36%</td>
<td>24%</td>
</tr>
<tr>
<td>Minimum cut per product</td>
<td>15%</td>
<td>10%</td>
</tr>
<tr>
<td>Domestic support</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amber Box (average cut)</td>
<td>20%</td>
<td>13%</td>
</tr>
<tr>
<td>Export subsidy</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Value of subsidies (budgetary outlay)</td>
<td>36%</td>
<td>24%</td>
</tr>
<tr>
<td>Quantities of subsidies</td>
<td>21%</td>
<td>14%</td>
</tr>
</tbody>
</table>

Sources: World Trade Organization website
Note: LDCs were exempted from all reduction commitments. The base period uses the bound rate before January 1995, or for unbound tariffs, the calculation uses the actual rate in September 1986.

Although agriculture was eventually brought into the main WTO discipline, tariffs and subsidies—as trade distortions—remained high and even became legitimised, while flexibilities for developing countries were limited with a weak legal foundation. It is important to note that all of these subsidy and tariff protections ran contrary to the liberal trade principle. These new WTO rules actually permitted the continuation of subsidy and tariff protections that were mostly designed to fit the US and EC economic structures. In effect, the agreement not only enabled the US and EC to increase their subsidies and maintain high tariff protections, but also legitimise them as part of the WTO rules.284 For this reason, many developing countries consider the AoA a double standard. The agreement allows extensive and specific flexibilities for developed countries, but provides limited or ‘best endeavour’ provisions related to flexibilities under SDT for developing countries.285

During the Doha Round, the renegotiation of agriculture—a long-term trade reform—was a built-in agenda (or unfinished agenda) as part of the dual mandates under paragraph 13 of the Doha Declaration. On the one hand, the mandate called for “substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade distorting domestic

284 WTO delegate from Southeast Asia, interviewed by author, September 29, 2010.
285 Kaukab, "Coalition and Alliance Strategies for Developing Countries in the Doha Round of Agriculture Negotiations," 133.
support” reflecting the liberal trade principle. On the other hand, the mandate called for “special and differential treatment for developing countries ... so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development” reflecting the developmental principle. The Doha mandates therefore required WTO members to renegotiate with a view to achieve a balance between pursuing trade liberalisation objectives and pursuing other legitimate developmental objectives, such as food security and rural development.

3.2 The Group of 20 Setting the Agenda for an Ambitious Agriculture Reform

This section evaluates the nature and role of the G-20 negotiating for an ambitious agriculture reform by focussing on reducing/eliminating trade distortions in major developed countries. It will concentrate on the coalition’s activism during the agenda-setting and modalities-setting processes, which involve setting the agenda for an ambitious agriculture reform and discussing specific policy options and their parameters to reduce/eliminate trade distortions (market access, domestic support, and export competition). In terms of the internal management of the G-20, the diverse interests and preferences among its members tend to be less salient because cooperation involved identifying an agenda and sharing a commitment to the long-term objectives of the trade regime. Cooperation within a coalition involved broad commitments to the specific policy options and their parameters in the agriculture modalities with abstract distributive implications and without determining cost-sharing arrangements.

The following sub-section begins with a brief illustration of the continuing global trade distortions even after the implementation of the AoA and the early discussions in the agriculture negotiations, which provide the contextual environment for the emergence of the G-20. The subsequent sub-section evaluates the G-20’s nature by investigating the G-20’s internal dynamic during its formation, namely the G-20’s mixed instrumental-normative frames and Brazil’s strategic-based leadership. The following sub-section evaluates the G-20’s role in the rule-development process by

287 Ibid., 3.
investigating the G-20’s external dynamic, particularly the strategies employed by key negotiators, and the overall mode of negotiation.

3.2.1 The Continuation of Trade Distortions and Renegotiation in Agriculture

In relation to the first Doha mandate concerning improvement of market access and reduction/elimination of subsidies, several reports and studies found that global agriculture trade remained distorted even after the AoA implementation, and consequently agriculture reform needed to continue. In regard to subsidies, a WTO report noted some WTO members increased their domestic supports and export subsidies during AoA implementation. The US overall domestic support actually increased from US$60.9 billion in 1995 to US$65 billion in 1998 with approximately two-thirds allocated to Green Box followed by support to Amber Box. The US export subsidies were relatively low, in the millions. In comparison to the US, the EC showed a more positive trend with a declining overall domestic support from US$116.5 billion in 1995 to US$94.8 billion in 1998. Similar to the US, the EC slightly decreased its export subsidies from US$6.3 billion in 1998 to US$5.6 billion in 1999. These numbers showed that the US relied mainly on domestic support rather than export subsidies, while the EC placed similar importance on both subsidies. In retrospect, the sheer amount of subsidies in the US and EC is astonishing. Some commentators indicated that cows in Europe received US$2.50 per day, which is more than the income of one-third of the world’s population.

A WTO study concluded that market access remained distorted due to high agriculture tariffs (compared to industrial tariffs), tariffs peak (very high tariffs on certain products compared to the generally low tariffs on other products), tariffs escalation (a higher level of tariffs for processed products), a small number of products under in-quota tariffs (compared to out-of-quota tariffs) under the Tariff-Rate Quota (hereafter TRQ) system, and frequent use of non-transparent non-ad valorem

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290 Tariffs Rate Quota (TRQ) is a two-tiered tariffs system. 'In-quota tariffs' allows a degree of domestic consumption to be imported with low tariffs, while 'out-of-quota tariffs' or 'above-quota tariffs' imposes higher tariffs or import products outside the amount of products under in-quota tariffs.
The Group of 20 Setting the Agenda for an Ambitious Agriculture Reform

tariffs on agriculture products. For instance, the OECD countries maintained substantially high agriculture tariffs, such as: Norway and Iceland nearing 70%, Japan around 40%, the EC exceeding 30%, and the US approximately 12%. In addition, some countries imposed mega tariffs or tariffs exceeding 100% on certain products. In controlling imports through the TRQ system, the EC imposed an in-quota tariff of €24.45 per tonne for two million tonnes of corn, while employing an almost double tariff for out-of-quota tariffs (or MFN basis) of €48.45 per tonne in 1999.

It is commonly understood that these subsidies and tariffs do affect agriculture trade; nonetheless, the degree of their impact remains debatable. Studies found different impacts for Blue and Green Boxes. A study verified that these subsidies caused minimum or no trade distorting effects on farmer’s decisions for production, investment, and risk assessment, while other studies concluded that these subsidies created significant trade distortions because subsidies reduce risk (moral hazard), affect farmers’ expectations for future support, and deter long-term exit strategies. Further, the FAO concluded that tariffs escalation is often aimed at particular labour-intensive sectors and agriculture products of interest to developing countries. Tariffs escalation tend to hinder export-led growth, product diversification, and poverty alleviation associated with demand for unskilled labour.

291 Ad valorem tariffs refer to tariffs that are based on a percentage of the price or value. In contrast, non-ad valorem is a complex mechanism using complicated technical factors such as particular components (e.g. sugar, milk, alcohol component) within a product based on percentage or strength (e.g. degree of sweetness).


Subsidies and tariffs—as trade distortions—should be observed in a holistic manner. The high domestic agriculture price in developed countries (compared to the world’s price) could only be sustained through domestic support and under the protection of high tariffs. The high agriculture price induces farmers to maintain or even increase production that could be exported with an export subsidy (or equivalent measures).298

The combination of subsidies and tariffs often create detrimental short-term and long-term consequences for developing countries. An FAO study found that developing countries needed to be protected against subsidies and high tariffs because they depress world prices, create price uncertainties and, in turn, generate unfair competition.299 The long-term implications include the declining share of agriculture trade of developing countries from less than 40% in 1961 to less than 30% in 2003, but at the same time, increasing the share of agriculture trade of developed countries from more than 20% in 1961 to more than 30% in 2003.300

In addressing the issue of continuing trade distortions, at the beginning of agriculture renegotiations in 2000, discussions revolved around the traditional rivalry between the US and EC. The US (and the Cairns Group) advocated greater market access and elimination of export subsidies.301 The EC requested greater discipline on domestic support and expansion of discipline on export enhancing measures, such as export credit, food aid, and state trading enterprise. The EC together with proponents of multifunctionality also demanded greater flexibilities for non-trade concerns.302 In most cases, developing countries were mainly in the back relying on the US to push for a more market-oriented agenda or dependent on the EC to promote greater flexibilities. In order to help understand the substantive progression of the agriculture negotiations

301 See for example, World Trade Organization, “Committee on Agriculture - Special Session - Proposal for Comprehensive Long-Term Agriculture Reform - Submission from the United States,” G/AG/NG/W/15 (June 23, 2000): 2-4.
302 See for examples, World Trade Organization, "Committee on Agriculture - Special Session - European Communities Proposal - Export Competition," G/AG/NG/W/34 (September 18, 2000); World Trade Organization, "Committee on Agriculture - Special Session - EC Comprehensive Negotiating Proposal," G/AG/NG/W/90 (December 14, 2000); World Trade Organization, "Committee on Agriculture - Special Session - Note on Non-Trade Concerns - Revision," G/AG/NG/W/36/Rev.1 (November 9, 2000).
Tables 9 and 10 provide the key proposals and agriculture negotiation texts on domestic support and market access during the agenda-setting and modalities-setting processes.

### Table 9. Key Proposals and Draft Agriculture Texts on Domestic Support (2000-2004)

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<tbody>
<tr>
<td><strong>Overall trade distorting domestic support (OTDS)</strong></td>
<td>-</td>
<td>-</td>
<td>Reduce all trade distorting domestic support based on certain range (bands) on product specific basis with a down payment in the first 12 months</td>
<td>Reduce the sum of all trade distorting domestic support consisting of Amber Box, de minimis, and Blue Box; tiered formula</td>
<td>Reduce overall base level trade distorting domestic support consisting of Amber Box, de minimis, and Blue Box; tiered formula</td>
</tr>
<tr>
<td><strong>Amber Box or total AMS</strong></td>
<td>Reduce by 60% over 5 years</td>
<td>Reduce most trade distorting domestic support</td>
<td>Reduce the sum of AMS with certain minimum cuts</td>
<td>Tiered formula</td>
<td>Tiered formula</td>
</tr>
<tr>
<td><strong>Product specific cap under Amber Box</strong></td>
<td>Individual products not exceed tariff levels of 1999-2001</td>
<td>-</td>
<td>Capped based on an agreed historical period</td>
<td>Capped</td>
<td>Capped</td>
</tr>
<tr>
<td><strong>De minimis cut</strong></td>
<td>Reduce by 0.5% over 5 years</td>
<td>To be reduced</td>
<td>To be reduced with certain minimum cuts</td>
<td>To be reduced by certain percentage</td>
<td>Negotiated</td>
</tr>
<tr>
<td><strong>De minimis cut for developing countries</strong></td>
<td>Maintain at 10%</td>
<td>-</td>
<td>Maintain at the existing level</td>
<td>-</td>
<td>Allow developing countries to support subsistence and resource-poor farmers</td>
</tr>
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</table>
### Table 9. Key Proposals and Draft Agriculture Texts on Domestic Support (2000-2004) (cont’d)

<table>
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<tbody>
<tr>
<td><strong>Blue Box</strong></td>
<td>Reduce 50% over 5 years; Developing countries reduced to 33% over 10 years</td>
<td>Maintain &quot;less trade distorting domestic support&quot; such as direct payments under product limited programme and support below 5% of the total value of agriculture production</td>
<td>Eliminate Blue Box</td>
<td>Maintain old Blue Box (direct payment with production limiting programme) and add new Blue Box (direct payment with no production requirement); not exceed percentage of average total value of agriculture production</td>
<td>Maintain old Blue Box and new Blue Box; negotiate new criteria; not exceed 5% average total value of agriculture production</td>
</tr>
<tr>
<td><strong>Cap on Blue Box</strong></td>
<td>Capped based on the period of 1999-2001</td>
<td>-</td>
<td>-</td>
<td>Capped</td>
<td>Capped</td>
</tr>
<tr>
<td><strong>Green Box</strong></td>
<td>Maintained but modified</td>
<td>-</td>
<td>Capped and/or reduced; additional discipline</td>
<td>Reviewed; take account of non-trade concerns</td>
<td>Reviewed and clarified; take account of non-trade concerns</td>
</tr>
<tr>
<td><strong>Peace clause</strong></td>
<td>-</td>
<td>Not agreed</td>
<td>-</td>
<td>Expired</td>
<td>Expired</td>
</tr>
<tr>
<td><strong>Others</strong></td>
<td>Expand exemptions of domestic support commitment for development programme in developing countries</td>
<td>Establish specific rules for a category of developing countries called 'net food exporting countries'</td>
<td>Expand exemptions of domestic support commitment for focussed and targeted programme</td>
<td>SDT integral part of domestic support</td>
<td>SDT integral part of domestic support</td>
</tr>
</tbody>
</table>

Sources: TN/AG/W/1; JOB(03)/157; WT/MIN(03)/W/6; JOB(04)/96; WT/1/579

<table>
<thead>
<tr>
<th>Developed countries</th>
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<tbody>
<tr>
<td>Tariff reduction formula</td>
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<tr>
<td>Tariff caps</td>
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<tbody>
<tr>
<td><strong>Tariff reduction formula</strong></td>
<td><strong>Tariff caps</strong></td>
<td><strong>Other</strong></td>
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</tr>
<tr>
<td>Similar tiered formula with lower tariff reductions and establish the Strategic Product</td>
<td>Not capped</td>
<td>End SSG</td>
<td>Maintain SSG</td>
<td>Expand TRQ; in-quota reduced to zero; eliminate SSG; duty-free for all tropical products</td>
<td>Expand TRQ; improve TRQ administration, in-quota reduced to zero; eliminate SSG; LDCs no reduction commitment, receive DFQF and work on cotton; address RAMs concerns; Monitoring and surveillance;</td>
</tr>
<tr>
<td>Lower tariff reductions and longer implementation periods; Special Safeguard Mechanism for import sensitive tariff lines; developed countries extend duty-free for a percentage of imports</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Lower tariff reductions and longer implementation periods; Special Product and Special Safeguard Mechanism; no TRQ expansion; no in-quota reduction</td>
<td>Critical towards blended formula causing disproportionately higher cuts for developing countries</td>
<td>SDT integral part of all elements taking into account rural development, food security and/or livelihood security, full liberalisation of tropical products, and preferences erosion</td>
<td>SDT integral part of all elements taking into account rural development, food security and/or livelihood security, full liberalisation of tropical products, and preferences erosion</td>
<td>SDT integral part of all elements taking into account rural development, food security and/or livelihood security, full liberalisation of tropical products, and preferences erosion</td>
<td>SDT integral part of all elements taking into account rural development, food security and/or livelihood security, full liberalisation of tropical products, and preferences erosion</td>
</tr>
<tr>
<td>Developing countries</td>
<td><strong>Note</strong></td>
<td><strong>Other</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Source: TN/AG/W/1; JO8/03/157; WT/MIN/03/W/6; TN/AG/GEN/9; JO8/04/96; G-20 proposal on 28 May 2004; WT/L/579</td>
<td></td>
<td><strong>Other</strong></td>
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In bridging the diverse positions among WTO members, Stuart Harbinson, as the agriculture chairperson, released agriculture modalities in a personal capacity in February 2003 with very limited guidance from WTO members (Tables 9 and 10). As the first attempt to develop agriculture modalities, the Harbinson text was highly criticised on all sides. Some demanded more-ambitious liberalisation, such as the US, Australia, and Uruguay, and some insisted on less-ambitious liberalisation and preservation of preferential treatment, such as the EC, Norway, and Mauritius. Although a revised draft was issued, a compromise could not be met by the deadline of 31 March 2003.

In preparation for an upcoming Cancún Ministerial Conference, the US and EC issued the EC-US joint text in August 2003 (Tables 9 and 10), which indicated that both countries were neither serious in reducing domestic supports (heavily used by the US) nor reducing tariff protections and eliminating export subsidies (mainly used by the EC). In regard to domestic support, the joint text simply referred to reducing the most trade distorting domestic support (most likely referring to Amber Box) and to reduce de minimis without suggesting any reduction formula, cap, or product specific disciplines. The joint text proposed maintaining ‘less trade distorting domestic support’ (most likely referring to Blue Box), but did not propose any new Green Box discipline. With regard to market access, they offered a blended tariff cut-formula using a Uruguay Round formula (a simple linear average cut-formula and a minimum cut per tariff lines), a Swiss formula (a formula using a certain coefficient to harmonise all tariffs towards a relative equivalent maximum ceiling level causing deeper cuts for higher tariffs) and a duty-free approach. The Uruguay Round formula—causing less-ambitious cuts—would be used for Sensitive Products (usually products with tariffs peak and tariffs escalation), while the Swiss formula and duty-free approach—causing more aggressive cuts—would be applied to general tariffs outside Sensitive Products. Further, the joint text envisaged eliminating export subsidies only for products of interest to developing countries, but maintaining all other export subsidies. More importantly, they actually targeted

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303 See World Trade Organization, "Committee on Agriculture - Special Session - Negotiations on Agriculture - First Draft of Modalities for the Further Commitment," TN/AG/W/1 (February 17, 2003).
304 World trade Organization, "Committee on Agriculture - Special Session - Summary Report on the Seventeenth Meeting of the Committee on Agriculture Special Session Held on 28 February 2003 - Note by the Secretariat," TN/AG/R/7 (March 24, 2003): 3, 9, 10, and 14.
developing countries by demanding additional rules or disciplines for a new category of developing countries called ‘net food exporting countries’.\textsuperscript{305}

The G-20 came onto the scene as a direct response to this joint text. The following sub-section investigates the internal dynamic related to the formation of the G-20 by viewing its basic arguments and Brazil’s leadership role.

\textbf{3.2.2 Internal Coalition Dynamic: The G-20’s Mixed Instrumental-Normative Frames and Strategic-Based Leadership}

The G-20 under the auspice of Brazil exhibited a strategic-based leadership that used its diplomatic, management, and technical skills to persuade members to cooperate in achieving mutual gains by taking into account the diverse interests and preferences among G-20 members. Initially, Brazil was concerned that many developing countries could be absorbed into the US and EC positions after the Harbinson text and organised a group of developing countries to develop a common platform in pursuing an ambitious agriculture reform by concentrating on reducing/eliminating trade distortions, particularly in developed countries. In achieving such objectives, Brazil’s analytical assessment indicated that Brazil would not be negatively affected if it incorporated the concerns for flexibilities on market access for developing countries. Brazil then approached India (which traditionally favoured less ambition on market opening) and found a common platform for cooperation by focussing on subsidies and tariffs in developed countries. Subsequently, Brazil brought Argentina, while India brought China into the group.\textsuperscript{306} The inner core of the G-20 consisted of Argentina, Brazil, China, India, and South Africa.\textsuperscript{307} These informal movements were not initially aimed at establishing a coalition per se, but to develop a common platform through a position paper. It is worth noting that the group was far from exclusive. During my interviews, for instance, a delegate pointed out that Australia and New Zealand were asked to join, but they declined.\textsuperscript{308} The group then steadily enlarged. Table 11 shows G-20 members in the early phase of its formation and later stage as membership stabilised.

\textsuperscript{308} WTO delegate from Latin America, interviewed by author, February 24, 2011.
By the time the EC-US joint text was released, the G-20 consisted of unique and diverse members, in which, according to a G-20 delegate, the Brazilian leadership was able to use the G-20’s heterogeneity as invaluable samples of the divergent positions among WTO members.\(^{309}\) It is important to note that a G-20 decision requires a consensus by unanimity, meaning every G-20 decision had to take into account the diverse interests and preferences among G-20 members. In many cases Brazil or India initiated a proposal and then refined it with other G-20 members, such as Argentina, China, and South Africa.\(^{310}\) All of the G-20 members shared a common platform on disciplining trade distortions, particularly domestic support and export competition, in developed countries. In regard to market access, however, some G-20 members favoured a more liberalised market access, such as Brazil, Argentina, and Paraguay, while others were more cautious on market opening, such as India, China, and the Philippines.

As mentioned in Chapter 2, a previous study by Hurrell and Narlikar categorised the G-20 as a ‘smart’ coalition because it merged the characteristics of a coalition formed based on like-mindedness, ideational and normative foundations; and a coalition based on rationalist conceptions of power and interests relations.\(^{311}\) This thesis further explores this broad definition of a smart coalition by unpacking the G-20’s main arguments. By unpacking the G-20’s core argument, it could explain how the G-20 established and maintained the coalition considering its heterogeneous membership. The distinction of the core arguments is important to understanding how these arguments unfold at different stages of negotiation.

\(^{309}\) WTO delegate from Southeast Asia, interviewed by author, March 1, 2011.

\(^{310}\) WTO delegate from Latin America, interviewed by author, March 2, 2011; and WTO delegate from Latin America, interviewed by author, March 3, 2011.

\(^{311}\) Hurrell and Narlikar, "A New Politics of Confrontation? Brazil and India in Multilateral Trade Negotiations," 422.
This thesis argues that the G-20 used mixed instrumental-normative frames as the G-20 put forward its alternative agriculture modalities in September 2003 to counter the EC-US joint text (Tables 9 and 10). On the one hand, the G-20 members used an instrumental frame by emphasising specific technical measures to discipline trade distortions particularly in developed countries in the area of domestic support, market access, and export subsidies. The G-20 called for a reduction of all domestic support in certain bands with product specific discipline. It also proposed to: reduce Amber Box and *de minimis* with certain minimum cuts, eliminate Blue Box, and limit Green Box with additional disciplines. In contrast to the EC-US joint text, the G-20 proposed that products with tariffs escalation would be subject to the Swiss formula and duty-free approach, while other tariffs would be subject to the Uruguay Round formula. The G-20 also wanted to eliminate all export subsidies and parallel export enhancing measures.312 This core argument implies that a fair and market-oriented agriculture trading system would enable competitive agriculture exporters to compete at the same level playing field with greater responsibility by developed countries since they largely generate existing distortions in agriculture trade and production.313 In the long-run a fairer and market-oriented trading system could encourage development of the agriculture sector and rural development in many developing countries that potentially possess a comparative advantage in agriculture. This principal argument reflects the liberal trade principle.

In regard to the G-20’s instrumental frame, a G-20 delegate stated that G-20 members were fully united in disciplining trade distortions in developed countries and this endeavour was also supported by other developing countries.314 The broad support for the G-20 was possible because the coalition exhibited an in-depth technical understanding of distortive subsidy and tariff structures as well as technical know-how to develop innovative ways to address them. As mentioned above, for instance, the G-20 counter-proposal on tariff cut-formula overturned the EC-US proposed blended formula by requesting the application of steeper cut-formulas (Swiss formula and duty-free approach) for import Sensitive Products with high tariffs.

314 WTO delegate from Southeast Asia, interviewed by author, September 29, 2010; and WTO delegate from Latin America, interviewed by author, March 2, 2011.
On the other hand, the G-20 used a normative frame by requesting flexibilities under SDT on several provisions under domestic support and market access. The G-20 proposed that developing countries could preserve their level of *de minimis* and exempt programmes for resource-poor farmers under domestic support. On market access, SDT not only entailed the traditional lower tariffs threshold and longer implementation periods, but also no TRQ expansion or in-quota tariff reductions. More importantly, the G-20 supported the establishment of SP and SSM advocated by the G-33 as a form of market access flexibilities aimed at food and livelihood security and rural development. The inclusion of the normative frame could be achieved because some G-33 members were also members of the G-20, such as China, India and later Indonesia. At this stage, the G-20 did not attempt to develop specific rules on these flexibilities, but agreed on the principal argument and reason behind the special trade provisions for food security purposes.

In regards to the G-20’s normative frame, this thesis further argues that the compromise for the normative frame in the G-20 was achieved with a form of arguing through communicative action. The relationship among G-20 members reflected the existence of a degree of an artificial ‘common lifeworld’ that created a sense of solidarity among delegates of developing countries. For instance, Quinsaat recognises that the Philippines membership in the G-20 (and G-33) was based on developing countries’ shared experience in the difficulties of implementing their Uruguay Round commitments. The close relation was also amplified by interpersonal relations (both professional and personal) among delegates partly due to their common culture and orientation, in particular those from the same region. The G-20 members, which had a relatively symmetrical relation, were able to discuss in a sensible and open manner, and members were willing to sympathise with other members by accepting a certain degree of loss. The G-20 export-oriented members were willing to restrain themselves or slightly redefine their agriculture exporting preferences to accommodate less-ambitious G-20 members.

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316 Quinsaat, "The Philippines Waltzes with the Big Boys," 982.
My interviews verified the argument that the G-20 members at this stage engaged in arguing through communicative action. A member indicated that the G-20 could understand the G-33’s position although some individual members might not totally agree with the specific SP or SSM rules. He further stated that the G-20 tried to maintain mutual support among members and sustain a strong unity despite differences among individual members.\textsuperscript{317} Another interviewee put forward an example that Argentina, as a strong advocate for agriculture liberalisation, was more receptive towards giving flexibilities to developing countries at this stage of negotiation.\textsuperscript{318} A former G-20 member mentioned that the G-20 could not seek full agriculture liberalisation because members had to accommodate the position of other G-20 members, such as India.\textsuperscript{319} This solidarity among the G-20 members, particularly countries with less-ambitious and more-ambitious positions on market access, was also exhibited among the G-33 members between countries demanding moderate and greater flexibilities during the rule-making process discussed later in this chapter, and members of the Gore Group and G-90 between countries with less-advanced and more-advanced trade facilitation capacities during the rule-making process in Chapter 4.

It is worth noting that at this stage the creation of a common lifeworld, which in turn created a sense of solidarity among G-20 members, and their ability to sustain the coalition was relatively easier because the coalition did not need to address cost-sharing arrangements (in terms of exchange of concessions) and possible distributive implications among G-20 members. The proposal did not entail specific details and, as a result, members could only anticipate abstract distributive consequences. The G-20 members developed a consensual understanding on particular agendas with a view of the long-term objectives of the trade regime. They were also committed to the policy options and their parameters rather than detailed rules. For example, the G-20 supported the principles of SP and SSM and was willing to support the inclusion of these special trade provisions in the agriculture modalities; however, the G-20 proposal did not mention specific rules on SP and SSM, and left the specific rules “to be determined in the negotiation”.\textsuperscript{320}

\textsuperscript{317} WTO delegate from Southeast Asia, interviewed by author, October 21, 2010.
\textsuperscript{318} WTO delegate from Southeast Asia, interviewed by author, March 1, 2011.
\textsuperscript{319} WTO delegate from Latin America, interviewed by author, February 24, 2011.
\textsuperscript{320} World Trade Organization, "Ministerial Conference - Fifth Session - Cancún, 10 - 14 September 2003 - Agriculture - Framework Proposal - Joint Proposal by Argentina, Bolivia, Brazil, Chile, China,
3.2.3 External Coalition Dynamic: Strict Distributive Strategy towards Mixed Distributive-Integrative Strategies Achieving a Compromise through Bargaining

After evaluating the G-20’s internal dynamic, this sub-section will examine the external relations related to the G-20, in particular its role and substantive contribution in the rule-development process during the agenda-setting and modalities-setting processes. There were important milestones during this period: (a) Cancún Ministerial Conference in 2003; and (b) July Package in mid-2004.

a) The Cancún Ministerial Conference in 2003: Key Negotiators Maintained a Strict Distributive Strategy Leading to Hard Bargaining Without a Compromise

The emergence of the G-20 was definitely triggered by external factors, particularly the EC-US joint text and to a lesser extent the immobility of the Cairns Group. Traditionally, developing countries relied on US leadership and Cairns Group activism pursuing ambitious agriculture trade reform.

As mentioned earlier, the joint text indicated that the US and EC clearly wanted to preserve the status quo. This means that the US and EC employed a strict distributive strategy by maintaining their value claims in preserving their level of tariffs and subsidies, while demanding value claims from their negotiating counterparts. This was further exacerbated as the US and EC undertook minor agriculture reforms under the US Farm Bill in 2002 and European Union (EU) CAP reform in mid-2003. This indicated their lack of seriousness about undertaking major agriculture reforms.

In comparison to the position of the US and EC, the Cairns Group conventionally displayed a strong offensive posture across-the-board and for this reason, according to a Cairns Group member during an interview, the coalition found it difficult to bridge the diverse interests among its members. Surprisingly, the Cairns Group did not confront the EC-US joint text. One of the delegates described the Cairns Group as “losing their sense of direction”. At the time, the Cairns Group became

Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, India, Mexico, Pakistan, Paraguay, Peru, Philippines, South Africa, Thailand, and Venezuela," WT/MIN(03)/W/6: 3.


322 WTO delegate from Latin America, interviewed by author, March 2, 2011.

323 WTO delegate from Latin America, interviewed by author, February 24, 2011.
further isolated when Canada and Australia were willing to negotiate with the joint text.\textsuperscript{324}

This lack of leadership by the US, EC, and Cairns Group provided a political space for the G-20 to come into the scene. The entrance of the G-20, however, sparked a clash between the G-20 and the major powers. The disappointment stemming from the Blair House experience became the trigger for non-cooperation. According to an article by Celso Amorim, External Relations Minister of Brazil at the time, the G-20 was concerned that a ‘Blair House agreement revision 2’ would be repeated again.\textsuperscript{325} As discussed in Chapter 2, this situation is similar to a repetitive game scenario, in which current cooperation would be determined by past successful or, in this case, unsuccessful cooperation.\textsuperscript{326}

In preparing for the 2003 Cancún Ministerial Conference, the G-20 and many developing countries were unhappy with the draft ministerial declaration (Castillo text) because it reflected the US and EC’s understandings of agriculture reform.\textsuperscript{327} The G-20 maintained its position for a high level of ambitious reform, such as: substantial cut of Amber Box, elimination of Blue Box, cap and additional discipline for Green Box, and demand for a specific date to eliminate export subsidies. The US was willing to move on domestic support in exchange for greater market access in developed and developing countries, while the EC conceded developed countries should make more concessions, but considered the G-20 were putting all the reform burdens on developed countries.\textsuperscript{328}

This thesis argues that the G-20 and major powers implemented a strict distributive strategy and the mode of negotiation resembled hard bargaining through rhetorical action leading to a deadlock. The G-20 and major powers tried to maximise their own fixed interests and preferences without really engaging with the value claims of negotiating counterparts. Even after the release of a revised draft text ministerial declaration (Derbez text), members mostly repeated their positions and maintained their

\textsuperscript{325} Amorim, "Making Room for Making a Difference: Developing Countries and the Multilateral Trading System: The Case of Brazil," 97.
\textsuperscript{327} Amorim, "Making Room for Making a Difference: Developing Countries and the Multilateral Trading System: The Case of Brazil," 97.
value claims without moving to a higher level of discourse. During the conference, several G-20 Latin American members were promised side-payments on regional deals by the US, while the EC threatened African and Caribbean countries that were considering joining the G-20. The conference ended abruptly over disagreement on the new ‘Singapore’ issues as discussed in detail in Chapter 4. Although the agriculture text was not formally negotiated, there was no compromise on the text and it remained an outstanding issue.

In contrast to the G-20's relation with the major developed countries, the G-20 proactively approached and coordinated with other coalitions involving developing countries, such as the G-33, AG, ACP Group, and LDCs Group. These coalitions established an inter-coalition, known as the Group of 110 (G-110). According to Hurrell and Narlikar, the creation of this inter-coalition or ‘alliances of sympathy’ was an adaptation (or predominantly strategic behaviour) rather than a deeper learning process because developing countries and their coalitions were continuously marginalised by the major powers during the GATT era.

In comparison to this strategic analysis, this thesis suggests that the G-20 mixed instrumental-normative frames emphasised and balanced the liberal trade and developmental objectives, which relate to similar endeavours by other developing countries. On the one hand, the G-20’s core argument against long-overdue trade distortions in developed countries could be associated with the efforts by other developing countries, such as efforts to eliminate cotton subsidies. On the other hand, the G-20 supported provisions for general and specific flexibilities under SDT in all aspects of the agriculture pillars that could be associated with the endeavours by other

331 The concept implies the differentiation between ‘adaptation’ referring to behavioural change without questioning the underlying program and original values, and ‘learning’ reflecting behavioural change based on close examination or questions related to the underlying program and original values. For a more detailed explanation see Haas, When Knowledge is Power: Three Models of Change in International Organizations: 2-6.
coalitions, such as the G-33 and LDCs Group. For this reason, the inter-coalition was able to focus on the overall direction of the Doha negotiations, while coalitions mutually supported each other on each specific developmental agenda.

The G-20 therefore did not represent all developing countries, but its balanced position could relate with other development-oriented agendas pursued by other coalitions involving developing countries. My interviews further verified the above argument. A delegate indicated that the G-20 is often considered a leader of developing countries because the G-20 engaged in all elements of agriculture negotiations. Another delegate stated that developing countries could work better among themselves because of their shared cultural values. He further mentioned that delegates from developed countries only expect to maximise their own interests without ever yielding to the interests of the community. Similar to the internal nuance of a sense of solidarity within the G-20, the mutual support among coalitions reflected an extension of this artificial common lifeworld among coalitions of developing countries.

b) The 2004 July Package: Key Negotiators Used Mixed Instrumental-Distributive Strategies Achieving a ‘Middle Ground’ Compromise through Bargaining

After the failure in Cancún, the US and EC moved into mixed distributive-integrative strategies and actively approached key developing countries, including the G-20, to salvage the Doha Round. A South African delegate wrote in an article that the US changed its tone “from rebuke and criticism to constructive dialogue”. The EC indicated a positive gesture by agreeing to eliminate export subsidies in parallel to other export competition and were willing to exempt the G-90—an inter-coalition consisting of the AG, ACP Group, LDCs Group—from commitments in the Doha Round.

Tim Groser of New Zealand, as the new agriculture chairperson, started negotiations in March 2004 to move key negotiators into an integrative movement and to complete agriculture modalities by 31 July 2004. He shifted negotiations to a member-driven process through bilateral and plurilateral formats involving key members rather than attempting to pre-empt with a chair’s draft text. The chairperson’s new approach also created the new Quad, known as the Five Interested Parties

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333 WTO delegate from Southeast Asia, interviewed by author, October 1, 2010.
334 WTO delegate from Southeast Asia, interviewed by author, March 1, 2011.
(hereafter FIPs) that included key G-20 members, Brazil and India, together with the US, EC, and Australia. In these small group meetings, Brazil and India maintained a transmission belt by conveying the substantive discussions in the small group meetings back to fellow G-20 members. A member of the G-20 verified that most often Brazil would be consistent with the G-20’s position in these small group meetings. He further indicated that delegates would eventually reveal the discussions in the small group meetings because “nothing is confidential in the WTO”.

This thesis suggests that the G-20 began to show its negotiation intellectual capacity by developing proposals using mixed instrumental-normative frames, which became genuine middle ground solutions. In May 2004, the G-20 submitted two proposals on market access (Table 10). The G-20 initially analysed problems associated with the blended formula that did not address tariffs peak and caused disproportionately higher tariff cuts for developing countries. Subsequently, the G-20 released an alternative approach to market access based on four key principles: (1) progressivity referring to higher cuts for higher tariffs and lower cuts for lower tariffs; (2) neutrality indicating that the formula should not be biased towards certain tariff structures; (3) proportionality referring to ‘less than full reciprocity’ between developed and developing countries; and (4) flexibility, meaning taking account of sensitivities in developed and developing countries. The proposal also called for specific provisions for: converting non-ad valorem tariffs, improving TRQ rules, eliminating special agriculture safeguard (SSG), support for SP and SSM, and special treatment for LDCs.

These principles reflected the long-term objective of agriculture renegotiation to achieve a fairer and market-oriented trading system. The notion of progressivity implies that the liberalisation process should place greater responsibility for those with the most trade distortions. Nonetheless, all members must participate in exchange for concessions with several exceptions, particularly LDCs. Moreover, the notion of ‘less than full reciprocity’ is a relative novel understanding or an expansion of the reciprocity

338 WTO delegate from Southeast Asia, interviewed by author, October 1, 2010.
norm under the liberal trade principle as discussed in Chapter 2. Conventionally there were only two options, namely full reciprocity and non-reciprocity. This new concept implies that: full reciprocity would be applicable for developed countries; less than full reciprocity for developing countries; and non-reciprocity for LDCs.\textsuperscript{341} Nevertheless, the interpretation of the reciprocity norm is a very abstract conception based on individual assessment and the degree of reciprocity depends on a political interpretation rather than quantitative economic measurement.

The G-20’s middle ground or balanced position became broadly acceptable to most of the WTO members especially as the G-20 was able to translate these principles into technically viable modalities. For instance, the G-20 proposed a \textit{tiered formula} (similar to the Harbinson text) rather than a blended formula. It seriously took into account the different tariff structures among WTO members.\textsuperscript{342} In translating progressivity, the tiered formula divides a range of tariff levels into different bands, in which the higher range of tariffs would be subject to higher cuts. In addition, the notion of ‘less than full reciprocity’ was often translated into developing countries reciprocating two-thirds of the concessions made by developed countries.

This thesis further suggests that the G-20’s four principles became the cornerstone of agriculture negotiations because the middle ground solutions—using mixed instrumental-normative frames—reflected a balance between the liberal trade and developmental principles. The G-20 middle ground proposals then became the starting point of negotiations. In July 2004, the agriculture chairperson issued a draft text, known as the Groser text, which used many elements of the G-20 proposal (Tables 9 and 10). A new discipline based on the G-20 proposal was introduced to limit the sum of all trade distorting domestic support using a tiered formula. The Groser text also used a tiered formula to reduce subsidies under the Amber Box together with product specific caps. In contrast to the G-20’s demand to eliminate the Blue Box, the Groser text would maintain Blue Box. Blue Box would also include both ‘old Blue Box’ containing trade distorting subsidies linked to a limited production, and ‘new Blue Box’ covering trade

\textsuperscript{341} The notion of graduation implies WTO members would take full reciprocity as a member ‘graduates’ to a higher level of economic development. In other words, the level of responsibility and commitment to the multilateral trade discipline corresponds to the level of economic development. This concept of ‘less than full reciprocity’ attempts to clarify the level of responsibility and commitment among WTO members.

\textsuperscript{342} The US and EU tend to have an overall average of low tariffs, but impose high tariffs on particular products, while developing countries tend to have a relatively homogenous tariffs structure across-the-board.
distorting subsidies without a production requirement. The new Blue Box incorporated the US’s counter-cyclical payments under the 2002 US Farm Bill. Further, the Green Box would be reviewed by taking into account non-trade concerns, but it would not be capped or reduced as requested by the G-20. On market access, the text employs a tiered formula incorporating the G-20’s principles of progressivity and proportionality. In parallel to the G-20’s proposal, export subsidies would be eliminated by a credible end date with parallel discipline on all other export enhancement measures.343

By the end of July 2004, the July Package (or July Framework), taking many aspects of the Groser text, was finally agreed despite initial reservations by WTO members (Tables 9 and 10). A new discipline called Overall Trade Distorting Domestic Support (OTDS) would be established to limit the overall amount of Amber Box, de minimis, and Blue Box. A tiered formula was also used to cut subsidies under Amber Box, while de minimis remained to be negotiated. The OTDS and tiered formula (for domestic support and tariff cuts) are some of the most important innovative contributions of the G-20. Blue and Green Boxes mainly remain unchanged compared to the Groser text. With regard to market access, a tiered formula cut remained mostly unchanged and comparable to the G-20 proposal. Several provisions related to developing countries were clarified in the July Package.344

This thesis suggests that a compromise on the 2004 July Package was possible because the G-20’s middle ground or balanced proposal (rather than EC-US joint text) was acceptable to the majority of WTO members, which became the starting point of negotiations. As a result, key members began to move into mixed distributive-integrative strategies by accepting some value claims of their negotiating counterparts and maintaining some of their own value claims. This thesis further suggests that the mode of negotiation was primarily bargaining through rhetorical action adhering to the core liberal trade principle. At this stage, a compromise was achieved through a process of exchange of concessions between elements within agriculture. On domestic support, tighter discipline on OTDS and Amber Box was compensated by expanding Blue Box and providing Green Box without a cap or limit. The July Package therefore would enable the US and EC to ‘box shift’ by moving subsidies from Amber and Blue Boxes

into the unlimited Green Box. Further, tighter discipline on market access with a tiered tariff cut-formula was offset by relatively loose requirements for Sensitive Product treatment and importing countries would maintain autonomy in determining the complicated TRQ system.

In the context of the liberal trade and development nexus, this thesis suggests that the G-20’s original position for an ambitious agriculture trade reform in major developed countries would likely be scaled down because negotiators engaged in traditional bargaining through exchange of concessions among elements within the agriculture modalities (greater discipline on OTDS and Amber Box in exchange for looser discipline on Blue and Green Boxes, as well as Sensitive Products and TRQ rules). Despite criticism of the July Package by NGOs and other commentators due to lack of clarity of rules related to developing countries, the G-20’s contribution to the agriculture modalities was to keep the agriculture reform agenda alive. The July Package was a difficult and important result to achieve considering the possible counterfactual scenarios, particularly if the agriculture modalities were based on the EC-US joint text. The final outcome, however, remained open because the agriculture modalities merely provided a framework of a Doha agreement, but precise or numerical binding commitments would be negotiated in the next stage of the rule-making and deal-making processes.

3.3 The Group of 20 Negotiating Rules Disciplining Trade Distortions

The July Package provided the basic framework for the rule-making and near deal-making processes between 2005 and 2010. This section will focus on the G-20 negotiations for specific agriculture rules related to the reduction/elimination of trade distortions. At this stage, negotiations involved defining specific rules and quantitative binding commitments with clearer distributive implications. In regard to coalition maintenance, the diverse interests and preferences among members would become more salient due to the clearer distributive implications related to particular rules. The

cohesion in a coalition would also be more difficult to sustain since members must determine cost-sharing arrangements (concessions). The issue of cost-sharing arrangements might not only be limited to concessions in an issue area, but also involve complex issue linkages with other issues under negotiation.

The next sub-section investigates the G-20’s internal dynamic by focussing on the G-20’s ability to continue producing middle ground or balanced proposals and Brazil’s efforts to maintain its strategic-based leadership. The following sub-section evaluates the external coalition dynamic looking at the G-20 in the rule-development process by concentrating on the strategies of key negotiators and mode of negotiation at the later stage of negotiation.

3.3.1 Internal Coalition Dynamic: The G-20’s Mixed Instrumental-Normative Frames and Efforts to Maintain a Strategic-Based Leadership

The G-20 continued to exhibit its ability to develop mixed instrumental-normative frames, but largely focussed on the former by providing very detailed and specific technical proposals to discipline trade distortions in developed countries. The mixed instrumental-normative frames were often broadly accepted within the coalition and by the broader WTO members. Similar to the G-20, the Core Group and G-90 developed similar mixed instrumental-normative frames (despite focussing more details on its normative frame) that were also broadly acceptable as discussed in Chapter 4.

The G-20 began to translate the principles of progressivity, neutrality, proportionality, and flexibilities into sound and viable technical proposals. Under domestic support, the G-20 proposal of July 2005 divides OTDS into three bands, while Amber Box was separated into four bands. The EC would fall in the top band, the US and several developed countries in the second band, and the majority of WTO members in the lower bands. Higher bands would be subject to deeper cuts compared to lower bands. The G-20 put forward additional criteria and transparency requirements for Blue Box, and called for Green Box clarification to avoid its misuse, such as impacts of direct payment and fixed based period (Table 12).  

In regard to market access, the G-20 proposal in July 2005 divided tariffs into five bands for developed countries and four bands for developing countries. In accordance with the notion of proportionality, developing countries would commit to a two-thirds cut compared to developed countries. Tariffs would be capped at 100% for developed countries and 150% for developing countries. The G-20 also demanded an end date to eliminate export subsidies. Moreover, it called for specific SDT provisions, such as exemption for countries with no Amber Box entitlement, and public funding programmes for food and livelihood security and rural development. It also highlighted particular market access issues, such as SP and SSM, preferences erosion, LDCs, and Recently Acceded Members (RAMs) (Table 13).

Based on its middle ground proposal, this thesis posits that the G-20’s strategic-based leadership could be illustrated by its ability to use the G-20’s heterogeneity in seeking an acceptable common platform. As mentioned in Chapter 2, a heterogeneous group under a democratic leader could be suited to addressing more complex issues. Although a compromise might be harder to achieve, a compromise would likely be more persuasive and durable.\textsuperscript{347} In the past, many coalitions involving developing countries would dissolve as the coalition moved to the next stage of negotiation. The G-20, under Brazil’s auspices, demonstrated a formidable strategic-based leadership in identifying mutual gains among members and producing innovative technical proposals. According to several G-20 members, the coalition incorporated the diverse value claims among its members, particularly defensive and offensive positions in market access.\textsuperscript{348} During the rule-making process, the G-20 continued to produce middle ground or balanced proposals, which often became the foundation of negotiations as discussed later in this chapter.

\textsuperscript{348} WTO delegate from Southeast Asia, interviewed by author, March 1, 2011; and WTO delegate from Latin America, interviewed by author, March 3, 2011.
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<td>Cut OTDS</td>
<td>Billion (US$)</td>
<td>Cut (%)</td>
<td>Billion (US$)</td>
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<td>Billion (US$)</td>
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<tr>
<td></td>
<td>x&gt;60</td>
<td>A</td>
<td>x&gt;60</td>
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<td>10&lt;x≤60</td>
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<td>10&lt;x≤60</td>
<td>53</td>
<td>10&lt;x≤60</td>
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<td></td>
<td>x≤10</td>
<td>C</td>
<td>x≤10</td>
<td>31</td>
<td>x≤10</td>
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<td>Cut OTDS for developing countries</td>
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<td>Tiered formula: 3 bands; higher linear cuts in higher bands</td>
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<tr>
<td>Cut Total AMS (or Amber Box)</td>
<td>x&gt;25</td>
<td>A</td>
<td>x&gt;25</td>
<td>83</td>
<td>x&gt;25</td>
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<td>12&lt;x≤25</td>
<td>60</td>
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<td>2&lt;x≤12</td>
<td>C</td>
<td>x≤12</td>
<td>37</td>
<td>x≤15</td>
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<td></td>
<td>x≤2</td>
<td>D</td>
<td></td>
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<td>Band 3</td>
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<tr>
<td>Cut Total AMS (or Amber Box) for developing countries</td>
<td>Two-thirds of developed countries with the same band; cuts should not be large</td>
<td>Slightly lesser reduction and long phase-in period</td>
<td>Refer to G-20 proposal July 2005 (Annexed)</td>
<td></td>
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<tr>
<td>Basis for Caps on product specific AMS for developing countries</td>
<td>Refer to G-20 proposal July 2005 (Annexed)</td>
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Table 12. Key Proposals and Draft Agriculture Texts on Domestic Support (2005) (cont’d)

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<tr>
<td>De minimis cut</td>
<td>Product specific and non-product specific reduction</td>
<td>Product specific and non-product specific reduction by 50% cut</td>
<td>Reduce product and non-product specific de minimis depending on OTDS</td>
<td>80%</td>
<td>Some convergence</td>
</tr>
<tr>
<td>De minimis cut for developing countries</td>
<td>Exempt developing countries with no AMS entitlement</td>
<td>-</td>
<td>Exempt developing countries with no AMS entitlement</td>
<td>-</td>
<td>Exempt developing countries with no AMS commitment</td>
</tr>
<tr>
<td>Blue Box</td>
<td>Additional criteria for old and new Blue Box; additional transparency measures</td>
<td>-</td>
<td>Refer to G-20 proposal July 2005 (Annexed)</td>
<td>Limited ability to offset price depreciation</td>
<td>-</td>
</tr>
<tr>
<td>Cap on Blue Box</td>
<td>Capped</td>
<td>2.5%</td>
<td>Refer to G-20 proposal July 2005 (Annexed)</td>
<td>5% (no product specific cap)</td>
<td>-</td>
</tr>
<tr>
<td>Green Box</td>
<td>Review and clarify: eligible conditions for direct payment (e.g. wealth effect), public funding programme without transfer from consumers or production requirement, fixed based period, address incomplete decoupled programme</td>
<td>No material change and no caps; include non-trade distorting development policies; reintroduce Peace Clause for programme under new discipline or Green Box</td>
<td>Refer to G-20 proposal July 2005 (Annexed)</td>
<td>Review and clarify</td>
<td>Reviewed; ensure include programme in developing countries</td>
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</table>

Sources: G-20 proposals in July and October 2005; US Office of Trade Representative (2005); European Union (2005); WT/MIN(05)/DEC
Notes: x = subsidies; brackets means still under negotiation at the time
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<td>a</td>
<td>0&lt;(x\leq20)</td>
<td>55-65</td>
<td>0&lt;(x\leq20)</td>
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<td>0&lt;(x\leq30)</td>
<td>40 (20-45)</td>
<td>Tiered formula: divide into 4 bands</td>
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<td>Band 2</td>
<td>20&lt;(x\leq40)</td>
<td>b</td>
<td>20&lt;(x\leq40)</td>
<td>65-75</td>
<td>20&lt;(x\leq50)</td>
<td>55</td>
<td>30&lt;(x\leq60)</td>
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<td>Band 3</td>
<td>40&lt;(x\leq60)</td>
<td>c</td>
<td>40&lt;(x\leq60)</td>
<td>75-85</td>
<td>50&lt;(x\leq75)</td>
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<td>60&lt;(x\leq90)</td>
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<td>Band 4</td>
<td>60&lt;(x\leq80)</td>
<td>d</td>
<td>60&lt;(x\leq80)</td>
<td>85-90</td>
<td>75&lt;(x\leq90)</td>
<td>75</td>
<td>90&lt;(x\leq100)</td>
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<td>Band 5</td>
<td>80&lt;(x)</td>
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<tr>
<td><strong>Tariff caps</strong></td>
<td>100</td>
<td>75</td>
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<td><strong>Developing countries</strong></td>
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<tr>
<td>Band 1</td>
<td>0&lt;(x\leq30)</td>
<td>Two-thirds less than developed countries</td>
<td>Same tariff bands; cuts slightly lesser and longer phase-in period</td>
<td>0&lt;(x\leq30)</td>
<td>25</td>
<td>0&lt;(x\leq30)</td>
<td>25 (10-40)</td>
<td>Tiered formula: divide into 4 bands</td>
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<td>30&lt;(x\leq80)</td>
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<td>30&lt;(x\leq80)</td>
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<tr>
<td>Band 3</td>
<td>80&lt;(x\leq130)</td>
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<td>80&lt;(x\leq130)</td>
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<td>80&lt;(x\leq130)</td>
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<td><strong>Tariff caps</strong></td>
<td>150</td>
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<tr>
<td><strong>Others</strong></td>
<td>Improve and increase transparency of TRQ administration; eliminate SSG; integrate SP and SSM; address tariffs escalation, tariff simplification; tropical products, preferences, LDCs, RAMs</td>
<td>Refer to G-20 proposal July 2005</td>
<td>Maintain SSG</td>
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Sources: G-20 proposals in July and October 2005; US Office of Trade Representative (2005); European Union (2005); WT/MIN(05)/DEC

Notes: x = tariffs
However, the strategic-based leadership became harder to sustain as negotiations proceeded and discussions involved detailed rules concerning special trade provisions for food security purposes. In 2005-2006, the G-20 tried to develop detailed rules for SDT flexibilities on market access, notably the SP and SSM. The diverse interests and preferences among G-20 members on market access were too wide to bridge. On the one hand, agriculture exporters in the G-20, such as Argentina, Paraguay, and Uruguay (hereinafter APU), were concerned these instruments would constrain their agriculture exports. On the other hand, proponents of SP and SSM mainly G-33 members in the G-20, such as China, India, and Indonesia, emphasised the socio-humanitarian aspect of these flexibilities and demanded operable and effective instruments. The heterogeneity of G-20 members eventually became the stumbling block (rather than stimulant) in building a common platform although members were able to maintain a degree of solidarity. Brazil indicated that the G-20 could agree on the principles of SP and SSM, but could not agree on their specific rules. Brazil made strong representation to Paraguay and Uruguay, but Argentina eventually supported them. Consequently, the APU released a separate paper (wherein the specific details would be discussed later in the next case study), which indicated the G-20’s inability to develop a common platform on specific rules on SSM.

Interviews substantiated the argument that G-20 members could accept the principles on the special provisions for food security purposes, but were unable to develop a consensual understanding on their specific rules. A Brazilian delegate stated that there was a common understanding on these subjects that reflected a sense of solidarity but not a common platform for negotiations. A delegate also confirmed that Brazil played a relatively neutral role in these subjects to maintain the G-20’s cohesion. According to Gusmardi Bustami, the former Indonesian Ambassador to the WTO, the spirit of the G-20’s internal discourses was aimed at ensuring SP and SSM would be [operationally] meaningful but could also prevent abusive use of these instruments. Federico González, the Paraguayan Ambassador, also indicated that the

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351 WTO delegate from Latin America, interviewed by author, March 2, 2011.
352 WTO delegate from Southeast Asia, interviewed by author, March 23, 2011.
353 WTO delegate from Southeast Asia, interviewed by author, October 21, 2010.
problem was not in the principle of SSM, but specific rules of implementing SSM, particularly assurances of relevant import data so that SSM would not be misused.\(^{354}\)

### 3.3.2 External Coalition Dynamic: Key Negotiators Moving Gradually towards Mixed Distributive-Integrative Strategies Reaching an Increasing Convergence through Bargaining

Moving from the internal coalition dynamic, this sub-section will examine the external relations related to the G-20 during the rule-making and near deal-making processes. It is worth noting that negotiations for specific rules for a Doha agreement took gradual steps towards achieving a mature agriculture text. The agriculture text consisted of vast and technically complex elements and each element progressed at a different pace. There were some critical developments during this period: (a) negotiations nearing the 2005 Hong Kong Ministerial Conference; (b) suspension of negotiations in mid-2006; (c) renewed efforts by the chairperson in 2007; (d) negotiations leading to the 2008 Geneva mini-ministerial meeting; and (e) post-2008 agriculture negotiations. The Geneva mini-ministerial meeting in 2008 was the closest effort in achieving a Doha agreement or ‘near deal-making moment’. In order to understand the progression of the negotiations, Tables 12 to 15 provide key proposals and agriculture negotiation texts on domestic support and market access between 2005 and 2010.

**a) The Hong Kong Ministerial Conference in 2005: Key Negotiators Laying Out Their Maximum Positions**

During the rule-making process, the G-20 proposal on July 2005 became the starting point of negotiations. In October 2005, key negotiators, such as the US, EC, and G-20, put forward their maximum positions for an upcoming Hong Kong Ministerial Conference (see Tables 12 and 13).

The US gave some concessions on domestic support with the expectation of receiving greater agriculture market opportunity in the EC and larger developing countries. The US also pushed for very high tariff cuts (85-90\%) for the top band (tariffs above 60\%) and imposed a low tariff cap at 75\%. On OTDS domestic support, the US demanded a 75\% cut for the top band (for the EC) but only a 53\% cut for the middle band (for the US). The US also wanted export subsidies to be eliminated no later than 2010 and proposed to extend the Peace Clause preventing challenges against

\(^{354}\) WTO delegate from Latin America, interviewed by author, 15 March 2011.
Moreover, the US wanted to narrow the proportion of domestic subsidies between the US and EC from 3.4 to one to be approximately two to one.\textsuperscript{356}

In comparison to the US proposal, the EC wanted tariffs above 90% to be subject to only a 60% cut for the top band (for the EC) and was willing to cap tariffs at 100%. With regard to domestic support, the EC accepted a 70% cut (for OTDS and Amber Box) for the top band, but only on the condition that similar proportional commitments be extended to the US, Japan, Canada, Korea, Switzerland, and Norway.\textsuperscript{357} The EC perceived that the US proposal "would potentially destroy agriculture in many sectors" and favoured the G-20's 'middle ground' solution.\textsuperscript{358} Furthermore, the EC cautioned that, at 'crunch time' or at the deal-making moment, the final level of ambition would have to link agriculture, manufacturing or Non-Agriculture Market Access (hereafter NAMA), and services. The EC re-emphasised that its offer to phase out export subsidies is conditional to disciplining all forms of export competition.\textsuperscript{359}

In response to the US and EC proposals, the G-20 proposal on domestic subsidies called for an 80% cut for the top band for OTDS subsidies over US$60 billion (for the EC), and a 75% cut for the middle band for subsidies between US$10-60 billion (for the US).\textsuperscript{360} Further, the G-20's tariff cut-proposal was situated between the US and EC level of ambition, in which the top band of tariffs over 75% would be subject to a 75% cut (for the EC), and the second band of tariffs higher than 50% and lower or equal to 75% would be subject to a 65% cut (for the US).\textsuperscript{361}

\textsuperscript{358} European Commission, "Making Hong Kong a Success: Europe's Contribution," 5.
\textsuperscript{359} Mandelson, "Statement of EU Conditional Negotiating Proposals."
\textsuperscript{360} G-20, "G-20 Proposal on Domestic Support," (October 12, 2005).
\textsuperscript{361} G-20, "G-20 Proposal on Market Access," (October 12, 2005).
This thesis suggests that key negotiators mostly engaged in a strict distributive strategy with minor movement towards negotiating counterpart’s value claim. For this reason, WTO members scaled down their expectation when FIPs failed to reach a compromise in November 2005. During the Hong Kong Ministerial Conference in December 2005, the EC moved into an integrative strategy by agreeing to eliminate export subsidies by 2013 at the final moment of negotiations. This was considered a minor concession because the offer was politically feasible and export subsidies were scheduled to be eliminated anyway under the 2003 EU CAP reform.\(^{362}\) As a result, the conference achieved minor movement among key negotiators (Tables 12 and 13). According to the Hong Kong Ministerial Declaration, the agriculture text will use a progressive tariff cut-formula adopting a four bands system, and progressive OTDS and Amber Box cut-formula using a three bands system without agreeing on quantitative and binding commitments. The G-20 succeeded in including exemptions for development programmes aimed at poverty alleviation and agriculture development, but fell short of preventing box shifting. Finally, the Hong Kong Ministerial Declaration fortified issue linkages by calling for a comparable market access ambition between agriculture and manufacturing.\(^{363}\)

**b) Negotiations Suspension in 2006: Key Negotiators Maintained a Strict Distributive Strategy Despite a Clearer Understanding of the Distributive Implications**

After the Hong Kong Ministerial Conference, a number of working papers and proposals were issued and negotiations in 2006 became very technical with attempts to put forward quantitative binding commitments and further clarify their distributive implications as part of the rule-making process.


Table 14. Key Proposals and Draft Agriculture Texts on Domestic Support (2006-2010)

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</thead>
<tbody>
<tr>
<td></td>
<td>Billion (US$)</td>
<td>Cuts (%)</td>
<td>Billion (US$)</td>
<td>Cuts (%)</td>
</tr>
<tr>
<td>Cut OTDS</td>
<td>x&gt;60</td>
<td>[70-80]</td>
<td>x&gt;60</td>
<td>[75-85]</td>
</tr>
<tr>
<td></td>
<td>10&lt;x≤60</td>
<td>[53-75]</td>
<td>10&lt;x≤60</td>
<td>[66-73]</td>
</tr>
<tr>
<td></td>
<td>x≤10</td>
<td>[31-70]</td>
<td>x≤10</td>
<td>[50-60]</td>
</tr>
<tr>
<td>Cut OTDS for developing countries</td>
<td>-</td>
<td>Two-thirds commitment; exempt developing countries with no AMS commitment, provisions for RAMs, NFIDCs</td>
<td>Two-thirds commitment; exempt developing countries with no AMS commitment and NFIDCs</td>
<td>Two-thirds commitment; exempt developing countries with no AMS commitment; exempt VRAMs, small-income RAMs, and NFIDCs</td>
</tr>
<tr>
<td></td>
<td>x&gt;40</td>
<td>[70-83]</td>
<td>x&gt;40</td>
<td>[70]</td>
</tr>
<tr>
<td></td>
<td>15&lt;x≤40</td>
<td>[60-70]</td>
<td>15&lt;x≤40</td>
<td>[60]</td>
</tr>
<tr>
<td></td>
<td>x≤15</td>
<td>[37-60]</td>
<td>x≤15</td>
<td>[45]</td>
</tr>
<tr>
<td>Cut total AMS (or Amber Box)</td>
<td>-</td>
<td>[Two-thirds] commitments; [exempt NFIDCs]</td>
<td>Two-thirds commitments; exempt NFIDCs</td>
<td>Two-thirds commitments; exempt developing countries with Amber Box equal or lower than US$100 million; exempt VRAMs, small-income RAMs, and NFIDCs</td>
</tr>
<tr>
<td></td>
<td>x&gt;40</td>
<td>[70-83]</td>
<td>x&gt;40</td>
<td>[70]</td>
</tr>
<tr>
<td></td>
<td>15&lt;x≤40</td>
<td>[60-70]</td>
<td>15&lt;x≤40</td>
<td>[60]</td>
</tr>
<tr>
<td></td>
<td>x≤15</td>
<td>[37-60]</td>
<td>x≤15</td>
<td>[45]</td>
</tr>
<tr>
<td>Basis for Caps on product specific AMS for developing countries</td>
<td>-</td>
<td>Options: (1) [1995-2000] or [1995-2004]; (2) [twice] members' product specific de minimis level; or (3) [20%] annual Amber Box</td>
<td>Options: (1) [1995-2000] or [1995-2004]; (2) [twice] members' product specific de minimis level; or (3) [20%] annual Amber Box</td>
<td>Options: (1) 1995-2000 or 1995-2004, (2) twice the level of members' product specific de minimis, or (3) 20% annual Amber Box</td>
</tr>
</tbody>
</table>
Table 14. Key Proposals and Draft Agriculture Texts on Domestic Support (2006-2010) (cont’d)

<table>
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<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>De minimis cut</strong></td>
<td><strong>-</strong></td>
<td>[50%-80%]</td>
<td>At least [50%-60%]</td>
<td>No less than 50% at the beginning of the implementation period</td>
</tr>
<tr>
<td><strong>De minimis cut for developing countries</strong></td>
<td><strong>-</strong></td>
<td>Exempt for developing countries with no AMS commitment, AMS allocated for subsistence and resource-poor farmers, [and NFIDCs]</td>
<td>Two-thirds commitment; RAMs provide allowance 5% points; exempt for developing countries with no AMS commitment, members allocating AMS for subsistence and resource-poor farmers, and NFIDCs</td>
<td>Two-thirds commitment; exempt for developing countries with no AMS commitment, members allocating AMS for subsistence and resource-poor farmers, and NFIDCs; exempt VRAMS, and small-income RAMs</td>
</tr>
<tr>
<td><strong>Blue Box</strong></td>
<td>Additional discipline on Blue Box to prevent box shifting and product-shifting</td>
<td>Exempt old and new Blue Box; additional criteria and transparency requirement</td>
<td>Exempt old and new Blue Box; additional criteria and transparency requirement</td>
<td>Exempt old and new Blue Box; additional criteria and transparency requirement</td>
</tr>
<tr>
<td><strong>Cap on Blue Box</strong></td>
<td>2.5%</td>
<td>[2.5%] for developed countries and [5%] for developing countries</td>
<td>2.5% for developed countries and 5% for developing countries</td>
<td>2.5% for developed countries and 5% for developing countries; special provision for the US to incorporate the US Farm Bill 2002</td>
</tr>
<tr>
<td><strong>Green Box</strong></td>
<td>Include policies and services for land and rural programme; exclude cost of foodstuffs stock from low income resource-poor farmers Amber Box; fixed and unchanged historical period for decoupled income support; development-friendly approach to income safety net and payment for disaster relief</td>
<td>Include policies and services for land and rural programme; exclude certain administered price food security programme from Amber Box; fixed and unchanged historical period for decoupled income support; modified payment for disaster relief, structural adjustment and regional assistance programme</td>
<td>Include policies and services for land and rural programme; exclude certain administered price food security programme from Amber Box; fixed and unchanged historical period for decoupled income support; modified payment for disaster relief, structural adjustment and regional assistance programme</td>
<td>Include policies and services for land and rural programme; exclude certain administered price food security programme from Amber Box; fixed and unchanged historical period for decoupled income support; modified payment for disaster relief, structural adjustment and regional assistance programme</td>
</tr>
</tbody>
</table>

Sources: G-20 proposals in May 2006; TN/AG/W/3; TN/AG/W/4; TN/AG/W/4/Rev 4

Notes: x = subsidies; brackets means still under negotiation at the time
Table 15. Key Proposals and Draft Agriculture Texts on Market Access (2006-2010)

<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td></td>
<td>Tariffs (%)</td>
<td>Cuts (%)</td>
<td>Tariffs (%)</td>
</tr>
<tr>
<td><strong>Developed countries</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Band 1</td>
<td>x≤[20-30]</td>
<td>[20-65]</td>
<td>x&lt;20</td>
</tr>
<tr>
<td>Band 2</td>
<td>[20-30)&lt;x≤[40-60]</td>
<td>[30-75]</td>
<td>20&lt;x≤50</td>
</tr>
<tr>
<td>Band 3</td>
<td>[40-60)&lt;x≤[60-90]</td>
<td>[35-85]</td>
<td>50&lt;x≤75</td>
</tr>
<tr>
<td>Band 4</td>
<td>[60-90)&lt;x≤[75-100]</td>
<td>[42-90]</td>
<td>75&lt;x</td>
</tr>
<tr>
<td><strong>Tariff caps</strong></td>
<td></td>
<td>[75-100]</td>
<td>-</td>
</tr>
<tr>
<td><strong>Developing countries</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Band 1</td>
<td>0&lt;x≤[20-50]</td>
<td>[15-slightly less than 65]</td>
<td>x&lt;30</td>
</tr>
<tr>
<td>Band 2</td>
<td>(20-50)&lt;x≤[40-100]</td>
<td>[20-slightly less than 75]</td>
<td>30&lt;x≤80</td>
</tr>
<tr>
<td>Band 3</td>
<td>[40-100)&lt;x≤[60-150]</td>
<td>[25-slightly less than 85]</td>
<td>80&lt;x≤130</td>
</tr>
<tr>
<td>Band 4</td>
<td>[60-150)&lt;x≤[150]</td>
<td>[30-slightly less than 90]</td>
<td>130&lt;x</td>
</tr>
<tr>
<td><strong>Tariff caps</strong></td>
<td></td>
<td>[150]</td>
<td>-</td>
</tr>
</tbody>
</table>

Sources: TN/AG/W/3; TN/AG/W/4; TN/AG/W/4/Rev 4
Notes: x = subsidies; brackets mean still under negotiation at the time
In May 2006, the chairperson circulated several reference papers to jump-start negotiations, while the G-20 responded to some of these papers demanding stricter conditions on Blue and Green Boxes to prevent box shifting. For instance, the G-20 wanted additional disciplines on Blue Box (e.g. double-trigger and anti-concentration) to avoid box-shifting and product-shifting. These disciplines are crucial considering that 25% or US$1.2 billion new Blue Box concentrates on cotton subsidies. On Green Box, the G-20 insisted on establishing a fixed and unchanged base period to prevent recoupling subsidies by simply adjusting the base period.

During these negotiations, a number of simulations laid out clearer distributive implications for key negotiators, which was very important to the negotiation process. One simulation by Canada and Australia illustrated the impact of domestic support proposals by the US, EC, and G-20. The US OTDS ceiling using the 1995-2000 base period would be cut to US$12.1 billion (G-20 proposal), US$19.3 billion (EC proposal) or US$22.1 billion (US proposal). In 2005, US real subsidies accounted for approximately US$19 billion and, consequently, only the G-20 proposal would impose actual subsidies cuts. Further, the EC ceiling would be cut to €22.1 billion (G-20 proposal), €27.5 billion (US proposal) or €33.1 billion (EC proposal). All of these proposals would make real cuts to the EC's OTDS spending of €58 billion in 2004.

Another simulation illustrated applied tariffs and possible bound tariffs among members according to different proposals. The simulation also indicated tariffs overhang or 'water' between applied and bound tariffs. For instance, Indian and Brazilian applied tariffs were 37.89% and 10.13%, but their bound tariffs were 113.82% and 35.66%, respectively. The US proposal would cut bound tariffs to 38.31% for India and 15.8% for Brazil leaving very limited water. In comparison, the G-20 proposal

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367 The paper also simulated the proposal by the G-10 that consisted mostly of agriculture net importer developed countries and proponents of agriculture protectionism, such as Japan, Norway and Switzerland. See World Trade Organization, "Committee on Agriculture - Special Session - Agriculture Negotiations - Agriculture Domestic Support Simulations - Simulation," JOB(06)/151 (May 22, 2006).
would bring bound tariffs to 74.78% for India and 25.73% for Brazil providing a larger amount of water. Moreover, the US proposal tried to harmonise tariff levels between the US and EC. The applied tariffs were 11.27% for the US and 22.79% for the EC. The US proposal would cut the US and EC bound tariffs of 11.28% and 22.80% to 5.3% and 7.9%, respectively.368

As a follow-up, the chairperson tabled a well-developed agriculture text in July 2006 incorporating proposals by the US, EC, and G-20 (Tables 14 and 15).369 Negotiations intensified with 20-30 members trying to work out a compromise. Pascal Lamy, WTO Director-General, emphasised the need for a horizontal process entailing a ‘triangle of issues’, namely: deeper US subsidies cuts, greater EC market access, and deeper manufacture tariff cuts by emerging countries.370 US farm lobbies and US Congress pressured the US Government to reject concessions on domestic support, and in turn US negotiators demanded greater market access by the EC and developing countries.371 The strict US distributive strategy pushed negotiating counterparts to respond in a similar fashion. The divergence among members therefore remained very wide without substantial integrative movements from key negotiators. At the end of July 2006, agriculture negotiations were finally suspended.372

c) The Chairperson's Challenges in 2007: Encouraging Key Negotiators towards Integrative Movement

The agriculture chairperson made several attempts in 2007 to move the negotiations forward, narrowing the gap among key negotiators and moving them into an integrative movement. In May 2007, the chairperson released papers to challenge WTO members. With regard to domestic support, the chairperson reported that the EC was willing to

368 See World Trade Organization, "Committee on Agriculture - Special Session - Applied Tariff Simulations - Agriculture - Summary of Results," JOB(06)/152 (May 22, 2006).
369 See World Trade Organization, "Committee on Agriculture - Special Session - Draft Possible Modalities on Agriculture," JOB(06)/199 (June 22, 2006); World Trade Organization, "Committee on Agriculture - Special Session - Draft Possible Modalities on Agriculture - Corrigendum," JOB(06)/199/Corr.1 (June 29, 2006).
371 Ismail, "One Year since the WTO Hong Kong Ministerial Conference: Developing Countries Reclaim the Development Content of the WTO Doha Round," 133.
cap OTDS to €27.5 billion (or 75% cut). He encouraged the US to accept a ceiling of
less than US$22 billion (or higher than a 53% cut), possibly below 19 or very low

teens. The G-20 argued that the centre of gravity does not entail averaging
negotiation positions, but it should benchmark to the Doha mandate that called for
substantial cuts and effective disciplines. According to the chairperson, the majority
of WTO members (including the G-20) considered 1995-2000 as an appropriate base
period for calculating Amber Box’s product specific cap, but the US favoured the based
period of 1999-2001. The G-20 argued that the US proposal was unrealistic because
the proposed period constituted low international prices and a very high cap level.

In regard to market access, the chairperson’s paper suggested first discussing the
tabled proposals for the top band between 60% (EC proposal) and 85% (US proposal),
and then working through to the lower bands. The G-20 maintained its position of
October 2005. Further, the chairperson suggested that the mid-point of export
subsidies cuts should account to 50%—the G-20 and Cairns positions—or two-thirds
cuts.

After a failed high-profile Potsdam meeting in July 2007 between the US, EC,
Brazil, and India, the chairperson made another attempt to encourage key negotiators
into integrative movements concentrating on draft agriculture texts. In August 2007, a
draft agriculture text was released to further narrow the divergent positions (Tables 14
and 15). In the top band, OTDS would be cut by 75-85% meaning that EC subsidies
would be capped between €27.5 billion and €15 billion (the EC already agreed to a 75% cut).
In the middle band, OTDS would be cut by 66-73% meaning US subsidies would
be limited to between US$13-16.4 billion (the US only proposed a 53% cut or ceiling at

373 See World Trade Organization, “Communication from the Chairman of the Committee on Agriculture
Special Session,” April 30, 2007, 6, www.wto.org/english/tratop_e/agric_e/agchairtxt_30apr07_e.doc
(accessed February 1, 2013).
374 See also World Trade Organization, “Committee on Agriculture - Special Session - G-20 Reaction on
375 See World Trade Organization, “Communication from the Chairman of the Committee on Agriculture
Special Session,” 8.
376 See also World Trade Organization, “Committee on Agriculture - Special Session - G-20 Reaction on
the Agriculture Chair’s Challenge Paper - Domestic Support,” JOB(07)/71: 4.
377 World Trade Organization, “Communication from the Chairman of the Committee on Agriculture
Special Session,” 19.
378 G-20, “Centrality of Agriculture in the Doha Round,” (June 4, 2007): 1; World Trade Organization,
“Communication from the Chairman of the Committee on Agriculture Special Session,” 12-13.
379 World Trade Organization, “Committee on Agriculture - Special Session - G-20 Reaction on the
Agriculture Chair’s Challenge Paper - Export Competition,” JOB(07)/70 (May 23, 2007); World Trade
Organization, “Communication from the Chairman of the Committee on Agriculture Special Session.”
Chapter 3. Negotiating Coalitions on Agriculture

US$22 billion). Amber Box cuts were on singular numbers with brackets. Product specific Amber Box cap would be based on the period of 1995-2000. 380

With regard to market access, the draft agriculture text managed to narrow down thresholds and cuts in all four bands in the tariff cut-formula. The top band constituted tariffs above US$75 billion subject to 66-73% cut (between the EC proposal and US proposal of October 2005). 381 Surprisingly, the text removed all tariff caps contrary to the G-20’s demand to accommodate the G-10’s demands. 382 The provisions on export competition became more stabilised with 50% export subsidies cut by the end of 2010 before ending in 2013. 383

At the end of 2007 and early 2008, the chairperson released working documents in preparation for a new draft agriculture text. At this stage, export competition became more stabilised, domestic support had several unresolved issues, such as OTDS and Amber Box cuts, and market access still had many moving parts, such as tariff cuts, and flexibilities provisions. 384

By this period, the G-20 still maintained most of its value claim, but had to gradually accept some of the value claims of its negotiating counterparts. The G-20, for example, tried to tighten domestic support conditions with the new concept of OTDS, Blue Box cap and discipline, and product specific caps for Amber and Blue Boxes. 385

On market access, the G-20 tried to reintroduce tariff caps but had incorporated the

381 Ibid.
value claims of the G-10 by proposing different tariff caps for non-Sensitive and Sensitive Products.386

Having evaluated the G-20’s position and the chairperson’s efforts in narrowing the gap among key negotiators, it is important to note that the G-20 maintained the previous inter-coalition in the three years during the rule-making process. The inter-coalition later included Small and Vulnerable Economies (SVEs), NAMA-11 and Cotton-4. The inter-coalition would conduct consultation and coordination concerning their positions and issued joint statements, particularly in high level and critical meetings. The joint statements from 2005 through 2007 indicated members’ broad political commitments to the overall direction of the negotiations, and generally emphasised the centrality of agriculture to development, called for removal of trade distortions, and ensured policy space by considering the socio-economic conditions in developing countries. The statements also mentioned the need for flexibilities in agriculture and NAMA to ensure liberalisation processes do not cause unsustainable development, such as deindustrialisation. The statements also highlighted issues of concern for developing countries, such as: duty-free quota-free (DFQF) for LDCs, cotton, SVEs, RAMs, NFIDCs, tropical products and product diversification, and preferences erosion.387

Similar to its initial formation, the inter-coalition joint statements were possible because they focussed on the broad objectives of each coalition. These statements highlighted specific issues or concerns to developing countries, but did not touch specific rules. Despite evidence of increasing divergence among developing countries on specific rules, particularly SP and SSM, the solidarity of this artificial common lifeworld among them was still sufficiently robust in maintaining these broad commitments. Nevertheless, these broad commitments became more difficult to sustain in the following negotiation stage.

Building upon the chairperson’s draft agriculture text in 2007 and a revision in early 2008, a more mature third revision was circulated for an upcoming Geneva mini-ministerial meeting in July 2008. 388 This revision resolved various issues, such as the amount of Amber Box cuts, de minimis cuts, and tariff cuts (except the highest band). Outstanding issues included: amount of OTDS cuts (US as the main stakeholder), top band tariff cuts (EC as the main stakeholder), and market access flexibilities, such as Sensitive Products, SP and SSM (the G-10 and developing countries as the main stakeholders). These core outstanding issues would be brought to the ministerial level meeting for a political decision.

Many delegates thought that the mini-ministerial meeting would be a deal-making moment. WTO members were supposed to determine final quantitative and binding commitments, to evaluate cost-benefit calculations of elements within agriculture, and to overview issue linkages between agriculture and manufacturing as an overall package deal or single undertaking.

At the beginning of the meeting, the EC maintained its offer of 60% tariff cuts for the top band as the highest tariff cuts in multilateral trade history. 389 The EC ‘must haves’ included reciprocal concessions in agriculture, NAMA, services, and Geographical Indication. 390 Similarly, the US wanted: concessions in new trade flows (actual market outcome) in all three agriculture pillars, assurance of acknowledgement of its import sensitivities, and receive meaningful contributions from emerging markets.

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as they have benefited from an open trading system. A report indicated that the US offered a concession to cap its OTDS by US$15 billion to stimulate negotiations.

During the last days of the meeting, Pascal Lamy submitted a package of elements on 25 July 2008, known as the ‘Lamy Package’, to encourage key negotiators into integrative movement and push for a compromise on core issues in agriculture and manufacturing. The Lamy Package was negotiated under a closed-door setting among the FIPs and additional countries, or FIPs Plus, consisting of the US, EC, Brazil, India, China, Australia, and Japan. The package called for the US to cut its OTDS ceiling by 70% (approximately US$14.4 billion) and the EC to cut its OTDS ceiling by 80% (around €22 billion). The US and EC could maintain an uncapped Green Box. On market access, the top band (for EC) for tariffs above US$75 billion would be cut by 70%. The concept of ‘4+2’ entails that WTO members could allocate 4% tariff lines as sensitive, and allow an additional 2% tariff lines for members with very high tariff levels, such as Switzerland and Norway. Developed countries need to cap non-Sensitive Products at 100% with further flexibilities. The package also introduced a modified version of SP and SSM as discussed later in the next case study.

The package also put forward proposals on manufacturing which included developed countries subject to tariff cuts with a coefficient of eight, while developing countries were subject to an anti-concentration clause, as well as an optional ‘sliding scale’ tariff cuts formula (between coefficients of 20-25) linked with certain disciplines.

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394 Developing countries may choose three options: (1) developing countries choosing a coefficient of 20 have the option either to cut 14% tariff lines by as much as half of the required formula (or ‘half-formula cuts) consisting of 16% of manufacture import value or exempt 6.5% tariff lines from cuts covering 7.5% of manufacture import value; (2) developing countries taking a coefficient of 22 have the option to either take half-formula cuts for 10% tariff lines and manufacture import value, or exempt 5% tariff lines and manufacture import value; and (3) developing countries making a coefficient of 25 have least flexibilities and no tariff cuts exemptions. See ibid.
In negotiating the Lamy Package, the US and India (later with China) could not reconcile their differences on SSM despite several attempts to bridge them. Susan Schwab, US Trade Representative, believed that at least five countries agreed with the Lamy Package as it stood, but the US could not make any adjustments to the package because if "you pull one thread on that compromise package...all of a sudden different countries had different issues".\(^{395}\) In a press conference, Celso Amorim from Brazil stated that the G-20 provided the main structure, ideas and formula on many agriculture issues.\(^{396}\) He also wrote in an article that the G-20 could agree on the general terms of the SSM but was unable to develop a common platform on the subject. He further noted that coalitions were less effective during a time-constraining endgame scenario because bottom-up coordination requires substantial time and effort.\(^{397}\) The EC perceived that it offered substantial concessions on subsidies and tariff cuts, much higher than Uruguay Round commitments, and a deal was within reach with 90-95% of issues already resolved.\(^{398}\)

During the Trade Negotiation Council, the agriculture chairperson reported that the Geneva mini-ministerial meeting was a 'genuine final decision mode' and believed that other issues would fall into place should the outstanding issues been resolved. He further mentioned some of the compromises that were met, such as subsidy cuts, tariff cuts and the concept of '4+2' for Sensitive Products, and also noted outstanding issues, such as SSM and cotton.\(^{399}\)

After the mini-ministerial meeting, the agriculture chairperson continued consultations to seek further consensus. A fourth revision of the text was finally released in December 2008 together with several working papers, which indicated an increasing convergence among key negotiators on several elements (Tables 14 and 15). The domestic support was mainly stabilised. Tariff and subsidy cuts as well as an

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\(^{396}\) Amorim, Press Conference: Brazil --- Audio: Mr. Celso Amorim, Minister of External Relations.


\(^{399}\) World Trade Organization, "Committee on Agriculture - Special Session - Report to the Trade Negotiations Committee by the Chairman of the Special Session of the Committee on Agriculture - Ambassador Crawford Falconer," JOB(08)/95 (August 12, 2008): 1-2.
The Group of 20 Negotiating Rules Disciplining Trade Distortions

uncapped Green Box reflected the compromise in July 2008. Canada and Japan were unsatisfied with the ‘4+2’ concept on Sensitive Products and demanded 6% and 8% tariff lines, respectively. Iceland, Japan, Norway, and Switzerland were also seeking flexibilities to impose tariffs exceeding 100% with a limit of 1% tariff lines. Other outstanding issues include TRQ expansion, cotton, and of course, SSM.400

In light of the empirical evidence, this thesis suggests that the G-20 and its main negotiating counterparts engaged in bargaining through rhetorical action in achieving this lowest common denominator. It took approximately three years to achieve a mature agriculture text, which indicated a significant increase of convergence among key negotiators. Key negotiators basically exchanged subsidies and market access concessions. The G-20 employed mixed distributive-integrative strategies as it received some of its own claimed value, but at a price of accepting the value claims of the major developed countries. While the G-20 received astonishing subsidies cuts, the new disciplines would not impact US real or applied subsidies. The US and EC could also shift their subsidies into Blue Box and uncapped Green Box. Moreover, the G-20 received substantial tariff cuts, but the Sensitive Products and complex TRQ systems allowed substantial flexibilities or policy space for developed countries to protect uncompetitive products.

Despite maintaining a strong cohesion among G-20 members on the coalition’s primary argument—the reduction/elimination of trade distortions in developed countries—the G-20 as a group was unable to play a larger role in bridging the differences on the SSM partly because, as mentioned earlier, the G-20 themselves were unable to find a common platform on the subject.401 This also limited the G-20’s ability in maintaining the inter-coalition and issuing a joint statement with other coalitions as discussed in the next case study.

In regard to the liberal trade and developmental nexus, the G-20 engaged in the traditional liberal trade principle, adhering to the norms of reciprocity through exchange of concessions. The G-20 succeeded in establishing progressive subsidy cut- and tariff


401 Amorim, Press Conference: Brazil — Audio: Mr. Celso Amorim, Minister of External Relations.
cut-formulas but actual subsidies would most likely remain untouched. By accepting the value claims of the major powers for a looser discipline on Blue and Green Boxes, Sensitive Products, and TRQ system, the major developed countries could shift their subsidies to Blue and Green Boxes and still have greater autonomy in applying high tariffs and maintaining a complex TRQ system for their most Sensitive Products. It means that a Doha agreement would establish the lowest binding thresholds for tariffs and subsidies in the history of the trade regime, but there would remain sufficient policy space for major developed countries to manoeuvre. A Doha agreement therefore would likely generate a modest rather than an ambitious agriculture reform.

e) The Post-2008 Negotiations: The G-20’s Declining Role and Intensifying Issue Linkage between Agriculture and NAMA Sectoral

After the Geneva mini-ministerial meeting and subsequent negotiations in 2008, the role of the G-20 began to decline due to three main reasons. First, the main areas of concern to the G-20 were mainly stabilised by the end of 2008. Second, agriculture negotiations were at a standstill in 2009 and focussed instead on more technical templates and scheduling, while negotiations in 2010 emphasised outstanding issues. And third, agriculture was somewhat held hostage by the issue linkage or horizontal process on sectoral negotiations in NAMA.

The last point is particularly important because the US began to forcefully demand greater market access in specific manufacturing sectors despite having stabilised the NAMA tariff cut-formula. After the Geneva mini-ministerial meeting, the US National Association of Manufacturers pressured the US Government to demand greater sectoral participation of Brazil, China, and India. The NAMA sectoral initiative is supposed to be non-mandatory and depends on request and offer among

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The Group of 20 Negotiating Rules Disciplining Trade Distortions

WTO members. Both the major powers, particularly the US, would not accept a trade agreement without the contribution of emerging economies.\(^{403}\)

By the end of 2009, however, the EC was disappointed with US sectoral demands in NAMA and even blamed the US for the Doha deadlock.\(^{404}\) Pascal Lamy’s report on the consultations in 2010 indicated that the main sticking point was a demand to bring down tariffs to zero on chemicals, industrial machinery, and electric and electronic products. These demands approximately equate to a coefficient of four for developed countries (instead of eight in NAMA modalities) and approximately a coefficient of eight for developing countries (instead of 20-22). Brazil, India, and China indicated they were not seeking market access and had sensitivities over these sectors, especially chemicals and to a lesser degree electric and electronics. He concluded that the objective of the sectoral negotiations was for emerging economies to ‘catch up’ to the level of market access in developed countries rather than a supplement to the tabled NAMA modalities.\(^{405}\) More cynically, Faizel Ismail, a South African high senior official, in an article suspected that the US’s artificial strong liberal stance—asserted with the knowledge that emerging economies could not reciprocate—was actually a mark-up to maintain its protectionist stance on a wide variety of issues.\(^{406}\)

During my interviews, several delegates indicated similar concerns related to the US over demand for concessions in several manufacturing sectors. An anonymous source indicated that the EC tried to persuade the US to limit its demands, but felt powerless to bridge the differences between the US and emerging economies.\(^{407}\) Brazil stated that it could not accept a Doha agreement at any price because there are those who pay and those who free ride.\(^{408}\)

This thesis suggests that the cost burden was disproportionately higher on a number of emerging economies, particularly Brazil, India, and China. The price for US agriculture concessions was placed heavily on emerging economies. In other words, the

\(^{403}\) Peter Mandelson, "Doha a Posteriori," in Agreeing and Implementing the Doha Round of the WTO, ed. Harald Hohmann (Cambridge: Cambridge University Press, 2008), 14; Schwab, "Ambassador Susan Schwab, United States Trade Representative, Press Briefing."


\(^{406}\) Ismail, "Is the Doha Round Dead? What is the Way Forward?," 6.

\(^{407}\) WTO delegate from a developed country, interviewed by author, March 11, 2011.

\(^{408}\) WTO delegate from Latin America, interviewed by author, March 2, 2011.
Chapter 3. Negotiating Coalitions on Agriculture

G-20 as a group gained some agriculture concessions from the major developed countries, but cost-sharing arrangements were not placed on the entire G-20 membership. This condition thereby limits the role of the G-20 during this period because the G-20 as a group cannot provide concessions on other issues. Similarly, Diego-Fernández argues that coalitions are often single tasked and therefore it is ‘virtually impossible’ to undertake cross-disciplinary exchange of concessions. 409 Furthermore, this issue linkage enabled the US to exercise its hegemonic status. The mandate for ‘less than full reciprocity’ in NAMA bears little significance because the US perception of reciprocity is based solely on its unilateral political assessment. In an interview, a developed country delegate indicated that the agriculture text is stable in the sense that eventually ‘anything could be negotiated’. 410 The fact that the US could manage without a Doha agreement until the rules were in its favour indicates a form of selfish hegemonic behaviour. 411

There are several stand-alone findings which could be briefly pointed out concerning the nature and role of the G-20 from the agenda-setting until near deal-making processes. The G-20 played a significant role in the agenda-setting, modalities-setting, and rule-making processes, but was unable to significantly contribute in the near deal-making process in 2008. The G-20 constantly used mixed instrumental-normative frames, concentrating on its instrumental frame, which were often broadly accepted and perceived as middle ground solutions. The coalition also exhibited a formidable strategic-based leadership under Brazil’s auspices as it developed new and innovative solutions to accommodate the diverse interests and preferences of its members despite failing to develop rules on special trade provisions for food security purposes. In formulating its strategy, the G-20, together with the US and EC, as key negotiators, began with a strict distributive strategy and moved gradually into mixed distributive-integrative strategies within three years of negotiations. The increasing convergence among WTO members by the end of 2008 was achieved through the traditional exchange of reciprocal concessions adhering to the liberal trade principle. As a consequence of the bargaining mode of negotiation, the original G-20 position for an ambitious agriculture reform had to be downgraded to take into account the value

410 WTO delegate from a developed country, interviewed by author, March 29, 2011.
claims of the major developed countries, which in turn would result in a modest agriculture reform.

### 3.4 The Group of 33 Setting the Agenda for Food Security Purposes

After critically evaluating the nature and role of the G-20 in sections two and three, the following sections four and five will critically examine the nature and role of the G-33 during the agenda-setting and modalities-setting processes, as well as rule-making and near deal-making processes, respectively. In contrast to the G-20's broad agenda, the G-33 narrowly focussed its efforts on market access flexibilities under SDT. The G-33 promoted the principles and rules related to special trade provisions for food security purposes for developing countries, namely: (1) SP as a special instrument providing tariff flexibilities; and (2) SSM as a temporary relief mechanism for sudden import surges or price declines.

Focussing on section four, this thesis will closely evaluate the coalition's activism during agenda-setting and modalities-setting processes, which involve promoting the new agenda of food security and establishing the parameters of the new special trade provisions for food security purposes. It is important to note that these special trade provisions have not been established in the trade regime, and at this stage, there was still the question of whether SP and SSM would be included or not in a Doha agreement. The internal G-33 management was relatively easier to manage because the diverse interests and preferences among the G-33 members tend to be less prominent. Cooperation relies on shared commitment to the principles of the broad parameters of the SP and SSM with abstract distributive implications and without determining cost-sharing arrangements.

As part of section four, the first sub-section provides a contextual background of the broader understanding of food security pillars (food security, livelihood security, and rural development) as well as food security in relation to international trade. The second sub-section will examine the nature of the G-33 during its formation. This will focus on the ideational basis of its normative claims and the knowledge-based leadership exhibited by the G-33's founders. The third sub-section evaluates the G-33's
role during the rule-development process focussing on the external coalition dynamic, particularly the strategy of key negotiators and the overall mode of negotiation.

3.4.1 The Significance of Food Security Pillars in the WTO Agenda

Coming back to the second Doha mandate mentioned earlier in this chapter, the DDA called for the need to develop SDT provisions related to food security and rural development. First of all, it is important to understand the foundation of this mandate. The World Food Summit in 1996 emphasised that “food security at the individual, household, national, regional and global level will be achieved when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.”\(^{412}\) The notion of food security had expanded from traditional national ‘self-sufficiency’ to ‘self-reliance’ meaning that access to food over time must reach individual and household levels. This notion of food security implies that households should generate sufficient income to buy food in markets or, for poor households in rural areas, may choose to produce food for themselves to avoid market risks and uncertainties.\(^{413}\) Agriculture therefore is an important source of basic food, income, and employment in many developing countries. Agriculture could account for approximately 60% of the labour-force in low income countries.\(^{414}\) A minor change in agriculture prices or employment in rural areas might cause adverse impacts on food security and livelihood security of the poorest and most vulnerable people. For this reason, the notion of food security rests on three intertwined pillars: food security, livelihood security, and rural development.

In theory, the liberalisation process could create severe economic, social, and even political adjustment costs. Market volatility could cause adjustment pressure on low income farmers by the transmission of low world agriculture commodity prices into domestic markets or cause sudden import surges.\(^{415}\) Adjustment costs would be more

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415 Matthews, "Shallow versus Deep Special and Differential Treatment (SDT) and the Issue of Differentiation in the WTO among Groups of Developing Countries " 85.
There are many examples in which market liberalisation and market volatility caused an unsustainable development with alarming economic and social impacts. After the implementation of the AoA, the Philippines experienced negative growth in its corn production, and had to convert agricultural land causing unemployment and livelihood insecurity in rural areas. Indonesia took bold unilateral liberalisation measures under IMF loan conditionality. As a result, Indonesia experienced a sudden price depression hurting subsistence farmers due to excessive rice imports by the private sector and speculative distributions in 2000. This was followed, in 2008, with basic food price hikes causing food insecurity for the poorest and even middle-income people due to international price volatility. An FAO study evaluating the impacts of AoA implementation found that “tariffs are often the primary, if not the only, trade instrument open to these countries to stabilize domestic markets and to safeguard farmers’ interests in the face of sharp swings in world prices or a surge in imports.”

Several efforts were made to introduce the food security pillars into the WTO agenda since international trade negotiations had never placed the issue of food security at centre stage of the WTO agenda. WTO members, both individually and collectively, introduced the issue of food security using various frames. On the one hand, many developing countries proposed the creation of a ‘development box’ or ‘food security box’ to achieve food security pillars. On the other hand, many developed countries

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419 "WTO Agreement on Agriculture: The Implementation Experience - Developing Countries Case Studies."
promoted the idea of a multifunctional role of agriculture including the promotion of food safety, environmental protection, and animal welfare. However, most developing countries perceived that the urgency of food security is different between survival in developing countries and preserving traditional rural society in developed countries.

In tandem to the efforts by WTO members, UN agencies and international NGOs tried to build awareness around the issue of food security. During the Doha Ministerial Conference in 2001, the FAO highlighted the problem of food insecurity. Developing countries accounted for 777 million out of 815 million people living with food insecurity, with 70% of the world’s extremely poor and food insecure population living in rural areas. The FAO called for several measures, such as: protection for farmers from adverse import surges (particularly subsidised imports), elimination of tariffs escalation to foster agriculture production in developing countries, and maintenance of bound tariffs or domestic subsidies prior to the substantial reduction of agriculture protection and support in developed countries. The UNDP also supported the establishment of a development box for all developing countries to ensure policy flexibilities for food and livelihood security for their poor and vulnerable populations. Similarly, Oxfam found that US and EC farm subsidies caused financial losses, displaced poor local farmers in developing countries, and supported the establishment of a development box.

The efforts to elevate the food security issue into the WTO agenda was to some extent discouraged when the 2001 Doha mandate did not specifically mention a development box despite maintaining the objective that trade rules must “enable developing countries to effectively take account of their development needs, including

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food security and rural development". 425 The Friends of Development Box was deeply
disappointed that the WTO did not take sufficient account of the problems of small
subsistence farmers competing with unfair trade practices and subsidised farmers.
Subsidised farmers receive "$1 billion a day which is roughly equal to the daily income
of the poorest 1 billion people in the world". 426

Proponents of food security, in particular developing countries and non-state
actors, used a normative frame, which emphasised the socio-humanitarian and socio-
economic aspects of trade. In some cases, data were exaggerated to gain wider public
attention and immediate political reaction. These arguments clearly differentiate trade
liberalisation as a means and food security pillars as an end. These arguments imply that
the trade liberalisation process should not cause unsustainable development, particularly
food and livelihood insecurity and rural under-development. The norm of sustainable
development under the developmental principle represents a new interpretation of the
WTO trade rules, in which negotiations should no longer be confined to trade terms
(such as non-reciprocal exchange of concessions) but include a broader understanding
of sustainable development. The Doha mandate provided guidance that food security
and rural development should be addressed without indicating a specific mechanism or
instrument to achieve them. The G-33 began to promote SP and SSM as viable special
trade provisions for food security purposes.

3.4.2 Internal Coalition Dynamic: The G-33's Normative Frame and
Knowledge-Based Leadership

As the idea of a development box never gained traction, a number of developing
countries, including Indonesia and the Philippines, began to develop the principles of
SP and SSM as special trade provisions for food security purposes. The Philippines
considered Indonesia a good partner and found a way to organise other developing
countries. In its initial phase the small group consisted of ten countries. 427 The coalition
did not spontaneously come into the negotiation scene, but had evolved and grew over

425 World Trade Organization, "Ministerial Conference - Fourth Session - Doha, 9 - 14 November 2001 -
Ministerial Declaration - Adopted on 14 November 2001," WT/MIN(01)/DEC/1: 3.
426 Friends of the Development Box, "Press Statement---Cuba; Dominican Republic; El Salvador; Haiti;
Honduras; Kenya; Nicaragua; Nigeria; Pakistan; Peru; Senegal; Sri Lanka; Uganda; Zimbabwe 
427 WTO delegate from Southeast Asia, interviewed by author, March 1, 2011.
time. The idea of SP and SSM emerged sporadically at the end of 2002. Table 16 illustrates G-33 members at the early stage of its formation and the growth of the coalition at the later stage of negotiations.

**Table 16. The G-33 Members**

<table>
<thead>
<tr>
<th>Year</th>
<th>Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>Barbados, Botswana, Cuba, Dominican Republic, Honduras, Indonesia, Jamaica, Kenya, Mongolia, Mauritius, Nicaragua, Nigeria, Pakistan, Panama, Peru, the Philippines, Tanzania, Trinidad and Tobago, Turkey, Uganda, Venezuela, Zambia, and Zimbabwe</td>
</tr>
<tr>
<td>2005</td>
<td>Antigua and Barbuda, Barbados, Belize, Benin, Botswana, China, Cote d’Ivoire, Congo, Cuba, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, India, Indonesia, Jamaica, Kenya, Korea, Mauritius, Mongolia, Montserrat, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, the Philippines, Peru, Saint Kitts, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sri Lanka, Suriname, Tanzania, Trinidad and Tobago, Turkey, Uganda, Venezuela, Zambia, and Zimbabwe</td>
</tr>
</tbody>
</table>

Sources: WT/MIN(03)/14, WT/MIN(03)/14/Add.1, JOB(Os)/303

In developing the parameters and later detailed rules for SP and SSM, the G-33 established a close relation with non-state actors. As mentioned in Chapter 2, the promotion of a certain normative frame often involves collaboration of middle powers and small democracies with civil society. The G-33 engaged in close consultations with UN agencies, inter-governmental organisations, and NGOs, such as the FAO, South Centre, ICTSD, Third World Network (TWN), Oxfam, and Institute for Agriculture and Trade Policy (IATP). For this reason, the G-33’s proposals were to a certain degree in line with them. The inclusive and bottom-up processes proved important because the G-33 received broad support and these non-state actors also helped disseminate the G-33’s agenda.

The coalition gained momentum when the Harbinson text in February 2003 incorporated Strategic Product (SP, later changed to Special Product) and SSM as part of the first agriculture modalities. The Harbinson text was the starting point for

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430 WTO delegate from Southeast Asia, interviewed by author, September 15, 2010; and WTO delegate from Southeast Asia, interviewed by author, September 29, 2010. See also Malby, "Centralized Production: The Group of 33," 249.

431 World Trade Organization, "Committee on Agriculture - Special Session - Negotiations on Agriculture - First Draft of Modalities for the Further Commitment," TN/AG/W/1: 3-4.
developing the principle and parameters for SP and SSM. According to the Harbinson text, SP and SSM gave tariff flexibilities under market access for developing countries for food security purposes. Products under SP would be subject to only 10% average cut and minimum 5% cuts per tariff lines. Moreover, SSM covers SP and SSG products that should be operationally effective. Beginning with the Harbinson text, Tables 17 and 18 would help us understand the progression of the principles and parameters for SP and SSM during the agenda-setting and modalities-setting processes between 2002 and 2004.

Table 17. Key Proposals and Draft Agriculture Texts on Special Product (2000-2004)

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Treatment</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harbinson text (February 2003)</td>
<td>-</td>
<td>(10%) average cut; minimum [5%] per tariff lines (still refers to Strategic Product)</td>
</tr>
<tr>
<td>Alliance for SP and SSM (18 July 2003)</td>
<td>Self-determined and self-declared</td>
<td>-</td>
</tr>
<tr>
<td>Alliance for SP and SSM (9 September 2003)</td>
<td>Self-designated a certain per cent of tariff lines</td>
<td>Exempt from tariffs reductions and TRQ commitment</td>
</tr>
<tr>
<td>EC-US joint text (August 2003)</td>
<td>Stand-alone category and self-designated</td>
<td>Exempt from tariffs reductions and TRQ commitment</td>
</tr>
<tr>
<td>G-33 (June 2004)</td>
<td>Designate a certain number under conditions to be agreed</td>
<td>Exempt from TRQ commitment</td>
</tr>
<tr>
<td>Groser text (July 2004)</td>
<td>Designate an appropriate number based on criteria of food security pillars; criteria to be negotiated</td>
<td>Treatment to be negotiated</td>
</tr>
</tbody>
</table>

Table 18. Key Proposals and Draft Agriculture Texts on Special Safeguard Mechanism (2000-2004)

<table>
<thead>
<tr>
<th>Coverage-Treatment</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harbinson text (February 2003)</td>
<td>Products covered by SP and SSG</td>
</tr>
<tr>
<td>Alliance for SP and SSM (18 July 2003)</td>
<td>Improvement to existing SSG; address import surge disturbances and highly trade distorting environment</td>
</tr>
<tr>
<td>Alliance for SP and SSM (9 September 2003)</td>
<td>SSM to be established</td>
</tr>
<tr>
<td>EC-US joint text (August 2003)</td>
<td>SSM relates to import sensitive tariff lines</td>
</tr>
<tr>
<td>G-33 (June 2004)</td>
<td>SSM to be established</td>
</tr>
<tr>
<td>Groser text (July 2004)</td>
<td>SSM will be established under conditions to be agreed by members</td>
</tr>
<tr>
<td>July framework (August 2004)</td>
<td>SSM to be established for developing countries</td>
</tr>
</tbody>
</table>

Sources: TN/AG/W/1; TN/AG/R/10; WT/MIN(03)/14; Job(03)/157; Job(04)/65; Job(04)/96; WT/L/579

Notes: brackets means still under negotiation at the time
The G-33—at the time known as the Alliance for Strategic Product and Special Safeguard Mechanism—eventually presented its socio-humanitarian claims in July 2003 (Tables 17 and 18). The coalition, with 16 members, stressed that food security pillars were a legitimate development goal. Food security pillars are often jeopardised by unfair competition from subsidised agriculture products or closed market opportunities. An overemphasis on trade liberalisation objectives “has no human face” and tends to dismiss other developmental needs. The G-33 proposed the principles that SP should be self-determined and self-declared, while SSM should be an improvement to the existing SSG.432

This thesis suggests that the G-33 used a normative frame to highlight the socio-humanitarian and socio-economic claims of the SP and SSM. The G-33 viewed SP and SSM as developmental instruments rather than protectionist trade instruments. The G-33 tried to expand the SDT norm under the developmental principle from merely trade conceptions to the broader norm of sustainable development. For this reason, according to the G-33, SP and SSM cannot be negotiated as a commercial product and therefore should not be subject to the norms of reciprocal concessions under the liberal trade principle. These arguments represented a new interpretation of the WTO trade rules. The G-33 tried to place the developmental principle in front of the liberal trade principle by requesting absolute flexibilities or full national autonomy in the application of SP and SSM.

This thesis further suggests that the G-33’s normative frame was relatively difficult to argue on at least three counts. First, a normative frame theoretically would be easier to communicate and be more receptive when the issue has ‘direct and simple’ chains of cause and effect.433 For instance, the campaign against landmines suggested that landmine injuries could be avoided or eliminated with a ban of landmines. The normative frame could easily be communicated because it has ‘direct and simple’ chains of cause and effect. The issue of food security is neither direct nor simple. One of the G-33’s main arguments is that food security problems are associated with

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subsidised products or market access protection in developed countries. However, food and livelihood insecurity and rural under-development could be caused by many other factors, such as supply side constraints and bad governance. In the short-run, elimination of subsidised products or market access opening would not necessarily guarantee an increase in agriculture productivity and export, which in turn enhance rural development, and ensure food and livelihood security.

Second, tariff instruments are a second best option. The first best option might be to use market-based risk management mechanisms, insurance programmes, or social safety net to overcome income risk. The main problem is that most developing countries do not have the capacity to undertake the first best option. As mentioned earlier, the FAO believed that tariff measures are the only viable policy option for most developing countries.

Third, special trade provisions for food security purposes are novel and vague concepts. A totally new norm or concept is often harder to argue and be accepted. In such a situation, actors might reframe an established norm or concept and modify it to be fitted with the new norm or concept. The G-33 used two established flexibilities provisions in the AoA to conceptualise SP and SSM. The Sensitive Products concept was established to provide flexibilities for uncompetitive commercial products. In this regard, SP could also be established to provide flexibilities for products vital to food security purposes. Moreover, SSG provides flexibilities by giving temporary relief mechanisms for products undertaking the tariffication process. The G-33 directly imported elements of the SSG and modified them to develop SSM as a more effective and operational safeguard mechanism for developing countries. The above three reasons indicated that the normative frame advocated by the G-33 was more difficult to argue. In contrast to the G-33 and as discussed in detail in Chapter 5, the CPTH developed a

434 Matthews, "Shallow versus Deep Special and Differential Treatment (SDT) and the Issue of Differentiation in the WTO among Groups of Developing Countries." 82.
435 Hoekman, Michalopoulos, and Winters, "More Favorable and Differential Treatment for Developing Countries: Toward a New Approach in the WTO." 20.
436 "WTO Agreement on Agriculture: The Implementation Experience - Developing Countries Case Studies."
437 Previous studies identified norm advocates using the message of violence against women for the campaign against circumcision, and using the concept of weapons of mass destruction targeting victims indiscriminately to campaign against land mines. See Finnemore and Sikkink, "International Norm Dynamics and Political Change," 908; Price, "Reversing the Gun Sights: Transnational Civil Society Targets Land Mines," 628.
438 WTO delegate from Southeast Asia, interviewed by author, September 22, 2010.
strong and persuasive normative frame in promoting flexibilities for public health purposes during the HIV/AIDS crisis because *inter alia* the CTPH argument was simple with direct cause and effect relation, and the HIV/AIDS crisis was easier to relate with HIV/AIDS victims all over the world.

In contrast to the G-20’s leadership, the G-33 reflected a knowledge-based leadership that emphasised a normative frame using socio-humanitarian claims. The coalition relied on a legitimate moral purpose to maintain a certain degree of policy space or flexibilities for food security purposes. In advancing this argument, members within the coalition viewed Indonesia as a viable informal coordinator although in practice often Indonesia and the Philippines would assume coordinating roles.\(^{439}\) The reputation of a knowledge-based leadership is imperative. The coordinator should possess sufficient political-economic weight as well as normative weight. As mentioned earlier, both coordinators experienced firsthand the adverse impacts of liberalisation and food insecurity. The coordinator should be able to effectively advocate the coalition’s normative claims and not be perceived as promoting its self-interests or as a biased actor. A non-state actor might distinguish itself from the normative claim it is promoting. Nonetheless, the WTO is an inter-governmental organisation that requires a WTO member to host this normative claim.

During my interviews, a delegate described Indonesia as possessing sufficient technical capacity and the ability to empathise with LDCs partly because Indonesia also has least developed regions.\(^{440}\) Another delegate thought that the G-33 members favoured Indonesia as the group’s coordinator rather than India or China. India and China (due to their international stature) might have contradicting self-interests or might play more independent roles during the negotiations.\(^{441}\)

By using a knowledge-based leadership, the G-33 turned out to be appealing for weaker, smaller, and often marginalised countries with less commercial weight and greater concerns for their resource-poor and subsistence farmers. For this reason, the coalition expanded to include a large number of members from the AG, ACP Group and LDCs Group. The narrow focus of the G-33 agenda worked positively in maintaining

\(^{439}\) WTO delegate from Southeast Asia, interviewed by author, October 21, 2010; and WTO delegate from Southeast Asia, interviewed by author, September 15, 2010.

\(^{440}\) WTO delegates from Southeast Asia, interviewed by author, September 17, 2010.

\(^{441}\) WTO delegate from Southeast Asia, interviewed by author, September 22, 2010.
cohesion among its heterogeneous members. Members only needed to reach a common platform on SP and SSM while G-33 members might have different positions on all other issues.

3.4.3 External Coalition Dynamic: Key Negotiators Moving towards an Integrative Strategy Achieving a Compromise through Rhetorical Entrapment

After analysing the G-33’s internal dynamic, this sub-section will evaluate the G-33’s external dynamic by looking closely at the strategies among key negotiators and overall mode of negotiation. During this period, there were some critical developments similar to the G-20: (a) negotiations leading to the Cancún Ministerial Conference; and (b) negotiations leading to the July Package.

a) The Cancún Ministerial Conference in 2003: Key Negotiators Failed to Achieve a Compromise on the Agriculture Modalities

As illustrated in the formulation of the principle and parameters of SP and SSM, the G-33 envisaged SP and SSM providing greater sovereign autonomy or absolute flexibilities in their application considering the socio-humanitarian importance of these instruments. This initial G-33 position encountered mixed reactions from its negotiating counterparts. During negotiations, the G-33 reiterated its position to demand SP be exempted from tariff cut commitments. WTO members also discussed the criteria and operation for a new SSM. Some members requested a self-selection instrument, while other members wanted selection to be based on objective criteria.442 Reports indicated that several developing countries outside the G-33 indicated their general support with certain conditions, such as Chile, Ecuador, and Paraguay.443 During my interviews, a high-level senior official stated that the US and Australia initially showed a strong resistance to SP and SSM, while the EC was relatively sympathetic. The EC even suggested changing the term from ‘strategic’ to ‘special’ partly because the EC had similar concerns under Sensitive Product.444 In this vein, an anonymous source stated the EC could understand the G-33’s demand for flexibilities and the G-33’s argument

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443 Ibid., 7 and 44; World Trade Organization, "Committee on Agriculture - Special Session - Summary Report on the Twentieth Meeting of the Committee on Agriculture Special Session Held on 18 July 2003 - Note by the Secretariat," TN/AG/R/10: 42-43.
444 WTO delegate from Southeast Asia, interviewed by author, October 21, 2010.
was convincing, well-elaborated, consistent, and a genuine issue for developing countries.\textsuperscript{445}

However, the EC-US joint text caused havoc across developing countries because it reflected a status quo by employing a distributive strategy that largely neglected or at least downgraded the value claims of developing countries, as illustrated in the previous case study. In regard to SP and SSM, the EC-US joint text incorporated the establishment of SSM with a limit for import sensitive tariff lines but excluded SP altogether (Tables 17 and 18).\textsuperscript{446}

Nearing the Cancún Ministerial Conference, the G-33, with 23 countries, highlighted its socio-humanitarian claims and requested absolute flexibilities in the application of the special trade provisions for food security purposes. The G-33 ministerial communique reiterated the significance of SP and SSM for resource-poor and subsistence farmers competing with trade distorting support and subsidies. Some of the G-33’s requests included: self-designation of a certain percentage of tariffs lines as SP with no tariff cuts, no new TRQ commitment, and establishment of SSM for developing countries, which would also be eligible for SP (Tables 17 and 18).\textsuperscript{447}

Many developing countries were unsatisfied with the draft of the ministerial text (in particular the Derbez text) despite efforts to integrate several value claims of key negotiators, such as the US, EC, and G-33, concerning the principles and broad parameters of the SP and SSM. The draft used the EC-US joint text as its foundation for the agriculture text and borrowed concepts from other proposals. For instance, the Derbez text used a blended formula for tariff cuts that was divided into three formulas (Uruguay Round formula, Swiss formula, and 0-5% cut approach), and SP would be included in one of these proposed formulas. The Derbez text also took the G-33’s

\textsuperscript{445} WTO delegate from a developed country, interviewed by author, February 12, 2011; and WTO delegate from a developed country, interviewed by author, March 11, 2011.
\textsuperscript{446} World Trade Organization, "Committee on Agriculture - Special Session - Joint EC-US Paper - Agriculture," JOB(03)/157: 3.
request to establish SSM with certain conditions. It is important to note that the main focus of negotiations was the discussion of a general tariff cut-formula, while flexibilities were still not high in the agenda. In the end, the new ‘Singapore’ issues became the immediate cause of the failure in Cancún, as discussed in Chapter 4, without time being available to discuss agriculture.

At this stage of negotiations, the failure to achieve a compromise meant that the inclusion or exclusion of the SP and SSM in a Doha agreement remained undetermined. The G-33 tried to bring a previously neglected agenda concerning food security issues into the WTO agenda. The SP and SSM would come under market access flexibilities under SDT particularly related to developing countries’ domestic markets. The G-33’s position was to seek absolute flexibilities or full national autonomy to determine the level of flexibilities or policy space. In other words, it attempted to place the developmental principle over the liberal trade principle rather than trying to find a balance between them. Although negotiations on provisions related to flexibilities were not high on the agenda, there was general support or at least there was no strong opposition to the principles of SP and SSM by other negotiating counterparts although the US and EC tried to limit their parameters.

b) The 2004 July Package: Key Negotiators Accepted the G-33’s Socio-Humanitarian Claims and Achieved a Compromise through Rhetorical Entrapment

The failure at Cancún brought greater attention to the value claims of developing countries, in which the US and EC began to move into mixed distributive-integrative strategies and approached key developing countries in an effort to revive the Doha Round. In one of these consultations, the US reached out to the G-33 coordinator. During these consultations, a G-33 high-level senior official argued that developing countries did not possess sufficient resources to provide direct support or subsidy for their farmers. He further asked leading developed countries to sympathise with those resource poor and subsistence farmers and at least give them some ‘hope’ of economic and social stability.

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448 See World Trade Organization, "General Council - Preparations for the Fifth Session of the Ministerial Conference - Draft Cancún Ministerial Text - Second Revision," JOB(03)/150/Rev.2 (September 13, 2003).
449 WTO delegate from Southeast Asia, interviewed by author, October 21, 2010.
In June 2004, the G-33 reiterated its position for greater national autonomy to self-designate products under SP that would not be subject to tariffs or TRQ commitments and to establish SSM, which was also available for SP. These measures were not viewed as a commercial product and therefore did not require an exchange of concessions (Tables 17 and 18).\(^{450}\) In the following month, draft agriculture modalities (known as the Groser text) was circulated, which reflected the G-33’s demand for members to self-designate products under SP without having to undertake TRQ expansion. The text also proposed the establishment of SSM for developing countries.\(^{451}\) A report indicated that proponents in the Cairns Group and several Latin American countries cautioned that SP and SSM could be used as protectionist tools hindering South-South agriculture trade.\(^{452}\)

Despite minor reservations, WTO members eventually accepted the G-33’s socio-humanitarian claims by incorporating SP and SSM into the 2004 July Package with very broad and loose parameters. The July Package mentioned that developing countries would be accorded SP for an appropriate number of products based on criteria of the food security pillars, in which the criteria and treatment would be further negotiated. Similar to the Groser text, SSM would be established without additional detailed parameters (Tables 17 and 18).\(^{453}\) Although the language for the SP and SSM did not go as far as the G-33 proposal, the July Package indicated a compromise of the principles and broad parameters of SP and SSM. The specific parameters and detailed rules were left for subsequent negotiations. The inclusion of SP and SSM, however, indicated that for the first time the WTO rules would allow special trade provisions for food purposes for all developing countries.

This thesis argues that the G-33 exhibited the behaviour of a communicative actor, (the term communicative actor has been defined in Chapter 2), trying to persuade negotiating counterparts using a normative frame and to change the behaviour of its negotiating counterparts to accept the G-33’s socio-humanitarian claims. In this regard,

\(^{453}\) See World Trade Organization, 'Doha Work Programme - Decision Adopted by the General Council on 1 August 2004,' WT/L/579.
the G-33 tried to create a sense of sympathy and even altruism from its negotiating counterparts. As discussed in the internal coalition dynamic, the G-33 used a normative frame by highlighting the need for special trade provisions for food security purposes particularly aimed at subsistence and resource-poor farmers largely located in rural areas. Although the SP and SSM are second best options, tariff instruments are arguably the most viable policy option for most developing countries to address food security concerns.

This thesis further argues that the G-33’s negotiating counterparts, such as the US, EC, and several agriculture exporters, were rhetorically entrapped to accepting the G-33’s socio-humanitarian claims. There were three plausible explanations for the rhetorical entrapment. First, there was no evidence that key negotiators openly opposed the socio-humanitarian principles of SP and SSM despite several efforts to limit their parameters (e.g. EC-US joint text, Derbez text). Further, those sympathisers tended to be at the borderline as they accepted the principles of SP and SSM, but remained cautious and uncertain about specific rules and possible distributional implications. Second, the major powers tried to maintain their reputation as a ‘genuine’ or unbiased actor, which could negotiate on the moral argument behind the SP and SSM, to overcome the negotiation deadlock and to achieve future gains. This is particularly important because after the failure in Cancún the US needed to seriously consider the value claims of developing countries particularly within the closed informal negotiation setting. Third, WTO members achieved a compromise on the principles and broad parameters of SP and SSM (rather than specific rules) that do not reveal their distributive implications. At this stage, agriculture exporters did not have a clear understanding of the distributive implications; nonetheless, they would still be able to direct future technical negotiations to ensure the specific SP and SSM rules would not endanger their commercial interests. This process of rhetorical entrapment was similar to the process when WTO members agreed to a favourable interpretation of the TRIPS flexibilities to implement policy measures in promoting broad public health issues, as opposed to addressing solely emergency situations, as discussed in Chapter 5.

In the context of the liberal trade and developmental nexus, the inclusion of SP and SSM as part of a Doha agreement was monumental because for the first time WTO members achieved a compromise to incorporate flexibilities under SDT for food security purposes. WTO members agreed on the principles and broad parameters of SP
and SSM despite their different levels of internalisation. The inclusion of SP and SSM indicated that non-trade concerns, in this case food security pillars, were placed at the very least on an equal footing to commercial trade concerns. This represents the broader perspective of the trade regime in which the liberalisation process should not generate adverse socio-humanitarian or socio-economic impacts and should take a view of the sustainable development norms. However, the actual levels of flexibilities or policy space remain to be determined and negotiated in the subsequent rule-making and deal-making processes.

3.5 The Group of 33 Negotiating Rules for Food Security Purposes

Based on the agriculture modalities, the G-33 took detailed technical work to translate the principles and broad parameters of SP and SSM into specific rules during the rule-making and near deal-making processes between 2005 and 2010. It is important to note that during the rule-making process a negotiation often begins with the main structure of a subject (e.g. tariff cut-formula under market access), followed by general flexibilities over the main structure (e.g. SP and SSM over tariff cut-formula), and then followed by specific flexibilities over the general flexibilities (e.g. SP and SSM for SVEs). The rule-making process also brought a clearer understanding of the operability of SP and SSM as well as possible commercial implications on WTO members both internally among G-33 members and externally towards agriculture exporters (developed and developing countries). In terms of maintaining the G-33’s cohesion, the diverse interests and preferences among members within a coalition become more important since members have a clearer understanding of the distributive implications and possible cost-sharing arrangements.

The following sub-section investigates the internal dynamic within the G-33 focussing on the G-33’s normative frame based on its socio-humanitarian claims. It will also examine the changing types of leadership exhibited by the G-33 as divergent interests and preferences became more salient. The last sub-section examines the external coalition dynamic focussing on strategies and overall mode of negotiation. Tables 19 and 20 provide key proposals and draft agriculture texts on SP and SSM highlighting the progression of their rule-development process.
3.5.1 Internal Coalition Dynamic: The G-33's Normative Frame and Adapting towards a Strategic-Based Leadership

Specific rules for SP and SSM needed to be developed using well-researched and evidence-based arguments to achieve a consensual understanding. Due to its limited technical capabilities, the G-33 relied on a wider pool of technical resources and expertise compared to the G-20. The G-33 would often lead ideas and take them to UN agencies, inter-governmental organisations, and NGOs for an in-depth analysis, such as the FAO, South Centre, and ICTSD.\textsuperscript{454} The G-33 often developed its arguments through a bottom-up process involving small-scale farmers, local NGOs, and academicians.\textsuperscript{455}

This thesis suggests that the G-33 maintained a normative frame throughout the negotiations in specifying the rules for SP and SSM (Tables 19 and 20). For instance, the G-33 proposal in 2005 re-emphasised that SP constitutes an instrument to achieve the development objective rather than to protect commercial interests. Consequently SP did not require to be exchanged with particular concessions. The G-33 proposed that SP coverage should be at least 20\% of tariff lines based on an illustrative and non-exhaustive list of indicators. The G-33 initially wanted SP treatment to be completely exempted from tariff cuts, but afterward accepted variable tariff cuts (from zero to below 10\% cuts).\textsuperscript{456} Further, the basic structure of SSM was developed based on the SSG. The SSG elements (e.g. coverage, triggers, remedies, duration) were modified into a more lenient safeguard mechanism for developing countries.\textsuperscript{457}

\textsuperscript{454} WTO delegate from Africa, interviewed by author, February 22, 2011.
\textsuperscript{455} Malby, "Centralized Production: The Group of 33," 247.
\textsuperscript{456} See World Trade Organization, "Committee on Agriculture - Special Session - G33 Proposal on Special Products - Communication from G33," JOB(05)/91 (June 3, 2005); World Trade Organization, "Committee on Agriculture - Special Session - Special Products - Contribution by the G-33," JOB(05)/230 (October 12, 2005); World Trade Organization, "Committee on Agriculture - Special Session - G-33 Proposal on the Modalities for the Designation and Treatment of Any Agriculture Product as a Special Product (SP) by Any Developing Country Member - Circulated at the request of Indonesia," JOB(05)/304 (November 22, 2005).
\textsuperscript{457} See World Trade Organization, "Committee on Agriculture - Special Session - G33 Proposal on Special Safeguard Measures - Communication from G3," JOB(05)/92 (June 3, 2005); World Trade Organization, "Committee on Agriculture - Special Session - G-33 Proposal on the Special Safeguard Mechanism for Developing Countries - Circulated at the request of Indonesia," JOB(05)/303 (November 22, 2005); World Trade Organization, "Committee on Agriculture - Special Session - G-33 Proposal on - Article 5 [...] - Special Safeguard Provisions Mechanism for Developing Countries," JOB(05)/263 (October 27, 2005).
<table>
<thead>
<tr>
<th>Coverage</th>
<th>Treatment</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>G-33 (June 2005)</strong></td>
<td>Self-designate with maximum flexibilities; possible SP indicators</td>
<td>Exempt from tariff cuts or TRQ commitments</td>
</tr>
<tr>
<td><strong>G-33 (October 2005)</strong></td>
<td>Products based on illustrative and non-exhaustive list of indicators; Products receiving domestic support and export subsidies</td>
<td></td>
</tr>
<tr>
<td><strong>G-33 (November 2005)</strong></td>
<td>Applicable for all products; Self-designate at least 20% of tariff lines; Products based on illustrative and non-exhaustive list of indicators (17 indicators); Products must fulfil at least one indicator</td>
<td>Tariff cuts varies from no reduction to below 10% depending on the characteristics of the products; Exempt from TRQ commitment or tariff capping;</td>
</tr>
<tr>
<td><strong>Hong Kong Declaration (2005)</strong></td>
<td>Self-designate an appropriate number of products; List of indicators based on the criteria of food security, livelihood security and rural development (food security pillars)</td>
<td></td>
</tr>
<tr>
<td><strong>US (May 2006)</strong></td>
<td>Self-designate no more than 5% tariff lines; Products made domestically; Export products or net exported products are not eligible for SP</td>
<td>A percentage of tariff lines subject to general tariff cuts; A percentage of tariff lines subject to less tariff cuts compared to Sensitive Products; Undertake TRQ expansion with zero duties for in-quota tariffs</td>
</tr>
<tr>
<td><strong>Thailand (May 2006)</strong></td>
<td>Additional indicators: Exempt products from developing countries accounting for a large share of export and import; Exempt products consisting of a percentage of domestic consumption, of agriculture GDP, and of total nutritional value</td>
<td>Lesser tariff cuts, but with a minimum tariff cuts; Undertake TRQ expansion; Impose higher tariffs capping</td>
</tr>
<tr>
<td><strong>G-33 (June 2006)</strong></td>
<td>Self-designate at least 20% tariff lines based on indicators of food security pillars; Products must fulfil at least one indicator</td>
<td>50% of SP no tariff cuts, 25% of SP subject to 5% cuts, and each tariff line no more than 10%; Additional 15% tariff lines would be exempted from tariff cuts under special situations; Exempt from TRQ commitment or tariff capping;</td>
</tr>
<tr>
<td>Countries/Texts</td>
<td>Coverage</td>
<td>Treatment</td>
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<tr>
<td>-----------------</td>
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</tr>
<tr>
<td>Job(06)/199 (June 2006)</td>
<td>Self-designate [at least 20%] or [up to 5%] tariffs lines; Additional list of indicators, such as product produced domestically, percentage of consumption, agriculture GDP etc.]</td>
<td>[50% of SP no tariffs cuts, 25% of SP subject to 5% cuts, and each tariffs line no more than 10%; Additional 15% tariffs lines would be exempted from tariffs cuts under special situations]; [Exempt from TRQ commitment or tariffs capping] or [TRQ expansion]</td>
</tr>
<tr>
<td>Pakistan (April 2007)</td>
<td>Products would be eligible based on a benchmark and a ranking system; Negative list of indicators (e.g. staple food)</td>
<td>All SP subject to tariffs cuts, TRQ expansion, and tariffs capping</td>
</tr>
<tr>
<td>G-33 (March and April 2007)</td>
<td>Narrows list of indicators to 12 indicators; Opposes Pakistan's proposal for a benchmark and a ranking system</td>
<td>Opposes all tariffs cuts, TRQ expansion or tariffs capping</td>
</tr>
<tr>
<td>4th Agriculture Text (1 August 2007)</td>
<td>The percentage of tariffs lines should be higher than Sensitive Products; Self-designation based on list of indicators that are quantified and transparent</td>
<td>Negotiations had not reach a level of convergence that enables a well-developed text, but the text mentioned some of the principles for SSM below</td>
</tr>
<tr>
<td>G-33 (December 2007)</td>
<td>20% tariff lines with a hybrid approach: a percentage would be self-designated and a percentage would use the list of indicators</td>
<td>A tiered approach using three bands subject to different tariff cuts</td>
</tr>
<tr>
<td>Costa Rica et al (April 2008)</td>
<td>8% tariff lines based on list of indicators; Allow to allocate 1% tariff lines (out of the 8% tariff lines) for 'Super Specials' with several conditions</td>
<td>A tiered approach using two bands subject to 25% cuts and 15% cuts; Super Special subject to smaller cuts than above</td>
</tr>
<tr>
<td>4th Agriculture Text Revision 2 (May 2008)</td>
<td>Self-designate [maximum 20% and] minimum 8% tariff lines based on list of indicators</td>
<td>[40%] or [no] tariff lines with zero tariff cuts; The remaining tariff lines subject to an average of 15% cut with minimum 12% and maximum 20% cut</td>
</tr>
<tr>
<td>Table 19. Key Proposals and Draft Agriculture Texts on Special Product (2005-2010) (cont’d)</td>
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</tr>
<tr>
<td><strong>G-33</strong> (June 2008)</td>
<td><strong>Coverage</strong></td>
<td><strong>Treatment</strong></td>
</tr>
<tr>
<td></td>
<td>Self-designate a minimum of 12% tariff lines based on list of indicators</td>
<td>8% tariff lines with zero cut; Non-zero tariff cuts would be subject to 15% average cut with minimum 12% and maximum 20% cut; Exempt from TRQ commitment or tariff capping</td>
</tr>
<tr>
<td><strong>4th Agriculture Text Revision 3 (10 July 2008)</strong></td>
<td>Self-designate 10-18 tariff lines based on list of indicators</td>
<td>6% tariff lines with zero cut; Overall 10-14% average tariff cuts</td>
</tr>
<tr>
<td><strong>Lamy Package (July 2008)</strong></td>
<td>Self-designate 12% tariff lines based on list of indicators</td>
<td>5% tariff lines with zero cut</td>
</tr>
<tr>
<td><strong>G-33, AG, ACP Group, SVEs (July 2008)</strong></td>
<td>Self-designate 15% tariff lines</td>
<td>5% tariff lines with zero cut; Overall average 9% tariff cuts</td>
</tr>
<tr>
<td><strong>4th Agriculture Text Revision 4 (6 December 2008)</strong></td>
<td>Self-designate 12% tariff lines based on list of indicators</td>
<td>5% tariff lines with zero cut; Overall average 11% tariff cuts</td>
</tr>
</tbody>
</table>

Sources: JOB(OS)/91; JOB(OS)/230; WT/MIN(05)/DEC; JOB(06)/137; JOB(06)/135; JOB(06)/173; JOB(06)/189; JOB(06)/199; JOB(07)/35; JOB(07)/53; JOB(07)/46; TN/AG/W/4; TN/AG/GEN/27; JOB(08)/24; JOB(08)/47; TN/AG/W/4/Rev.3; Cherniak (2008); G-33; African Group, ACP, SVEs (2008); TN/AG/W/4/Rev.4

Notes: brackets means still under negotiation at the time
Table 20. Key Proposals and Draft Agriculture Texts on Special Safeguard Mechanism (2005-2010)

<table>
<thead>
<tr>
<th></th>
<th>Coverage</th>
<th>Trigger</th>
<th>Remedy</th>
<th>Duration</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>**G-33 (June and</td>
<td>All agriculture products</td>
<td>Rolling import average in recent 3 years;</td>
<td>A variable of additional duty depending on</td>
<td>Volume-based SSM no longer than 12</td>
<td>Take account of perishable and seasonal products; Ensure transparency</td>
</tr>
<tr>
<td>October 2005)**</td>
<td></td>
<td>A variable of specific numerical volume</td>
<td>volume triggers</td>
<td>months; SSM could be repeated if trigger</td>
<td>with consultation and notification</td>
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<tr>
<td></td>
<td></td>
<td>triggers</td>
<td></td>
<td>met; No specific duration for price-</td>
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<td></td>
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<td></td>
<td>based SSM using shipment-by-shipment</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>basis</td>
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<tr>
<td>**Hong Kong</td>
<td></td>
<td></td>
<td>Volume and price trigger</td>
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<tr>
<td><strong>Declaration (2005)</strong></td>
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<tr>
<td>**G-33 proposals</td>
<td>All agriculture products</td>
<td>Rolling import average in recent 3 years;</td>
<td>A variable of additional duty depending on</td>
<td>Volume-based SSM no longer than 12</td>
<td>Take account of perishable and seasonal products; Ensure transparency</td>
</tr>
<tr>
<td>(March 2006)**</td>
<td></td>
<td>A variable of specific numerical volume</td>
<td>volume triggers</td>
<td>months; No specific duration for price-</td>
<td>with consultation and notification</td>
</tr>
<tr>
<td></td>
<td></td>
<td>triggers</td>
<td></td>
<td>based SSM using shipment-by-shipment</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>basis</td>
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<tr>
<td><strong>US (April 2006)</strong></td>
<td>Limited percentage of products</td>
<td>Larger than 130% of yearly average</td>
<td>Additional duty no greater than 50% of the</td>
<td>Volume-based SSM applied for the</td>
<td>Ensure transparency by notification; Terminated at the end of Doha</td>
</tr>
<tr>
<td></td>
<td>with additional requirements</td>
<td>imports over 36 months or the yearly average</td>
<td>difference between pre-Doha bound tariffs</td>
<td>remainder of calendar year</td>
<td>implementation (transitional measure)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>import between 2002-2004; Market test</td>
<td>and new Doha bound tariffs</td>
<td></td>
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</tr>
<tr>
<td></td>
<td></td>
<td>Equal or smaller than 70% average MFN</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>import price over 36 months or the average</td>
<td></td>
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<td></td>
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<tr>
<td></td>
<td></td>
<td>price between 2002-2004; Market test</td>
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</tr>
</tbody>
</table>
### Table 20. Key Proposals and Draft Agriculture Texts on Special Safeguard Mechanism (2005-2010) (cont’d)

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Trigger</th>
<th>Remedy</th>
<th>Duration</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>APU (21 June 2006)</strong></td>
<td>Limited percentage of products with additional requirements</td>
<td>Base volume level using moving average of most recent 3 year period of MFN import or fixed average MFN import period 2003-2005; Trigger 130% of base volume level</td>
<td>Base price level using moving average of most recent 3 years annual average of MFN import value or fixed average import MFN import value period 2003-2005; Trigger: 30% lower base price level</td>
<td>Additional duty of 20% of the Doha bound tariffs; Capped duty</td>
</tr>
<tr>
<td><strong>Job(06)/199 (22 June 2006)</strong></td>
<td>[All agriculture products] [percentage of tariff lines]</td>
<td>Exceed trigger equal to [130%] of yearly imports for [36 months] or [recent 3 years] certain percentage of domestic consumption</td>
<td>Import price fall below [70%] average [month] or [annual] price for [most recent 3 years] or 70% average price of certain period</td>
<td>Additional duty; [duty shall not exceed certain bound duty]</td>
</tr>
<tr>
<td><strong>4th Agriculture Text (August 2007)</strong></td>
<td>Products produced domestically or its substitutes; SSM for 'special situations'</td>
<td>SSM must not be burdensome; There will be price and volume trigger, but remedies cannot be applied at the same time for the same products; Volume trigger based on data between 3-5 years and invoked around 110% volume increase; Price trigger based on data between 12-18 months</td>
<td></td>
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</tr>
</tbody>
</table>

Negotiations had not reach a level of convergence that enables a well-developed text, but the text mentioned some of the principles for SSM below.
Table 20. Key Proposals and Draft Agriculture Texts on Special Safeguard Mechanism (2005-2010) (cont’d)

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<tr>
<th>Coverage</th>
<th>Trigger</th>
<th>Remedy</th>
<th>Duration</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>4th Agriculture Text Revision 2 (May 2008)</td>
<td>Limited to [3-8] products annually</td>
<td>Rolling average in most recent 3 years; A variable of specific triggers; Cross-checks with price decline; Pro-rating requirement</td>
<td>Import price fall equal to [70%] average month MFN price in recent 3 years with additional rules on exchange rates; Cross-checks with volume decline</td>
<td>Additional duty related to alternative triggers; An option based on G-33’s and agriculture exporters’ related to duty exceeding pre-Doha Round tariffs (except for LDCs)</td>
</tr>
<tr>
<td>G33 (June 2008)</td>
<td>A certain percentage of tariff lines rather than certain number of products</td>
<td>Most recent 3 years period for which data is available</td>
<td>Trigger price should only be publicly disclosed and available following its initial use; Non-mandatory cross-checks rules</td>
<td>Additional duty above pre-Doha bound tariffs should be applicable for all developing countries</td>
</tr>
</tbody>
</table>
Table 20. Key Proposals and Draft Agriculture Texts on Special Safeguard Mechanism (2005-2010) (cont’d)

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Trigger Coverage</th>
<th>Trigger Price-based</th>
<th>Remedy Volume-based</th>
<th>Remedy Price-based</th>
<th>Duration</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>4th Agriculture Text Revision 3 (July 2008)</td>
<td>All agriculture products, but price- and volume-based SSM could not be simultaneously invoked</td>
<td>Rolling average in most recent 3 years; A variable of specific triggers; Cross-checks with price decline; Pro-rating requirement</td>
<td>Import price fall equal to 80% average monthly price in recent 3 years with additional rules on exchange rates; Cross-checks with volume decline</td>
<td>Additional duty related to alternative triggers; [a special provision limiting duty exceeding pre-Doha bound tariffs]</td>
<td>Volume-based SSM a maximum period of 1 year except for seasonable products (maximum 6 months); Volume-based SSM could be invoked a maximum of 2 consecutive periods</td>
<td>TRQ imports counted as volume trigger; transparency provisions; flexibilities for LDCs; [flexibilities for SVEs]</td>
</tr>
<tr>
<td>Lamy Package (July 2008)</td>
<td>Volume-based SSM: SSM would be triggered when sudden imports account for 140% or more, and then additional duties could be imposed of 15% above pre-Doha bound tariffs</td>
<td>Import price fall equal to 90% average monthly price in recent 3 years; Non-mandatory cross-checks</td>
<td>Alternative remedies for additional duty exceeding pre-Doha bound tariffs</td>
<td>Opposes limitation for seasonable products, limitation of two consecutive implementations, and limitation of using only one implementation period when pre-Doha bound rate is breached</td>
<td></td>
<td></td>
</tr>
<tr>
<td>G-33, AG, ACP Group, SVEs (July 2008)</td>
<td>Rolling average in the preceding 3 years which data are available</td>
<td>Import price fall equal to 90% average monthly price in recent 3 years; Non-mandatory cross-checks</td>
<td>Alternative remedies for additional duty exceeding pre-Doha bound tariffs</td>
<td>Opposes limitation for seasonable products, limitation of two consecutive implementations, and limitation of using only one implementation period when pre-Doha bound rate is breached</td>
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</tbody>
</table>
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<tr>
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<th>Remedy</th>
<th>Duration</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>4th Agriculture Text Revision 4 or Rev.4 (December 2008)</strong></td>
<td>All agriculture products, but price- and volume-based SSM could not be simultaneously invoked</td>
<td>Rolling average in most recent 3 years; A variable of specific triggers; Cross-checks with price decline; Pro-rating requirement</td>
<td>Import price fall equal to 85% average monthly price in recent 3 years; Cross-checks with volume decline</td>
<td>Additional duty related to alternative triggers; [A special provision limiting duty exceeding pre-Doha bound tariffs]</td>
</tr>
<tr>
<td><strong>TN/AG/W/7 or W/7 (December 2008)</strong></td>
<td>2.5% tariff lines annually</td>
<td>Rolling average in most recent 3 years; A variable of specific triggers to invoke additional duty above pre-Doha bound rate; Cross-checking with price decline; A post-implementation panel of export review</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>G-33 (February 2009)</strong></td>
<td>Specific rules to provide additional flexibilities for SVEs: A variable of trigger and remedy for SVEs, including additional duty exceeding pre-Doha bound tariffs</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Table 20. Key Proposals and Draft Agriculture Texts on Special Safeguard Mechanism (2005-2010) (cont’d)

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Trigger</th>
<th>Remedy</th>
<th>Duration</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Volume-based</td>
<td>Price-based</td>
<td>Volume-based</td>
<td>Price-based</td>
</tr>
<tr>
<td>G-33 (January, February and March 2010)</td>
<td>Technical analysis against cross-checking; MFN basis only</td>
<td>Technical analysis: SVEs are more vulnerable to import surge and therefore needs more flexible SSM (e.g. lower trigger, higher remedies, higher tariff lines)</td>
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<tr>
<td>G-33 (March 2010)</td>
<td>Technical analysis: SVEs are more vulnerable to import surge and therefore needs more flexible SSM (e.g. lower trigger, higher remedies, higher tariff lines)</td>
<td>Technical analysis on volume-based SSM: Simple volume triggers could trigger large majority of lines, impede normal trade, and used almost every year; Supports TN/AG/W/7</td>
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<tr>
<td>Australia and Canada (July 2010)</td>
<td>Products undertaking tariff cuts</td>
<td>Products undertaking tariff cuts</td>
<td>Products undertaking tariff cuts</td>
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<td>Costa Rica (September 2010)</td>
<td>Products undertaking tariff cuts</td>
<td>Products undertaking tariff cuts</td>
<td>Products undertaking tariff cuts</td>
<td>Products undertaking tariff cuts</td>
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<tr>
<td>Ukraine (September 2010)</td>
<td>Products undertaking tariff cuts</td>
<td>Products undertaking tariff cuts</td>
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<td>Products undertaking tariff cuts</td>
</tr>
</tbody>
</table>

Sources: JOB(05)/52; JOB(05)/263; WT/MIN(05)/DEC; JOB(06)/64; JOB(06)/120; JOB(06)/197/rev 1; JOB(08)/47; TN/AG/W/4/Rev.3; Cherniak (2008); G-33, African Group, ACP, SVEs (2008); TN/AG/W/4/Rev.4; TN/AG/W/7; TN/AG/GEN/29; TN/AG/GEN/30; JOB/AG/4; JOB/AG/5; JOB/AG/7; JOB/AG/6; JOB/AG/13; JOB/AG/10; JOB/AG/14

Notes: brackets means still under negotiation at the time
The G-33 had to adapt from a knowledge-based leadership leaning towards a strategic-based leadership. Externally, the G-33’s knowledge-based leadership became more difficult to sustain because of increasing pressure from agriculture exporters. As a result, the G-33 needed to exert a form of strategic-based leadership because negotiations needed innovative solutions and points of mutual gains to achieve a lowest common denominator.

In parallel to its external need, the G-33’s strategic-based leadership became more salient considering the heterogeneity of G-33 members became a challenge in maintaining the coalition’s unity.\textsuperscript{458} By the end of 2005, the G-33 grew to include 45 members consisting of members from various coalitions: the AG, ACP Group, LDCs Group, RAMs, and SVEs. As the negotiations progressed, the G-33 had to accommodate the diverse interests and preferences of sub-groups within the coalition. LDCs were mainly concerned with SSM because they are exempted from Doha tariff cut commitments. RAMs, such as China, undertook substantial tariff cuts during their accession process and therefore had limited tariff overhangs (or ‘water’ between applied and bound tariffs) compared to older WTO members. Moreover, individual members had different levels of economic development, technical capabilities, and in turn different perceptions of the levels of flexibilities required.

In maintaining the G-33’s cohesion, the evidence indicates a form of arguing through communicative action within the coalition. The G-33 members were largely willing to adjust their national interests and preferences with the collective interests and preferences of the coalition. On many occasions, G-33 members sympathised with fellow members by accepting a certain degree of loss. For instance, the G-33 maintained the lowest benchmark among G-33 members when negotiating for the number of tariff lines under SP even though some member were willing and able to provide further concessions; thus, reducing the coalition’s bargaining leverage. In addition, the G-33 supported additional flexibilities for LDCs, RAMs, and SVEs.\textsuperscript{459} Despite different interests and preferences among members, the G-33 mostly maintained a cohesive coalition and a common platform on SP and SSM. The close solidarity among members was also reflected among the G-20’s members during agenda-setting and modalities-

\textsuperscript{458} WTO delegate from Southeast Asia, interviewed by author, September 15, 2010.  
\textsuperscript{459} WTO delegate from Southeast Asia, interviewed by author, September 15, 2010.
setting processes between countries with varying positions on market access, as discussed earlier, and among the Core Group’s and G-90’s members between countries with more-advanced and less-advanced trade facilitation capacities during the rule-making process (as discussed in Chapter 4).

The internal pressure escalated in 2007 when Pakistan—a member of the G-33—tried to bridge differences or test the boundaries between the G-33 and agriculture exporters. Pakistan released an individual proposal on SP prior to hosting a Cairns Group meeting in Lahore. The other G-33 members were very disappointed because Pakistan’s proposal reflected the position of the Cairns Group rather than the G-33. The G-33 (excluding Pakistan) issued a response criticising Pakistan’s proposal that primarily adopted a commercial perspective (suitable for Sensitive Products) rather than a developmental perspective. One of the harshest criticisms was that the proposal implicitly was guilty of “penalizing a country which has a large number of poor farmers producing diverse agriculture products at subsistence level and thus needs larger number of Special Products...the proposal seeks increasing penalties for higher poverty in a country”.

3.5.2 External Coalition Dynamic: A Normative Frame versus an Instrumental Frame Achieving a Partial Compromise through Bargaining

After evaluating the G-33’s internal dynamic, this sub-section examines the external relations related to the G-33. During the rule-making process, initial negotiations on market access were mainly focussed on the main tariff cut-formula and there was relatively less tension in negotiating SP and SSM. The 2005 Hong Kong Declaration simply agreed that developing countries could self-designate a number of SP guided by...
indicators, and SSM would be based on quantity and price triggers without providing more specific guidance (Tables 19 and 20).463

There were critical developments during the rule-making and near deal-making processes: (a) the intensifying negotiations in 2006; (b) the chairperson assessment in 2007; (c) the Geneva mini-ministerial meeting in 2008; and (d) the post-2008 negotiations.

a) Negotiations in 2006: Socio-Humanitarian Claims versus Commercial Claims

The principles and broad parameters of SP and SSM in the July Package and Hong Kong Ministerial Declaration made technical negotiations more important and complex. Potential distributive outcomes became clearer as negotiations touched upon more detailed rules and proposals. Key negotiators on SP and SSM could be differentiated into two main sides: (1) the G-33 tried to maintain robust instruments with less stringent requirements and generous treatments;464 and (2) the US and a handful of agriculture exporters weighed-in their agriculture commercial interests by calling for stricter requirements and treatments to minimise adverse impacts to their commercial interests.

i. Special Product

SP negotiations focussed on coverage and treatment. With regard to SP coverage, the chairperson noted that some members (notably the G-33) sought for an illustrative and non-exhaustive list of indicators, while exporters wanted a list that served as a filter. However, the chairperson questioned the G-33’s position to designate at least 20% tariff lines. According to a WTO simulation this G-33 position might cover a country up to 98.4% and another country up to 94% of their value of import trade. This would be similar to LDC’s entitlement of no tariff cuts.465

464 The G-33 consisted of Antigua and Barbuda, Barbados, Belize, Benin, Botswana, China, Cote d’Ivoire, Congo, Cuba, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, India, Indonesia, Jamaica, Kenya, Korea, Mauritius, Mongolia, Montserrat, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, The Philippines, Peru, Saint Kitts, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sri Lanka, Suriname, Tanzania, Trinidad and Tobago, Turkey, Uganda, Venezuela, Zambia, and Zimbabwe.
In response, the G-33 reiterated that SP should not be viewed using a commercial perspective. SP and Sensitive Products address completely different objectives and production conditions.\textsuperscript{466} The G-33 re-emphasised the developmental nature of SP and continued to argue that SP should be exempted from TRQ expansion and tariff capping, and be eligible for SSM.\textsuperscript{467} It also maintained its position that SP should cover at least 20% tariff lines with a variable of tariff cut commitments.\textsuperscript{468}

Agriculture exporters tried to add conditions on products eligible for SP and to limit SP treatments. The US, for instance, demanded SP only cover 5% tariff lines with additional conditions (e.g. only domestic and non-export products) and SP should include market compensation with TRQ commitments similar to the rules for Sensitive Products.\textsuperscript{469} Thailand used the argument that its poor and vulnerable farmers rely on market access opportunities for a few export products. For this reason, it called for additional conditions, such as exempting export products from developing countries. In addition, SP should only serve as a transitional instrument rather than permanent flexibilities for food security purposes.\textsuperscript{470}

\textit{ii. Special Safeguard Mechanism}

SSM negotiations had more moving parts, such as coverage, volume-based and price-based SSM related to their triggers and remedies, and duration. The G-33 and agriculture exporters, such as the US and a collective proposal by the APU, released their SSM proposals (Table 20).\textsuperscript{471} As mentioned earlier in this chapter, the APU countries—Argentina, Paraguay and Uruguay—were also members of the G-20 and the APU proposal was released partly because G-20 members could not reach a consensual understanding on specific rules for SSM.

\begin{footnotesize}
\begin{enumerate}
\item World Trade Organization, "Committee on Agriculture - Special Session - G-33 Contribution on the Chairman's Reference Paper on Special Products," JOB(06)/143 (May 11, 2006).
\item World Trade Organization, "Committee on Agriculture - Special Session - G-33 Contribution on the Modalities for the Designation and Treatment of Any Agriculture Product as a Special Product (SP) by Any Developing Country Member," JOB(06)/173 (June 7, 2006).
\item The G-33 proposed SP treatment should vary zero cuts for 50% of SP, 5% tariff cuts for 25% of SP, and no more than 10% tariff cuts for each tariff line. See ibid.
\item World Trade Organization, "Committee on Agriculture - Special Session - United States Communication on Special Products," JOB(06)/137 (May 3, 2006).
\item World Trade Organization, "Committee on Agriculture - Special Session - Thailand Paper on Special Products," JOB(06)/135 (May 2, 2006).
\item The G-20 tried to discuss specific rules on SSM, but could not achieve a convergence. APU proposal reflected the divergent views among G-20 members on SSM. Nonetheless, G-20 members, particularly Brazil, tried to tone down divergent positions among G-20 members.
\end{enumerate}
\end{footnotesize}
In negotiating SSM coverage, the G-33 felt that SSM should be extended to all agriculture products, while exporters wanted a limited percentage of tariff lines with additional conditions. On volume-based SSM, the G-33 proposed a trigger using a rolling average of the most recent three years, while exporters wanted a fixed based period (the US proposed 2002-2004, APU proposed 2003-2005). The rolling average represents recent and dynamic data but reflects a less certain trigger base, while a fixed based period represents static data but reflects a more certain trigger base. The G-33 wanted to include non-MFN products, while exporters wanted only MFN products.\textsuperscript{472} The G-33 also proposed volume-based SSM using a variable of trigger related to a variable of remedies. For instance, if average imports volume is higher than 105% and lower than 110%, the SSM remedy would be a 50% maximum duty or 40 percentage points of bound tariffs, whichever is higher. In contrast, exporters wanted a limited additional duty based on a proportion of applied tariffs (rather than bound tariffs) and a tariff cap on remedies, such as pre-Doha bound tariffs (or Uruguay Round bound tariffs). Moreover, the G-33 wanted a 12 month period after its application, while exporters wanted to limit SSM application at the end of a calendar or marketing year.\textsuperscript{473}

On price-based SSM, the G-33 requested to use a monthly average import price of the most recent three years, while exporters wanted a longer average period. For instance, the US wanted an average import price over 36 months or average import price in 2002-2004. A shorter average period would likely detect shorter and sudden surges, while a longer average period would less likely detect these surges. With regard to remedies, the G-33 wanted an additional duty consisting of differences between import price and trigger price. Some agriculture exporters suggested half of the

\textsuperscript{472} The G-33 argued that SP should be self-designated. It means the choice of using or not using non-MFN products would be determined by any individual country. Non-MFN products include products under TRQ import, preferential agreements and other concessional agreements.

\textsuperscript{473} See World Trade Organization, "Chair's Reference Paper — Special Safeguard Mechanism," April 26, 2006, www.wto.org/english/tratop_e/agric_e/ref_paper_ssm_e.doc (accessed February 1, 2013). For detailed positions of the G-33 and agriculture exporting countries, see also World Trade Organization, "Committee on Agriculture - Special Session - G-33 Proposal on Article 5 [...] - Special Safeguard Provisions Mechanism for Developing Countries," JOB(06)/64 (March 23, 2006); World Trade Organization, "Committee on Agriculture - Special Session - United States Communication on Special Agricultural Safeguard (SSG) and the Special Safeguard Mechanism (SSM) - [...]of the Agreement on Agriculture," JOB(06)/120 (April 24, 2006); World Trade Organization, "Committee on Agriculture - Special Session - G-33 Contribution on the Special Safeguard Mechanism (SSM) for Developing Country Members," JOB(06)/174 (June 7, 2006); World Trade Organization, "Committee on Agriculture - Special Session - Revised Consolidated Reference Paper on Possible Modalities on Market Access - SSM: Some Unanswered Technical Issues - Revision," JOB(06)/197/Rev.1 (June 21, 2006).
difference between pre-Doha bound tariffs and Doha bound tariffs, while others suggested a tariffs cap to pre-Doha bound tariffs.\textsuperscript{474}

The chairperson released an agriculture text on July 2006 that basically integrated the value claims of key negotiators (Tables 19 and 20).\textsuperscript{475} Eventually negotiations were suspended partly because the gap among WTO members was too wide.\textsuperscript{476}

This thesis suggests that the negotiations resembled an interaction between a communicative actor and a rhetorical actor, as discussed in Chapter 2. The communicative actor, however, failed to convince the rhetorical actor and cooperation failed. On the one hand, the G-33 kept arguing through communicative action by highlighting the socio-humanitarian nature of SP and SSM. A G-33 delegate mentioned that it was hard to negotiate with export-oriented developing countries because they were mainly concerned with market costs.\textsuperscript{477} On the other hand, agriculture exporters were bargaining through rhetorical action by highlighting possible costs for exporters (market constrain or uncertainty or temporary closure) and compensation for lost market access. Agriculture exporters therefore wanted similar rules to Sensitive Products, such as stricter conditions, TRQ expansion, and tariff capping. An agriculture exporter delegate stated that flexibilities provide a longer transition period in order for countries to compete in an open market and reiterated that the WTO is a liberalisation organisation rather than a social organisation.\textsuperscript{478}

\textit{b) The Chairperson's Assessments in 2007: Pushing the G-33 into an Integrative Strategy towards the Commercial Claims of Agriculture Exporters}

In 2007, the G-33 and agriculture exporters mostly maintained their value claims indicating a strict distributive strategy. The chairperson attempted to move negotiations forward but many of his assessments tended to favour the commercial claims of agriculture exporters.

\textsuperscript{474} Ibid.
\textsuperscript{475} See World Trade Organization, "Committee on Agriculture - Special Session - Draft Possible Modalities on Agriculture," JOB(06)/199; World Trade Organization, "Committee on Agriculture - Special Session - Draft Possible Modalities on Agriculture - Corrigendum," JOB(06)/199/Corr.1.
\textsuperscript{476} World Trade Organization, "Committee on Agriculture - Special Session - Negotiations on Agriculture - Report by the Chairman, H.E. Crawford Falconer, to the General Council," TN/AG/23.
\textsuperscript{477} WTO delegate from Southeast Asia, interviewed by author, October 1, 2010.
\textsuperscript{478} WTO delegate from Latin America, interviewed by author, March 3, 2011.
i. Special Product

On SP coverage, negotiations focussed on a list of indicators, but later moved to limiting the number of tariff lines. The G-33 narrowed the list to 12 indicators in March 2007.\textsuperscript{479} However, agriculture exporters (the US, Australia, and Thailand) remained unconvinced that the list would not hinder market access and favoured ‘publicly available data’ or ‘internationally verifiable data’.\textsuperscript{480}

In moving the negotiations forward, the chairperson asked members to ‘horse-trade’ on SP coverage. He suggested around 5-8\% tariff lines (the US proposed 5\% and the G-33 proposed at least 20\%) but recognised that some members might need a legitimately higher percentage. Similar to the demands of agriculture exporters, the chairperson believed that indicators should be transparent, predictable, and open for observation or verification. The chairperson further proposed SP treatment to range between 10\% to 20\% tariff cuts (rather than the G-33’s zero to below 10\% cuts).\textsuperscript{481} By August 2007, a fourth draft agriculture text indicated that the G-33 was finalising the indicators and recommended additional flexibilities for RAMs and SVEs (Table 19).\textsuperscript{482}

In a small group meeting of senior officials in September 2007, a report indicated that the US was very vocal against the degree of protection under SP that it believed could cover almost all products. Several agriculture exporters reiterated their demand for verifiable and international data. Malaysia doubted these indicators would address its concerns about market constraints on its palm oil export to India.\textsuperscript{483}

\textsuperscript{479} The G-33 underwent a bottom-up process in determining the list of indicators mainly from a developmental perspective. The list of indicators include: staple foods or basic food basket, significant proportion of domestic consumption, significant proportion of total agriculture population or rural labour force, significant proportion of total value of agriculture production or income of households, and products under Amber or Blue Box. See World Trade Organization, "Committee on Agriculture - Special Session - G-33 Contribution on the Indicators Guiding the Designation of Any Agriculture Product as a Special Product (SP) by Any Developing Country Member," JOB(07)/35 (March 28, 2007). See also Malby, "Centralized Production: The Group of 33," 253-58.

\textsuperscript{480} See World Trade Organization, "Communication from the Chairman of the Committee on Agriculture Special Session," 23-26.

\textsuperscript{481} World Trade Organization, "Committee on Agriculture - Special Session - Revised Draft Modalities for Agriculture," TN/AG/W/4:17.


In my interviews, these points were confirmed by delegates. A G-33 delegate stated that the process of measuring indicators was a ‘nightmare’ and members focussed instead on tariff lines.\footnote{WTO delegate from Caribbean, interviewed by author, March 4, 2011.} An interviewee from a developed country stressed that it needed certainty regarding which products would be designated for SP, probably in confidentiality, but the list of indicators could not provide such certainty.\footnote{WTO delegate from a developed country, interviewed by author, March 29, 2011.} Another delegate indicated that SP initially used a soft indicator (illustrative list), but then needed harder indicators (exact tariff lines percentage).\footnote{WTO delegate from a developed country, interviewed by author, February 12, 2011.}

By October 2007, the chairperson indicated possible options for SP treatment, such as a tiered formula with a lower proportion of SP subject to heavier protection or even tariff cut exemptions.\footnote{World Trade Organization, "Committee on Agriculture - Special Session - G-33 Proposal on Special Products," TN/AG/GEN/27 (December 17, 2007).} In response, the G-33 tried to take the chairperson’s value claim by proposing a hybrid approach (some percentage self-designated and others using indicators) despite maintaining SP coverage at 20% tariff lines. SP treatment used a tiered approach with additional flexibilities for RAMs. In addition, the G-33 proposed converting unused Sensitive Products to SP (Table 19).\footnote{World Trade Organization, "Communication from the Chairman of the Committee on Agriculture, Special Session --- Second Instalment," May 25, 2007, 3-4, www.wto.org/english/tratop_e/agric_e/agchairtxt_25may07_e.doc (accessed February 1, 2013).}

\textit{ii. Special Safeguard Mechanism}

In May 2007, the chairperson conveyed his observation on SSM negotiations that reflected many positions of agriculture exporters. The chairperson implied that SSM status should not be eligible to all agriculture products, and on a volume-based SSM trigger and remedy he favoured a single trigger and remedy rather than the G-33’s variable triggers and remedies. The G-33 wanted SSM to last for 12 months after its application, while the chairperson believed SSM should cease at the end of the calendar year so that SSM would not reduce the annual average imports calculation in the following period. On price-based SSM, the chairperson also favoured a trigger using the difference between import price and trigger price, and using an annual average in
contrast to the G-33’s position. Overall, the chairperson stressed that SSM should be applicable under genuine special circumstances and not hinder normal trade.\(^{489}\)

In August 2007, a fourth draft agriculture text mentioned that SSM was not sufficiently well-developed for a precise text (Table 20). It mainly reflected the chairperson’s observation that a volume-based SSM trigger should be around 110% based on three or five year periods (rather than the G-33’s variable triggers and remedies based on the most recent three rolling years), while price-based triggers should use a period around 12-18 months (rather than the G-33’s monthly average imports).\(^{490}\)

In response, the G-33 clarified that the term ‘special’ refers to a ‘special safeguard for agriculture’ in comparison to a ‘normal safeguard provision’ but does not apply to ‘special circumstances’. The G-33 repeated its position regarding SSM’s coverage, triggers and remedies, and duration.\(^{491}\)

During negotiations in September 2007, a small group of members discussed various elements of SSM. One of the major sticking points was concerns that remedies would exceed pre-Doha bound tariffs.\(^{492}\) In a follow-up discussion, several agriculture exporters put forward ideas of cross-checking between volume-based and price-based triggers to ensure SSM would not be easily invoked.\(^{493}\)

Given the empirical evidence, this thesis suggests that exporters were still unpersuaded by the G-33’s communicative action, and in turn, the G-33 exerted a form of rhetorical action. In SP negotiations, the G-33 and agriculture exporters began to put aside the list of indicators and horse traded the number of tariff lines and SP treatments. In SSM negotiations, each side maintained its preferences and employed a distributive strategy without taking many value claims of its negotiating counterparts. Agriculture exporters began to pile extra conditions on SSM with the intention of minimising the use of SSM and in turn minimise potentially adverse impacts on their commercial

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\(^{490}\) G-33, "G-33 Non-Paper on Special Safeguard Mechanism," (October 25, 2007).

\(^{491}\) International Centre for Trade and Sustainable Development, "AG Negotiators Discuss Market Access Exceptions As ‘Core Group’ Intensifies Work."


interests. Negotiations had moved to purely commercial considerations rather than safeguarding food security pillars in developing countries.

c) The Geneva Mini-Ministerial Meeting: Key Negotiators Moving to Mixed Distributive-Integrative Strategies towards a Partial Compromise through Bargaining

Previously SP and SSM negotiations were treated in isolation but at this stage they were viewed as part of a package deal or single undertaking.\(^{494}\) Negotiations on support and subsidies began to mature, and market access issues became more salient. SP and SSM (and Sensitive Products) were viewed as purely commercial flexibilities affecting market access rather than flexibilities for food security purposes. Negotiations emphasised limiting flexibilities and ensuring market access. In addition, agriculture market access would be horizontally linked to the level of subsidies cuts and manufacturing market opportunities. By the end of 2008, WTO members finally agreed on SP, but could not reach a compromise on SSM.

i. Special Product

In early 2008, the chairperson issued a working document to kick-start negotiations. The document suggested that SP coverage would be around 7-12% tariff lines. SP would undertake a 20% overall average cut with a 15% minimum and 25% maximum cut. In addition, a smaller category of ‘super specials’ would be subject to lesser tariff cuts (rather than zero cut). It proposed 2-5% tariff lines as ‘super specials’ and subject to 5% overall average cut with no minimum and a 10% maximum cut. The document also proposed additional flexibilities for SVEs and RAMs.\(^{495}\)

By April 2008, agriculture exporters (Australia, Canada, Costa Rica, Malaysia, New Zealand, Paraguay, Thailand, US, and Uruguay) consolidated their efforts (Table 19). They proposed SP to cover 8% tariff lines. SP treatments would be divided into two tiers. The first tier represents 4% tariff lines with 25% tariff cuts and the second tier would account for 4% tariff lines with 15% tariff cuts. ‘Super specials’ would account for only 1% tariff lines and its treatment would be lesser cuts, as part of the 4% second

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\(^{494}\) WTO delegate from Caribbean, interviewed by author, March 4, 2011.

\(^{495}\) World Trade Organization, “Committee on Agriculture - Special Session - Elements of Special Product Modalities - Communication from Australia, Canada, Costa Rica, Malaysia, New Zealand, Paraguay, Thailand, United States and Uruguay,” JOB(08)/24 (April 8, 2008).
tier. Several strict conditions were added for super specials. The proposal neither accommodated the G-33’s demand for zero cuts nor the list of indicators.496

The second revision of the fourth agriculture text in May 2008 mainly followed the basic positions of the G-33 and agriculture exporters (Table 19).497 In June 2008, the G-33 responded by taking into account the chairperson’s proposed structure. SP would cover a minimum of 12% tariff lines. SP treatments would be zero cut for 8% tariff lines and non-zero tariff cuts subject to a 15% overall average cut with a 12% minimum and 20% maximum cut. The G-33 also suggested flexibilities for RAMs, SVEs, and a conversion of unused Sensitive Products to SP (Table 19).498 Initially, G-33 members from the AG were persistent with a 20% tariff lines limit while other G-33 members would settle for 10-15% tariff lines. Fellow G-33 members eventually convinced the AG members that lowering tariff lines would be sufficient to cover their products that were vital to food security.499

In preparation for the Geneva mini-ministerial meeting in 2008, a third revision of the agriculture text narrowed down the quantitative and binding commitments. SP coverage was set at 10-18% tariff lines and subject to a zero cut for 6% tariff lines and non-zero tariff cuts would undertake 10-14% overall average cuts (Table 19).500 As previously mentioned in the G-20 case study, in the final hours of the mini-ministerial meeting the Lamy Package was introduced during the small group meeting among FIPs Plus. SP and SSM were no longer discussed in isolation but calculated as part of an overall Doha agreement. During the meeting, the Lamy Package proposed SP to cover 12% tariff lines, in which 5% tariff lines would be subject to a zero cut, and RAMs would be extended to 13% tariff lines (Table 19). The mini-ministerial meeting did not discuss SP in great detail, but focused instead on SSM. The small group meeting could not achieve a compromise on SSM and consequently the negotiation broke down as discussed later.

497 World Trade Organization, "Committee on Agriculture - Special Session - G-33 Submission on SPS and SSM - Draft Agriculture Modalities," JOB(08)/47 (June 4, 2008).
After the break down, the G-33 together with the AG, ACP Group, and SVEs issued a joint statement affirming their position by calling for SP to cover 15% tariff lines with a zero cut for 5% tariff lines and non-zero cuts SP would be subject to 9% overall average cuts. It proposed RAMs to cover 1% more tariff lines and 1% less overall average cuts (Table 19).\textsuperscript{501}

In the follow-up negotiations during the second half of 2008, the G-33 generally accepted the fourth revision of the fourth agriculture text (hereinafter ‘Rev 4’) in December 2008 despite reservations by smaller countries in the G-33 to move their position on the amount of tariffs lines coverage.\textsuperscript{502} The Rev 4 indicated that SP would cover 12% tariff lines based on indicators. On SP treatment, zero cuts to 5% tariff lines and non-zero cuts would be subject to an 11% overall average cut. SP for RAMs would cover 13% tariff lines and non-zero tariff cuts subject to a 10% overall average cut, while SVEs would be extended to additional flexibilities (Table 19).\textsuperscript{503} The SP was therefore mostly stabilised. According to an anonymous source, a small group of countries discussed in-confidence products, which would be categorised as SP and, as a result, the G-33 and agriculture exporters eventually reached a compromise on the specific rules for SP.\textsuperscript{504}

This thesis suggests that the G-33 failed to persuade agriculture exporting countries and, instead, engaged in bargaining through rhetorical action. The stabilisation of the SP was possible as competing sides moved into mixed distributive-integrative strategies working to achieve a lowest common denominator. The G-33 tried to maximise SP coverage (in terms of tariff lines) and treatments, while agriculture exporters attempted to minimise SP coverage and treatments; thus maximising their agriculture commercial interests. Negotiations did not revolve around the effectiveness or possible outcomes of ensuring food security pillars, but revolved around providing clarity and certainty of possible distributive implications for the commercial interests of agriculture exporters. The outcome meant that SP proponents had to water down their expectations for absolute flexibilities in determining SP coverage and treatment, while agriculture exporters accepted a lesser degree of new market opening.

\textsuperscript{502} WTO delegate from Southeast Asia, interviewed by author, March 23, 2011.
\textsuperscript{504} WTO delegate from a developed country, interviewed by author, March 29, 2011.
ii. **Special Safeguard Mechanism**

SSM negotiations proved harder to settle compared to SP because SSM generates greater market risks and uncertainties compared with SP. The G-33 wanted the most flexible or lenient safeguard instrument, while agriculture exporters preferred a strict safeguard instrument. In 2008, agriculture exporters succeeded in adding sophisticated and complex technical conditions to ensure SSM would not be easily invoked.

A second revision of the fourth agriculture text in May 2008 tried to accommodate members’ divergent views. SSM coverage would be no more than three to eight products annually. In accordance with the G-33’s position, volume-based SSM used the rolling average in the most recent three years with a variable of triggers, while price-based SSM used the monthly import price average in the most recent three years. In accommodating the commercial claims of agriculture exporters, pro-rating was introduced as an additional condition that served as a floor mechanism to trigger SSM. Additional cross-checks between volume-based and price-based SSM were added. The duration for volume-based SSM remedy would still be a maximum of 12 months except for seasonable products that could be limited to six months. Further, exporters proposed all additional duty be capped at pre-Doha bound tariffs except for LDCs (Table 20).\(^{505}\)

In response to the agriculture text, the G-33 indicated that it favoured SSM coverage to use a percentage of tariff lines instead of a limited number of products. It wanted a less binding language for a non-mandatory cross-checking trigger. The coalition reiterated its position opposing a seasonal limitation. The G-33 believed that access to remedies exceeding pre-Doha bound tariffs should be accorded to all developing countries and not limited to LDCs and that additional flexibilities should also be accorded to SVEs (Table 20).\(^{506}\)

In preparation for the mini-ministerial meeting a third revised agriculture text was issued that made minor amendments, such as SSM would cover all products as requested by the G-33 and tariff caps at a pre-Doha bound tariffs was maintained in

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\(^{505}\) World Trade Organization, "Committee on Agriculture - Special Session - G-33 Submission on SPS and SSM - Draft Agriculture Modalities," JOB(08)/47.

\(^{506}\) See ibid.
brackets (Table 20).\textsuperscript{507} The negotiations on SSM during the FIPs meeting became central to the overall negotiation process. With regard to the SSM, the Lamy Package proposed the volume-based SSM trigger be set at 140% before developing countries were able to apply additional duty exceeding pre-Doha bound tariffs by 15% of bound tariffs or 15 percentage points, whichever is higher (Table 20).\textsuperscript{508}

India and China became the voice of the G-33 in the small group meeting because they were the only representatives of the Group present. The US was uncertain with the package and China seemed supportive but India strongly opposed it. The US wanted to isolate India, but China together with other G-33 members later sided with India. Pascal Lamy perceived that the problem was a technical matter. As a result, a second version was introduced without a new trigger, but the remedy would be applied if imports created ‘demonstrable harm’ to food security pillars and a Permanent Group of Experts (PGE) would be established in case of a dispute. The decision of a PGE would be binding and not subject to any appeal. India was willing to negotiate this idea, but the US was unwilling. A third version was finally introduced by Jean-Luc Demarty, an EC senior official, using a variable of triggers (ranging between 115-140%) with a variable of remedies (similar to the G-33 proposal). SSM would be limited to an annual use of 2.5% tariff lines with cross-checking mechanisms. Developing countries would be allowed higher remedies if prices dropped dramatically (ranged between 7.5-15%) for only 1% tariff lines. While India and China indicated some reservations, the US immediately rejected this latest version, while Brazil and Australia thought the third version could overcome the impasse.\textsuperscript{509}

Divergent views on SSM eventually became the immediate cause for the mini-ministerial meeting deadlock. In the aftermath, the US and India together with the G-33 defended their positions. On one end of the spectrum, the US focussed on the

\textsuperscript{509} Third World Network, "Trade: Lamy Draft Faces Opposition from Many at TNC."

commercial considerations of agriculture exporters. Susan Schwab, US Trade Representative, argued that developing countries could easily close its market to other developing countries and even rollback concessions from the WTO accession process. The US indicated that if a volume-based SSM trigger was set at 140% India and China could frequently use SSM to breach pre-Doha bound tariffs.\(^{510}\)

On the other end of the spectrum, India and the G-33 coordinator highlighted the socio-humanitarian claims of SSM. Kamal Nath, Minister of Commerce and Industry of India, was willing to negotiate on commerce, but it did not want to negotiate on livelihood security or “put at stake the livelihood security of 1 billion people”.\(^{511}\) Indonesia as the G-33 coordinator wanted the opportunity to negotiate a balanced SSM between a sufficiently effective safeguard while addressing concerns of normal trade. Indonesia was critical of members that were unwilling to go the extra mile to negotiate.\(^{512}\)

In the following months, FIPs engaged in informal meetings to discuss a modified version of the EC proposal during the mini-ministerial meeting without a compromise.\(^{513}\) In December 2008, Rev 4 was issued that mainly repeated the agriculture text in July 2008 (Table 20).\(^{514}\) Simultaneously, a separate document on SSM was released, coded TN/AG/W/7 (hereinafter called ‘W/7’). The W/7 was a modification to the EC’s proposal to accommodate the perspective of agriculture exporters with stricter SSM conditions and remedies. In the W/7 SSM could only be applied to 2.5% of tariff lines per year. A pro-rating would apply in which calculations of a three-year based period of average import levels should exclude past months in which the safeguard was applied. Volume-based SSM uses two variable triggers and

\(^{510}\) The US used Chinese and Indian market as examples. Chinese soybean imports over the last ten years could have used eight out of ten years, Chinese poultry imports could have used six out of nine years, and Indian palm oil imports could have used three out of six years to raise their tariffs. See International Centre for Trade and Sustainable Development, "Agricultural Safeguard Controversy Triggers Breakdown in Doha Round Talks."; Mandelson, "EU Trade Commissioner Peter Mandelson’s Geneva Blog."

\(^{511}\) Schwab, "Ambassador Susan Schwab, United States Trade Representative, Press Briefing."

\(^{512}\) Kamal Nath, Press Conference: India --- Audio: Mr. Kamal Nath, Minister for Commerce and Industry (July 30, 2008).


remedies for additional duty above pre-Doha bound tariffs with price cross-check. A panel of experts would review the SSM if there was lack of reliable data. SSM applications would be limited with a holiday period (Table 20).\textsuperscript{515} By the end of 2008, however, a compromise on SSM could not be reached.

This thesis posits that proponents of SSM failed again to persuade agriculture exporters and in turn engaged in bargaining through rhetorical action. Each side maintained a strict distributive strategy. India, China, and the G-33 maintained their humanitarian claims, while the US and agriculture exporters maintained their commercial claims.

The evidence also indicates that negotiations were purely based on commercial considerations, particularly market opportunities in larger developing countries. From the beginning the US insisted on real market opening (both agriculture and manufacture) by emerging economies.\textsuperscript{516} SSM could be considered a potential market risk and uncertainty. Wolfe noted that the US perceived SSM as creating an additional 'Black Box'.\textsuperscript{517} During my interviews, an anonymous source confirmed that the US wanted greater understanding of the data that determines SSM. He further stated that SSM could be technically solved if agriculture exporters would receive clarification and certainty of the type of products and triggers for SSM, similar to the way a compromise was achieved for SP.\textsuperscript{518} There was limited evidence that agriculture exporters were concerned about the socio-humanitarian objectives of SSM. According to Hoekman, a protectionist trade policy, even a temporary instrument such as SSM, by a large developing country would likely create larger spill-over impacts on trading partners.\textsuperscript{519} Nonetheless, it is important to note that India and China would also need a temporary SSM for food security purposes considering they possess a large number of people living on under US$1 per day (300 million and 350 million) and have a large agrarian population (650 million and 850 million); regardless of their recent macro-economic

\textsuperscript{515} Triggers and remedies are: first, volume increase between 120\% and less than 140\% would be subject to one-third current bound tariffs or eight percentage points, and second, volume increase above 140\% would be subject to one-half current bound tariffs or twelve percentage points. See World Trade Organization, "Committee on Agriculture - Special Session - Revised Draft Modalities for Agriculture," TN/AG/W/4/Rev.4: 24-26.

\textsuperscript{516} World Trade Organization, "Committee on Agriculture - Special Session - Revised Draft Modalities for Agriculture - Special Safeguard Mechanism," TN/AG/W/7 (December 6, 2008).

\textsuperscript{517} Schwab, "Ambassador Susan C. Schwab, USTR Doha Media Roundtable."

\textsuperscript{518} WTO delegate from a developed country, interviewed by author, March 29, 2011.

\textsuperscript{519} Wolfe, "The Special Safeguard Fiasco in the WTO: The Perils of Inadequate Analysis and Negotiation," 16.
performance. During my interviews, for instance, an Indian delegate emphasised that a large portion of its population (a nominal greater than African countries) still live in poverty despite its high economic growth.

The mini-ministerial episode provided two important tests for the G-33 as a coalition. First, the participation of India and China instead of the G-33 coordinator (or any other smaller G-33 member) could be unhelpful to the Group’s objectives. As mentioned in Chapter 2, the reputation of a neutral and morally motivated leadership pursuing a normative frame is imperative. The US and agriculture exporters did not view India and China as neutral or morally motivated authorities because they see them as dominant global economic actors with huge market potentials. In one of the interviews, a delegate indicated that China will benefit from global trade regardless of the Doha outcome, while India has plenty of room to manoeuvre as it possesses large water or tariff overhang. Smaller developing countries with limited economies of scale and small tariff overhang, such as smaller RAMs, would possibly be in real need of SSM that could exceed pre-Doha bound tariffs. The representation of India and China as the face of the G-33 could therefore be misleading and even considered as a self-interested or biased actor.

Second, the G-33’s negotiating counterparts persistently tried to differentiate larger and smaller developing countries as a divide-and-conquer tactic. For instance, specific rules were issued to allow LDCs to impose additional duties above pre-Doha bound tariffs. The differentiation meant that smaller developing countries were exempt or had to provide fewer market concessions compared to larger developing countries. In other words, the cost burden arrangement among G-33 members fell more on non-LDCs and non-SVEs. Despite discriminatory attempts, the G-33 joint statement during the Geneva mini-ministerial meeting together with the AG, ACP Group, and SVEs indicated a strong unity on their common platform. In contrast to previous joint statements, the G-20 was not involved in the joint statement in 2008. In my interviews, a delegate indicated that many developing countries were dissatisfied with the Lamy

521 WTO delegate from South Asia, interviewed by author, March 23, 2011.
522 WTO delegate from Southeast Asia, interviewed by author, March 1, 2011.
523 WTO delegate from Southeast Asia, interviewed by author, September 15, 2010.
524 Ismail, “One Year since the WTO Hong Kong Ministerial Conference: Developing Countries Reclaim the Development Content of the WTO Doha Round,” 388.
Package and were uneasy with Brazil’s readiness to accept the Lamy Package. This could possibly be one of the reasons why the G-20 was not involved in the joint statement among coalitions of developing countries in 2008.\footnote{WTO delegate from Southeast Asia, interviewed by author, October 1, 2010.}

d) The Post-2008 Negotiations: Key Negotiators Strict Distributive Strategy Without Reaching a Convergence on SSM

Negotiations dramatically toned down in 2009 and focussed instead on technical matters. SSM negotiations began to pick-up at the end of 2009 with similar sides. Both sides indicated a purely distributive strategy without really engaging in the value claims of its negotiating counterparts.

On the one hand, several agriculture exporters argued that additional requirements are needed to ensure SSM would not disrupt normal trade and to prevent misuses of SSM. Australia and Canada simulated possible impacts of safeguard duties on soybeans, palm oil, and bananas. The analysis suggested that a simple volume trigger could invoke SSM almost every year and in turn impede normal trade. For this reason, both countries supported the wording of the W/7.\footnote{G-33 et al., "Statement of G-33, African Group, ACP and SVEs on Special Products and Special Safeguard Mechanism."} Costa Rica’s analysis implied that SSM coverage should be limited to tariffs undertaking Doha commitments, triggers should be sufficiently high with additional cross-checks, remedies should not exceed pre-Doha bound tariffs, and data should be available for examination and verification.\footnote{World Trade Organization, "Committee on Agriculture - Special Session - Analysis of the Volume-Based Special Safeguard Mechanism (SSM) - Implications for the Architecture of the SSM - Communication by Australia and Canada," JOB/AG/10 (July 1, 2010): 1-2.}

On the other hand, the G-33 produced in-depth analyses through technical papers related to specific conditionality imposed by agriculture exporters. Overall, the G-33 questioned the notion of ‘normal trade’ because agriculture exporters used a small number of products with high volume and price volatility (biased data) and thereby wrongly concluded that the SSM would easily be triggered. The G-33 analysis found that by using different data the majority of agriculture products volume and price fluctuations would not be easily triggered by SSM and concluded that the case for additional conditions on SSM was unfounded. For this reason, the G-33 argued against additional SSM conditions under Rev 4 and W/7, such as higher volume triggers, pro-
rating, cross-checks and seasonality.\textsuperscript{528} It also argued that developing countries were less likely to invoke SSM (or trigger happy) by evaluating historical records of the SSG implementations.\textsuperscript{529} In addition, the G-33 issued a technical paper on price-based SSM since several G-33 members favoured this approach. These members believed that developing countries would have more capacity in monitoring price fluctuations compared to monitoring volume fluctuations and thereby price-based SSM would be more effective in addressing problems of sudden price decline.\textsuperscript{530} Moreover, the G-33 released specific rules designed for SVEs in order to accommodate a sub-group within the G-33.\textsuperscript{531} The G-33 using various technical papers maintained its normative frame by emphasising the socio-humanitarian claims of SSM. Over-stringent conditions would make SSM ineffective and might even nullify the objective of the instrument.

Adding to the discussions, Ukraine supported the G-33’s proposal on SSM, but it recognised that Ukraine was neither a developed country nor a small and vulnerable country. For this reason, Ukraine requested specific SSM rules for RAMs and Very Recently Acceded Members (VRAMs) that also need access to SSM to protect the livelihoods of millions of poor farmers.\textsuperscript{532}

In regard to SSM negotiations, the thesis suggests that the G-33 and agriculture exporters maintained their distributive strategy and their mode of negotiation indicated a form of rhetorical action, in which each side attempted to maximise their interests and


\textsuperscript{529} The evidence suggests that developing countries have used SSG more often than developing countries. In one of the examples, the application of SSG indicated that four countries (Barbados, Costa Rica, Nicaragua, and the Philippines) have only used one time out of 29 potential occasions during the period of 2000-2004. See World Trade Organization, "Committee on Agriculture - Special Session - G-33 Submission on the SSM - Price and Volume Cross-Check Conditionalities - Communication by the G-33," JOB/AG/3 (February 5, 2010); World Trade Organization, "Committee on Agriculture - Special Session - G-33 Submission on the SSM - Seasonality - Communication by the G-33," JOB/AG/4 (February 5, 2010); World Trade Organization, "Committee on Agriculture - Special Session - G-33 Submission on the SSM: Pro-Rating - Communication by the G-33," JOB/AG/7 (March 5, 2010).


\textsuperscript{531} See World Trade Organization, "Committee on Agriculture - Special Session - Issues and Concerns on the Price-Based Special Safeguard Mechanism: Some Analysis and Technical Contributions for the Design and Structure - Communication by the G-33," JOB/AG/5 (February 11, 2010).

\textsuperscript{532} World Trade Organization, "Committee on Agriculture - Special Session - G-33 Proposal on the Treatment of SSM Provided to the SVEs," TN/AG/GEN/29 (February 10, 2009); World Trade Organization, "Committee on Agriculture - Special Session - G-33 Submission on the SSM - Flexibilities for SVEs - Communication by the G-33," JOB/AG/6 (March 4, 2010).
preferences without engaging in a higher level of discourse. Until the end of 2010, there was no movement from the principal negotiators under SSM negotiations. The G-33 using a normative frame tried to maintain its socio-humanitarian claims adhering to the developmental principle for an effective and operable SSM, while agriculture exporters using an instrumental frame attempted to maintain their commercial claims adhering to the liberal trade principle for the preservation of normal trade growth. In other words, divergence was not merely a technical matter, but it was a profound philosophical debate about rules within the trade regime. The confrontational approaches between the normative frame of the G-33 and instrumental frame of agriculture exporters represented different expected behaviours of their negotiating counterparts.

This thesis further suggests that, in the context of the liberal trade and developmental nexus, key negotiators might have to integrate competing value claims to achieve a lowest common denominator similar to the compromise for SP. As mentioned in Chapter 2, when both sides move into an integrative strategy and accept a certain loss in their value claim, the cost of such loss might be disproportionately more for weaker actors compared to stronger actors. In other words, developing countries might encounter difficulties in implementing the stringent SSM conditions in facing sudden price hikes or import surges, which might cause more detrimental adjustment costs for those affected and take longer to stabilise; while agriculture exporters would largely maintain their agriculture market access, and reduce their cost of temporary market access closure. The original G-33 objective to develop flexible and easy to implement SSM rules might have to be scaled down since the G-33 would most likely be drawn into bargaining to accommodate the commercial interests of agriculture exporters.

3.6 **Key Findings: The G-20 and G-33**

Whilst most studies observed the G-20 and G-33 in isolation or at a particular moment of the negotiation stages, this chapter critically evaluates and compares them at different stages of agriculture negotiations: the agenda-setting and modalities-setting processes, followed by rule-making and, in this case, near deal-making processes. Surprisingly, the G-20 and G-33 were amongst the longest active coalitions surviving throughout different stages of negotiation.

There are several key findings concerning the nature of the coalition related to their basic argument, the types of leadership within the coalition, strategies employed
which in turn impact the overall mode of negotiation, which lead to an understanding of the liberal trade and developmental nexus in the agriculture negotiations.

**The Nature of Argument**

The nature of the coalition closely relates to the core argument of the coalition and often related to the initial formation of the coalition. The case study demonstrates that the G-20 and G-33 used different frames in promoting their particular development-oriented agendas, but they were relatively consistent with their frame of reference throughout the different stages of negotiation.

The G-20 used mixed instrumental-normative frames in its arguments, but largely focussed on its instrumental frame. The G-20 used four principles: progressivity, neutrality, proportionality, and flexibility as the basis of its proposals. Based on the four principles, the G-20’s mixed frames concentrated on two arguments. First, the G-20 members shared interests in disciplining trade distortions (market access, domestic support, export competition) in developed countries. The G-20 believed that continuing trade distortions would impede market opportunities for competitive agriculture exporters and hinder the potential in developing the agriculture sector in developing countries, which is crucial to their developmental objectives. From the agenda-setting to rule-making processes the G-20 developed innovative modalities and rules to reduce/eliminate trade distortions. The G-20’s argument represented an instrumental frame adhering to the liberal trade principle. The G-20 therefore was often associated with the effort to advance the commercial interests of competitive agriculture exporters. Second, the G-20 supported specific agendas for developing countries and market flexibilities under SDT, such as SP and SSM. This normative frame served as a supplementary argument in addition to its core argument above. During the rule-making process, however, the G-20 was unable to develop a consensual understanding on detailed rules on SP and SSM.

The G-20’s mixed instrumental-normative frames were broadly acceptable and frequently considered as middle ground solutions. On the one hand, the G-20’s innovative solutions to disciplining trade distortions, such as OTDS and tiered formula, were acceptable because they accommodated the diverse subsidy and tariff structures of WTO members, and as a result, often became the foundation of negotiations for the agriculture modalities and agreement. On the other hand, the G-20 supported other
development-oriented agendas, including market flexibilities, which could also be extended to similar endeavours by other coalitions of developing countries. Consequently, the G-20 played a major role in establishing the inter-coalition together with the G-33, the AG, ACP Group, and LDCs Group, and later with SVEs and NAMA-11. The mutual support among coalitions involving developing countries was strong during the agenda and modalities-setting processes and even at the early stages of the rule-making process. It exhibited a form of social identity trust or the establishment of a sense of solidarity among coalitions involving developing countries with similar developmental-related concerns despite their different and specific interests.

In comparison with the G-20, the G-33’s main argument largely used a normative frame based on a moral justification by highlighting the needs of developing countries to maintain a certain degree of policy space or flexibilities for food security purposes. The G-33’s primary focus was the promotion of SP and SSM as part of SDT flexibilities under market access. This narrow focus of the G-33 worked positively in developing a dominant frame and maintaining cohesion among the G-33’s heterogeneous members. More importantly, the G-33’s socio-humanitarian claims attempted to expand the SDT norm departing from a conventional trade conception to the sustainable development norm. Traditionally, SDT is associated with non-reciprocity for members with lower levels of economic development and lack of commercial competitiveness. In contrast to traditional SDT, the SP and SSM represent permanent special trade provisions for food security purposes, which are aimed at reducing, even eliminating, possible externalities of agriculture liberalisation. However, the G-33’s normative frame conceptually was difficult to maintain and argue because of a number of factors: the issue of food security did not have direct and simple chains of cause and effect relations; SP and SSM were second best policy options; and both instruments were relatively new concepts. Despite these shortcomings, these special tariff instruments were considered the most viable, if not the only, policy options for most developing countries.

**The Types of Leadership**

In light of the G-20 and G-33’s argument, the initial type of leadership reflected the coalition’s primary argument. Nonetheless, the types of leadership developed and evolved depending on the negotiation stages and the response by their negotiating counterparts.
The G-20 under the leadership of Brazil showed a formidable strategic-based leadership, which used its diplomatic, management, and technical skills to develop innovative proposals in achieving mutual gains. The G-20 using mixed instrumental-normative frames took into account the wide variety of interests and preferences of its members and in turn formulated them to achieve broadly acceptable proposals. For this reason, the G-20 brought together an unlikely group of developing countries with offensive and defensive interests (on market access) into one coalition. Additionally, the G-20’s middle ground or balanced proposals were often used as the foundation of the agriculture negotiations. After the later stage of the rule-making processes, however, the strategic-based leadership became harder to sustain especially as the diverse interests and preferences among G-20 members, especially concerning specific SSM rules, became more salient and harder to bridge. This was clearly illustrated during the 2008 Geneva mini-ministerial meeting.

In comparison to the G-20, the G-33 under the coordination of Indonesia and the Philippines reflected a knowledge-based leadership that emphasised a normative frame based on a moral justification to persuade the perspective of negotiating counterparts with better-reasoned arguments. The G-33 should maintain its reputation as a neutral or morally motivated actor, rather than a self-interested or biased actor, to enable the G-33 to effectively negotiate and persuade its negotiating counterparts. Consistent with the G-33’s knowledge-based leadership and normative frame, the coalition was appealing for weaker, smaller, and often marginalised countries, such as members of the AG, ACP Group, LDCs Group, RAMs, and SVEs. For the most part, more-advanced G-33 members under the coordination of Indonesia and the Philippines exhibited a sympathetic attitude with the needs of fellow G-33 members by maintaining a lowest benchmark, with some members accepting a certain degree of loss as a consequence. This is particularly true as the G-33 supported the positions of the AG and LDCs Groups’ members and requested additional flexibilities for RAMs and SVEs. In addition, the G-33 maintained close relations with and gained support from UN specialised agencies, inter-governmental organisations, and NGOs, particularly those involved with food security issues.

However, the G-33 had to adapt towards a strategic-based leadership in seeking innovative solutions to achieve mutual gains during the rule-making process onward. Negotiations had moved from discussing principles and broad parameters to negotiating
detailed rules with quantitative and binding commitments, which provided clearer distributive implications. The diverse interests and preferences within the G-33 became more salient, such as sub-groups within the G-33 and export-oriented G-33 members. The G-33 had to find innovative solutions and point to mutual gains to achieve a lowest common denominator. Further, the reputation of a knowledge-based leadership became harder to sustain as agriculture exporters identified the G-33 with China and India. During the 2008 Geneva mini-ministerial meeting, the fact that the G-33 was represented by India and China, led to agriculture exporters having a biased perspective because exporters perceived China and India as merely a market access opportunity and considered SSM would significantly hinder their exporting opportunities.

**The Strategy of Coalitions and Overall Mode of Negotiation**

The G-20 and G-33’s roles in the rule-development process could be analysed through the external coalition dynamic. In both case studies, key negotiators often situated themselves at their maximum position and gradually reduced their demands towards the direction of their negotiating counterpart, often taking several years to achieve a compromise or an increasing convergence.

In the case of the G-20, the coalition emerged as a direct response to the EC-US joint text and issued its own alternative agriculture modalities for an ambitious agriculture reform on domestic support and export subsidy, and slightly less-ambitious reform in market access. In the post-Cancún period, key negotiators using the G-20 proposal as the basis of negotiations moved to mixed distributive-integrative strategies. The integrative movement led to a compromise for the agriculture modalities as part of the 2004 July Package. In 2005 and 2006 key negotiators maintained a strict distributive strategy as discussions involved specific quantitative and binding commitments with clearer distributive implications. The G-20 and the major powers gradually moved into mixed distributive-integrative strategies in late 2007 and early 2008. The core elements of the agriculture text, such as the main subsidy and tariff cut-formula, were finally stabilised at the end of 2008.

The overall mode of trade negotiation between the G-20 and the major powers can be characterised as bargaining through rhetorical action. Each side attempted to maximise their commercial interests by reducing subsidies and opening market access among them. Negotiations focussed on an exchange of concessions among elements within agriculture, and later linkages between agriculture and manufacturing. By the
end of 2008, the G-20 succeeded in tightening the domestic support discipline (with significant OTDS and Amber Box cuts) and tightening the export competition rules, including an end date to export subsidies. However, the G-20 had to accept the value claims of the major powers: loose discipline on Blue and Green Boxes enabling the major powers to box shift and product shift; as well as loose discipline on Sensitive Products enabling the continuation of tariffs peak and tariffs escalation as well as the continuation of the complex TRQ system to limit imports. After 2008 the US engaged in even harder bargaining, in which the US demanded its agriculture concessions be exchanged with market concessions in several sectors of manufacturing in emerging economies, namely Brazil, China, and India.

In comparison to the G-20, the mode of trade negotiation related to the food security issue resembled a situation between the G-33 as a communicative actor versus the US and a number of agriculture exporters as rhetorical actors. During the modalities-setting process, WTO members eventually accepted the G-33’s demand for SP and SSM as part of the 2004 July Package and achieved a compromise through rhetorical entrapment. There were several pieces of evidence supporting this argument: there was no evidence that key negotiators openly opposed the moral justification of SP and SSM; the major powers accepted the G-33’s socio-humanitarian claims to overcome the negotiation deadlock and were motivated by future gains; and the broad principles and parameters of SP and SSM did not reveal distribution implications.

As negotiations discussed detailed rules with quantitative and binding commitments, agriculture exporters were basically concerned that SP and SSM would permanently or temporarily hinder their agriculture exports. Real negotiations began in 2006 when a number of agriculture exporters, either individually or collectively, released counter-proposals which tried to reduce the G-33’s demand for absolute flexibilities by adding stricter conditions for SP and SSM. By 2007 and 2008, negotiations were primarily focussed on the commercial interests of agriculture exporters rather than trying to ensure SP and SSM would be effective and operational instruments safeguarding the food security pillars.

During the rule-making and near deal-making processes, the mode of trade negotiation also reflected bargaining through rhetorical action between the G-33 and agriculture exporters. However, the G-33 began to shift from communicative actor to a rhetorical actor by maintaining its normative value claims and applying a distributive
strategy. Negotiations resembled the G-20’s exchange of concessions but in this case exchanges were made on various elements within the SP and SSM. The G-33 and agriculture exporters, for instance, horse traded the number of tariff lines under SP coverage rather than exploring actual food security needs. SP negotiations were finally stabilised by the end of 2008 relying on quantified tariff lines rather than a qualitative list of indicators. In comparison to SP, SSM negotiations proved much more difficult because the temporary nature of the SSM generated greater market risks and uncertainties. Both sides maintained their value claims. On the one hand, the G-33 perceived that SSM remedies should be able to exceed pre-Doha bound tariffs arguing that the main objective of SSM is ensuring the food security pillars to protect subsistence and resource-poor farmers. On the other hand, agriculture exporters perceived that SSM should deal with market disruption as a consequence of undertaking the liberalisation process, but should not rollback to the concessions made prior to the Doha Round. In other words, the G-33 maintained its normative frame, while agriculture exporters maintained their instrumental frame. This strict distributive strategy eventually led to deadlock and in effect stalled the overall Doha Round negotiations.

**The Nexus between the Liberal Trade and Developmental Principles**

The saying ‘the devil is in the detail’ exemplifies the difficulty in developing an appropriate and acceptable multilateral trade rule that balances the liberal trade and developmental principles. By examining the G-20 and G-33’s mode of trade negotiation, both coalitions were successful in maintaining their development-oriented agendas and influencing the agriculture modalities during the agenda-setting and modalities-setting processes. However, both coalitions were drawn into traditional bargaining through exchange of concessions and had to scale down their original developmental objectives. It is important to note that the overall process of exchange of concessions through an integrative strategy or a value creation process would eventually minimise the value claims of each of the negotiating parties. A weaker actor might have to accommodate the value claims of the stronger actor to achieve a compromise, but the lost value claim may be disproportionately more for weaker actors. In practice, an integrative strategy based on the lowest common denominator might eventually offset or nullify the original objective for an ambitious agriculture reform or absolute flexibilities for food security purposes.
The G-20 engaged in the traditional liberal trade principle adhering to the norms of reciprocity through exchange of concessions. The G-20 succeeded in establishing a progressive subsidy and tariff cut-formulas but had to accept the value claims of the major powers for a lesser discipline on Blue and Green Boxes, Sensitive Products and TRQ system. Although agriculture reform might look significant on paper, actual subsidies would most likely remain untouched and developed countries could still have greater autonomy in box-shifting their domestic supports and applying high tariffs and complex TRQ system for their most Sensitive Products. The G-20 would likely scale down its original expectation for an ambitious agriculture reform to a modest agriculture reform during this Doha Round.

The G-33 began from a different perspective. The G-33 tried to expand the developmental principle to take into account the sustainable development norm. Sustainable development meant that the liberalisation process should not generate adverse impacts particularly on the poorest and most vulnerable population. Although other WTO members did not argue against these principles, the G-33 eventually had to accept the value claims of agriculture exporters. In the case of SP, the G-33 accepted limitations on coverage and treatment, while in the case of SSM, the G-33 might have to eventually accept more stringent conditions for SSM’s triggers and limited remedies. The G-33 therefore would likely downgrade its original expectation for absolute flexibilities, in which a sovereign country would have full autonomy in determining its policies for food security purposes, to accept relative flexibilities with more stringent SP and SSM rules. The real test-case would come during the implementation period and whether or not these special trade provisions would effectively address the issue of food and livelihood insecurity, and rural under-development. During an actual import surge or price decline, for instance, stringent SSM rules might prove too difficult to operate and in turn nullify the SSM objective of supporting the people most in need.
Chapter 4. Negotiating Coalitions on the New ‘Singapore’ Issues and Trade Facilitation

This chapter examines the nature and role of the negotiating coalitions involved in the negotiations of new ‘Singapore’ issues consisting of: trade and investment; trade and competition; transparency in government procurement; and trade facilitation. The investigation will focus on the Core Group together with the AG, ACP Group, and LDCs Group. The Core Group was developed to negotiate on the new ‘Singapore’ issues and later negotiated trade facilitation. The AG, ACP Group and LDCs Group often worked as an inter-coalition known as the Group of 90 (G-90). It is worth noting that the AG, ACP Group and LDCs Group were active in other issues under negotiation, but this case study will only examine their role in negotiations for new ‘Singapore’ issues.

The negotiations on new ‘Singapore’ issues could be characterised into: an agenda-setting process discussing the inclusion or exclusion of the new ‘Singapore’ issues as part of the single undertaking; a modalities-setting process discussing the principles and broad parameters of the trade facilitation modalities; and a rule-making process discussing specific rules on trade facilitation.

This chapter will demonstrate that the Core Group and G-90 used different frames of argument, beginning with a predominantly instrumental frame based on cost-benefit calculations during the agenda-setting process, and then adapted to developing mixed instrumental-normative frames, but concentrating on its normative frame during the modalities-setting and rule-making processes. Further, it will also illustrate that the Core Group and G-90 used different types of leadership: from a structural-based leadership blocking the negotiation on the new ‘Singapore’ issues during the agenda-setting process; to a strategic-based leadership by developing innovative solutions to achieve mutual gains accommodating the diverse interests and preferences of its members during the modalities-setting and rule-making processes. Furthermore, it will demonstrate the negotiation strategy of key negotiators and the overall mode of negotiation. During the agenda-setting process, the Core Group and G-90 (as opponents of the new issues) and the EC (as proponents of the new issues) employed a strict distributive strategy and the mode of negotiation resembled hard bargaining. During the
modalities-setting process, key negotiators moved into mixed distributive-integrative strategies, which eventually achieved a compromise on the trade facilitation modalities leaning towards the position of the Core Group. During the rule-making process, the negotiation climate dramatically changed to an amicable atmosphere in which key negotiators integrated their value claims in seeking a higher level of discourse, similar to arguing through communicative action. In the context of the liberal trade and developmental principles, this chapter will demonstrate that the trade facilitation modalities and rules provided an outcome balancing the objectives under the liberal trade principle (obligations by members) and objectives under the developmental principle (members' actual capacities and provision of TACB for members without sufficient capacities to implement their obligations).

The first section begins with a brief background on the process wherein the new 'Singapore' issues were brought into the Doha Round. The second section will closely investigate the nature and role of the Core Group and G-90 negotiating against the launch of the new 'Singapore' issues during the agenda-setting and modalities-setting processes between 2003 and mid-2004. During the modalities-setting process, WTO members agreed to continue negotiations on trade facilitation while dropping the other three new issues, and for this reason, the third section will examine the Core Group and G-90 negotiating for specific trade facilitation rules particularly related to SDT provisions during the rule-making process. The fourth section ends with the key findings in this chapter.

### 4.1 Background: New ‘Singapore’ Issues

The Uruguay Round was the most complex multilateral negotiation because it covered a wide range of issues from traditional border issues to behind the borders disciplines causing a process of deep integration. However, even now, there are no formal rules or agreeable formulations of what constitutes a WTO agenda, although some scholars tried to develop particular guidelines.\(^{533}\)

After the conclusion of the Uruguay Round, the EC wanted to add new issues into the WTO agenda. The EC initially requested to negotiate for a new multilateral

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\(^{533}\) See, for examples, World Trade Organization, "Committee on Agriculture - Special Session - Issues and Concerns on the SSM - Communication by Ukraine," JOB/AG/14 (September 21, 2010): 1-3.
agreement on investment, then requested new agreements for competition, and transparency in government procurement, and later trade facilitation.\textsuperscript{534} The EC introduced the four new issues as a package during the 1996 Singapore Ministerial Conference which thereafter became also known as the ‘Singapore Issues’. The EC applied a ‘tactical linkage’ approach by bundling these new issues even though they were not linked by any substantive relations and placed them as part of the single undertaking.\textsuperscript{535} The EC’s real intention was to link agriculture and the Singapore Issues or possibly later trade them off.\textsuperscript{536}

It is important to note that these new issues are actually not entirely ‘new’ to the trade regime. The Havana Charter, for the ITO, provided policy space for host countries in their early industrialisation stage to apply Foreign Direct Investment (FDI) requirements or restrictions, such as: prevention of FDI interference to domestic policies, autonomy in determining future investment, as well as rights to expropriation, nationalisation and compensation.\textsuperscript{537} More recently, some elements of the Singapore Issues were part of GATT/WTO agreements. Investment-related issues were partly disciplined under: the Trade Related Investment Measures (TRIMs) Agreement concerning ‘negative list measures’ (e.g. local content requirement and export balancing); TRIPS concerning FDI-related matters (e.g. definition of rights, international standards and procedures); General Agreement on Trade in Services (GATS) related to the establishment of a local company by a foreign company (as a subsidiary or a joint venture); and Agreement on Subsidies and Countervailing Measures (ASCM) concerning the prohibition of investment incentives as a form of subsidy.\textsuperscript{538} Further, GATT and GATS governed competition issues related to monopolies and exclusive services supplies, as well as a government’s right to impose anti-competitive rules on Intellectual Property Rights and services.\textsuperscript{539} Moreover, the plurilateral Government Procurement Agreement (GPA) included provisions on


\textsuperscript{536} Haas, \textit{When Knowledge is Power: Three Models of Change in International Organizations}; 77.


\textsuperscript{538} Graz, "The Political Economy of International Trade: The Relevance of the International Trade Organization Project."

\textsuperscript{539} Mehta and Nanda, "The Future of Singapore Issues," 152-53.
transparency issues. Lastly, trade facilitation was managed under GATT Articles: V (freedom of transit), VII (fees and formalities connected to importation and exportation), and X (publication and administration of trade regulations). The definition of trade facilitation varies from one organisation to another. The broad definition of trade facilitation includes the environment of cross-border transactions, such as customs administration, payment system, rules of origin, transport, health and safety, government procurement, competition policy, and tax collection. However, the WTO uses a narrow definition of trade facilitation focussing on the above three areas (Articles V, VII, and X). Despite using a narrow definition, trade facilitation agreement in substance would cover a wide range of measures at and behind the borders measures in clearing goods.

4.2 The Core Group and G-90 Opposing the Launch of the New ‘Singapore’ Issues

This section will examine the nature and role of the Core Group and G-90 negotiating against the launch of negotiations on the Singapore Issues as part of the agenda-setting and modalities-setting processes. This stage of negotiations involves identifying the specific agenda, developing policy options, and their parameters of each new issue with a view of the long-term objectives of the trade regime. As a result, a coalition could cooperate based on broad commitments and parameters related to the principles and norms under the trade regime, rather than dwell on developing detailed rules. It is important to note that the demand for expanding the agenda also involved a calculation of the overall ‘pie’ or package for future trade-offs as part of the single undertaking.

The first sub-section will examine the substantive discussions during the study and clarification process of the new issues. The next sub-section will investigate the internal coalition dynamic related to the changing frame of argument and leadership within these coalitions. The last sub-section will explore the external coalition dynamic surrounding the Core Group and G-90 by looking at the strategies employed by key negotiators and overall mode of negotiation, which in turn would explain the liberal trade and developmental nexus.

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4.2.1 The Inconclusive Study and Clarification Process

Although the new ‘Singapore’ issues are not entirely new, as mentioned above, there were viable questions regarding the rationale, merits, and implementation consequences of negotiating multilateral agreements on the new issues. Several developing countries questioned the rationale for expanding new issues in the WTO. India together with Indonesia, Malaysia and Pakistan were highly critical of this idea. For example, India questioned whether the expansion of new issues would fall within the ‘natural boundaries’ of the trade regime. Further, India cited a study by the UNCTAD indicating that a uniform multilateral regime on investment would not necessarily promote an equitable global development.

At the final hours of the 1996 Singapore Ministerial Conference, the EC succeeded in inserting the new issues into the Singapore Ministerial Declaration to be considered for negotiation in the new round. The declaration directed the Council for Trade in Goods to examine trade facilitation and to establish three working groups for the other three new issues in order to: study the relationship between trade with investment and competition, examine existing multilateral rules, and identify viable multilateral areas of cooperation under the WTO. The declaration mentioned that “future negotiations...will take place only after an explicit consensus decision”. This implies that there was no commitment to negotiate the Singapore Issues and negotiations could only begin provided an ‘explicit consensus’ was given by WTO members.

The debate of including or excluding the Singapore Issues continued until the 2001 Doha Ministerial Conference. The draft ministerial declaration proposed that negotiations would begin for government procurement and trade facilitation, but provided two options for investment and competition: to begin negotiations or to continue the study process. The Like-Minded Group (LMG) led by India insisted that negotiations should first address implementation issues, development issues and

543 World Trade Organization, "Ministerial Conference, Singapore - India - Statement by Dr. B.B. Ramaiah, Minister of Commerce (India)," WT/MIN(96)/ST/27 (December 9, 1996).
systemic reform, while it argued against the expansion of new issues.\textsuperscript{545} The coalition, however, was substantially weakened after the major powers introduced a ‘carrot and stick’ tactic.\textsuperscript{546} During the conference, several Asian and African countries maintained strong opposition towards launching negotiations on any of the Singapore Issues. Latin American countries expressed some reservations, and proponents of Singapore Issues (the EC and Japan) demanded greater assurances for launching the new issues into negotiations.\textsuperscript{547} Despite having weakened the LMG, developing countries succeeded in delaying negotiations, whilst the Doha mandate instructed that further study and negotiations would only begin after the next ministerial conference provided that WTO members agree on the Singapore Issues modalities by ‘explicit consensus’.\textsuperscript{548}

Looking back at the study and clarification process in the working groups/Council for Trade in Goods (1996-2003), most of the proposals were circulated by developed countries, such as the EC, US, Canada, Switzerland, and Japan. Only a small number of proposals were issued by developing countries, such as India, Thailand, and Korea. The development mandate was used to benchmark the relevance of each new issue.

There were three common features related to the study and clarification process which was picked up later during the agenda-setting process. The first common feature is the question related to the implications of applying the liberal trade principle, particularly non-discrimination norms, into multilateral agreements related to new issues. On investment, the EC argued that non-discrimination of foreign investors would improve allocation of capital and minimise distortion and would in turn attract foreign investment provided additional conditions, such as a conducive regulatory framework

\textsuperscript{545} The LMG consisted of Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Kenya, Malaysia, Pakistan, Sri Lanka, Tanzania, Uganda, and Zimbabwe. See World Trade Organization, "General Council - Preparations for the Fourth Session of the Ministerial Conference - Draft Ministerial Declaration," JOB(01)/140 (September 26, 2001): 5-6.

\textsuperscript{546} Narlikar and Tussie, "The G20 at the Cancún Ministerial: Developing Countries and Their Evolving Coalitions in the WTO," 949.


and a stable political system.\textsuperscript{549} In addition to traditional SDT (lower level of commitment and longer transition period), the EC proposed a ‘positive list’ approach (GATS-type approach) that provides flexibilities for host countries to determine which sector would be eligible under the agreement.\textsuperscript{550} Some developing countries feared that government would have limited authority in controlling MNCs activities and would provide foreign investors preferential treatment compared with national investors since there was no inclination that rules on investors or home countries would also be negotiated.\textsuperscript{551} Khor argues that the application of the liberal trade principle therefore implies that foreign investors would be extended equal rights (or better) compared to local investors, including access to market and investment.\textsuperscript{552} An analyst argues that the application of the liberal trade principle could therefore be detrimental for developing countries since it would provide a monopolistic advantage for relatively stronger foreign companies causing: \textit{inter alia}, displacement of local companies, concentration of producers, high prices, inefficiency, and in turn hurt the overall development objective.\textsuperscript{553}

In relation to the implication of the liberal trade principle on competition, there were divergent views of what constituted the core WTO principle, particularly the non-discrimination norm in a multilateral competition agreement. The EC wanted a comprehensive agreement covering both \textit{de jure} and \textit{de facto} discriminations. The former implies discrimination in legal texts and the latter refers to un-codified discrimination in practices or norms.\textsuperscript{554} In contrast to the EC, other WTO members wanted to limit the scope of the agreement: Korea proposed focussing on \textit{de jure} discrimination, Thailand requested exemptions for national and international export cartels since they are victims of large MNCs, and India argued that the WTO should recognise that different countries possess different capacities and therefore the

\textsuperscript{552} Mehta and Nanda, "The Future of Singapore Issues," 154.
\textsuperscript{553} Khor, "The “Singapore Issues” in the WTO: Evolution and Implications for Developing Countries," 31.

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competition regimes should be designed in a different manner.\textsuperscript{555} One analyst implied that a comprehensive competition agreement would open market access for foreign companies and scrutinise domestic laws or practices favouring local companies.\textsuperscript{556} This could also be detrimental to small, medium and even larger companies in developing countries.

With regard to the implication of the liberal trade principle on transparency in government procurement, the mandate ensured that WTO members would not be restricted to providing preferences for their domestic supplies and suppliers.\textsuperscript{557} This means that the non-discrimination norm would not be applicable. In this vein, India and Malaysia re-emphasised that government procurement, which they did not make open to foreign bidders, would not be subject to WTO discipline.\textsuperscript{558}

The second common feature is the direct and indirect costs associated with the implementation of new issues. Contracting parties accepted the Uruguay Round agreements without truly understanding, let alone quantifying the costs of implementation.\textsuperscript{559} This past experience brought an understanding that the costs of regulatory harmonisation (compared to simpler reduction/elimination of barriers) often were disproportionately asymmetrical for poorer countries and do not necessarily enhance trade flows nor alleviate poverty. According to Finger, the implementation of WTO agreements (custom valuation, SPS and TRIPS) cost approximately US$150 million or similar to an annual development budget for many LDCs.\textsuperscript{560}

In relation to the possible direct costs, one of the aims of negotiating investment is to establish a transparent environment for foreign investment; nonetheless, developing countries were concerned with the costs and resources needed to develop

\textsuperscript{556} Ibid.  
\textsuperscript{557} Khor, "The "Singapore Issues" in the WTO: Evolution and Implications for Developing Countries," 42-43.  
\textsuperscript{560} Finger, "Implementation and Imbalance: Dealing with Hangover from the Uruguay Round," 443.
such a transparent climate.\textsuperscript{561} Similarly, the establishment of an international standard of transparency in government procurement might disproportionately cost more for small countries with relatively small government procurement.\textsuperscript{562} In this vein, establishing standardised trade facilitation might create an additional burden for developing countries. During the study process, many developing countries favoured applying government procurement rules based on their human and financial resources and taking into account their level of economic development.\textsuperscript{563}

There were also possible indirect costs, particularly the risk of non-compliance for developing countries, considering their lack of capacity to implement obligations for new issues. On investment, discussions examined a form of consultation as a form of Dispute Settlement Mechanism (DSM) and discussed the types of remedies of a dispute settlement.\textsuperscript{564} Further, developing countries indicated that they were still struggling to implement the Uruguay Round’s trade facilitation obligations.\textsuperscript{565} New obligations on trade facilitation therefore could further expose them to dispute settlement. In this vein, developing countries also argued that transparency in government procurement should be exempted from dispute settlement.\textsuperscript{566}

The third common feature is associated with loss of policy space or flexibilities in determining non-trade policies (e.g. investment and industrial policy). On investment, one of the most controversial discussions was the scope and definition of investment. The US wanted a broad definition of investment to include short-term investment (e.g. portfolio), while developing countries favoured limiting the definition to long-term investment (e.g. FDI).\textsuperscript{567} The differing scope and definition could have a profound impact on the ability of a government to control investment flows and overall economy. For instance, short-term investments tended to be more volatile and could create

\textsuperscript{563} Mehta and Nanda, "The Future of Singapore Issues," 160.
\textsuperscript{565} Ibid., 2.
\textsuperscript{566} Lucenti, "Is There a Case for Further Multilateral Rules on Trade Facilitation?," 284.
financial crisis and balance of payment problems. The EC tried to accommodate the
concerns of developing countries by proposing a GATS-type positive list approach.
India and several developing countries, however, demanded an absolute flexibility in
which host countries should not be restricted in defining their FDI policies.\textsuperscript{568} For
instance, India suggested a development provision on investment that would allow
developing countries to determine the types of investment required for their economic
and welfare needs.\textsuperscript{569}

Pertinent to the issue of flexibilities on government procurement, India and
Malaysia ensured that discussions would focus solely on transparency issues and not
expand to market access issues, such as: procurement methods, time-periods, and
evaluating offers and contracts processes.\textsuperscript{570} Malaysia believed that government
procurement plays a major role in nation-building by promoting the socio-economic
development of small and medium enterprises as well as in disadvantaged regions.\textsuperscript{571}
This is understandable considering the role of government procurement in the overall
economy could represent up to 20\% of GDP in developing countries compared to 10-
15\% of GDP in developed countries.\textsuperscript{572}

After seven years of study and a clarification process, there was no conclusive
outcome, modalities, nor consensus to launch negotiations on new issues. In February
2003, however, the EC demanded that "negotiations will commence after Cancún" and
the Singapore Issues are "a key element of the DDA and part and parcel of the Single
Undertaking".\textsuperscript{573} The EC interpreted that the Doha Ministerial Declaration wanted to
commence negotiations on the Singapore Issues after the fifth Ministerial Conference
and therefore considered it timely to develop modalities on all four new issues so that a
decision could be made during the Cancún Ministerial Conference. The EC believed
that modalities should be 'broad and flexible' consisting of procedural matters, scope

\textsuperscript{568} Nanda, \textit{Expanding Frontiers of Global Trade Rules: The Political Economy Dynamics of the
International Trading System}: 113.


\textsuperscript{570} World Trade Organization, "Working Group on the Relationship between Trade and Investment -

\textsuperscript{571} Evenett, "Is There a Case for New Multilateral Rules on Transparency in Government Procurement?;"
203.

\textsuperscript{572} Ibid., 206.

\textsuperscript{573} Sandrey, "WTO and the Singapore Issues," 12.

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and coverage of negotiating agendas, and SDT provisions. The EC’s persistence spurred the formation of coalitions involving a large number of developing countries opposing the launch of negotiations on new issues.

### 4.2.2 Internal Coalition Dynamic: The Archipelagic Coalition’s Instrumental Frame and Structural-Based Leadership Adapting towards Instrumental-Normative Frames and Strategic-Based Leadership

There were several milestones related to the Core Group and G-90 during the agenda-setting and modalities-setting processes: (a) negotiations nearing and post the Cancún Ministerial Conference in 2003; and (b) negotiations for the July Package between early and mid-2004. By early 2004, there was an increasing consensual understanding that negotiations would only begin on trade facilitation and the other three new issues would be dropped.

The creation of the coalition involving developing countries opposing the launch of negotiations on the Singapore Issues could be characterised as an ‘archipelagic coalition’. The Core Group and the AG, ACP Group and LDCs together with other developing countries worked on a common platform as an archipelagic group of coalitions, rather than under an overarching grand-coalition.

In reaction to the EC’s persistence to insert the new issues into the WTO agenda, Malaysia and India were active in managing small group meetings at the ambassadorial-level in developing a common platform on the Singapore Issues. Malaysia eventually became the informal coordinator of the Core Group. In July and August 2003, the Core Group directly criticised the EC’s interpretation of the matter on at least three fronts. First, the Core Group argued that negotiations on the Singapore Issues could not automatically begin after the Cancún Ministerial Conference, and in reference to the

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575 The term ‘archipelagic’ (adjective) comes from the word ‘archipelago’ (noun). As a background, the United Nations Convention on the Law of the Sea (UNCLOS) Article 46 defines an archipelago as “a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely inter-related that such islands, waters and other natural features form an intrinsic geographical economic and political entity or which historically have been regarded as such”. During the Doha Round, the Core Group together with the AG, ACP Group, and LDCs Group worked together under a common platform, which was developed through informal web-like networking. This phenomenon is absolutely essential and is unique compared to past coalitions involving developing countries. The term an ‘archipelagic coalition’ therefore suits the new phenomenon of inter-coalitions relations.

576 WTO delegate from Southeast Asia, interviewed by author, March 1, 2011.
chairman’s statement in the Doha Ministerial Conference, further argued that a decision would indeed need to be taken by explicit consensus before negotiations on the Singapore Issues could proceed.\footnote{World Trade Organization, "General Council - Singapore Issues - The Question of Modalities - Communication from the European Communities," WT/GC/W/491: 1-2.} Explicit consensus therefore was seen as a ‘pre-condition’ to commencing negotiations. Second, the Core Group dismissed the EC’s perception that the Singapore Issues should be viewed as a package and part and parcel of the single undertaking.\footnote{World Trade Organization, "General Council - Comments on the EC Communication (WT/GC/W/491) on the Modalities for the Singapore Issues - Communication from Bangladesh, Cuba, Egypt, India, Indonesia, Kenya, Malaysia, Nigeria, Pakistan, Venezuela, Zambia and Zimbabwe," WT/GC/W/501 (July 8, 2003): 1-2.} Third, the Core Group wanted clearer modalities in terms of the substance and parameters of each of the Singapore Issues, and, for this reason, requested further clarification of all four Singapore Issues.\footnote{Ibid., 2.} Table 21 illustrates the Core Group members in its initial formation and the alternation of its members in the following stages of negotiation.

### Table 21. The Core Group Members

<table>
<thead>
<tr>
<th>2003 (on Singapore Issues)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bangladesh [on behalf of the LDCs Group), Botswana, China, Cuba,</td>
</tr>
<tr>
<td>Egypt, India, Indonesia, Kenya, Malaysia, Nigeria, the Philippines,</td>
</tr>
<tr>
<td>Tanzania, Uganda, Venezuela, Zambia, and Zimbabwe</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2006 (on Trade Facilitation)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bangladesh, Botswana, Cuba, Egypt, India, Indonesia, Jamaica,</td>
</tr>
<tr>
<td>Kenya, Malaysia, Mauritius, Namibia, Nepal, Nigeria, the</td>
</tr>
<tr>
<td>Philippines, Rwanda, Tanzania, Trinidad and Tobago, Uganda,</td>
</tr>
<tr>
<td>Venezuela, Zambia, and Zimbabwe</td>
</tr>
</tbody>
</table>

Sources: WT/GC/W/522, TN/TF/W/142

The Core Group’s paper made direct reference to the decisions taken by trade ministers of the AG, ACP Group and LDCs Group. The AG, ACP Group and LDCs Group agreed that negotiations should not begin and that the clarification process needs to include an understanding of the implications of the new issues towards their development aspiration.\footnote{See World Trade Organization, "General Council - Proposals on Singapore Issues for Inclusion in the Draft Text for Cancún - Communication from Botswana on behalf of ACP Group of States, Bangladesh, India, Indonesia, Malaysia, Sri Lanka and Philippines," WT/GC/W/513 (August 23, 2003): 2-3.} At one point, Kenya, on behalf of 11 African countries, outlined their position which was almost identical to the Core Group’s platform on the Singapore Issues.\footnote{See World Trade Organization, "The Nairobi Declaration on Preparations for EPA Negotiations and the 5th WTO Ministerial Conference - Nairobi, Kenya - 28 May 2003 - Communication from Kenya," WT/L/519 (June 18, 2003); World Trade Organization, "Second LDC Trade Ministers Meeting - Dhaka, Bangladesh - 31 May - 2 June 2003 - Communication from Bangladesh," WT/L/521 (June 26, 2003); World Trade Organization, "Mauritius Ministerial Declaration on the Fifth Ministerial Conference of the WTO - Communication from Mauritius," WT/L/522 (July 8, 2003).} The synchronised platform was possible because the Core Group
members included several members and even coordinators of the AG, ACP Group, and LDCs Group.

By examining closely the argument of the Core Group together with the AG, ACP Group, and LDCs Group, this thesis suggests that the arguments fall as a predominantly instrumental frame related to cost-benefit calculations. There are three distinctive aspects to their argument. First, the coalitions exploited the decision-making procedures under the trade regime and did not provide substantive counter-arguments against the Singapore Issues. As mentioned in Chapter 2, the traditional understanding of consensus implies that a compromise is achieved when there is no objection to a decision or a ‘passive consensus’. In contrast to the traditional understanding of consensus, the notion of explicit consensus implies an ‘active consensus’, in which consensus could be achieved not only when there is no objection to the decision, but also an active call of support for the decision. This reflects a tactical use of semantics by using different meanings or interpretations of a word to the advantage of weaker and smaller countries.

Second, the coalitions refused to take the Singapore Issues as a bundle and wanted to individually evaluate the costs and benefits of each new issue, which related to future trade-offs. As mentioned in Chapter 2, negotiators would examine the overall size of the package agreement for future trade-offs during the agenda-setting process. A larger number of agendas create a larger ‘pie’ to satisfy and greater possibility for trade-offs, but creates greater uncertainties and risks. A smaller number of agendas would create a smaller ‘pie’ to satisfy and a lesser possibility for trade-offs, while generating lesser uncertainties and risks. The EC tactical linkage did not reflect any substantive linkages and new issues expansion would provide greater opportunities for the EC to exchange concessions over more sensitive issues, such as agriculture tariffs and subsidies. For developing countries, however, the expansion of new issues tended to create greater uncertainties and risks, rather than opportunities.

Third, the coalition focussed on the lack of clarity of the substance and parameters of the modalities, which in turn created uncertainties of the implementation costs for developing countries. This argument predominantly represented concerns of

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The Core Group and G-90 Opposing the Launch of the New ‘Singapore’ Issues
direct and indirect costs. The broad and flexible modalities might take negotiations into
a number of directions, which would only be determined in a future technical rule-
making process. Considering that the new issues are largely behind-the-border
disciplines, the deeper integration could generate unexpected and uncalculated direct
and indirect costs.

Before analysing the types of leadership exhibited by the Core Group and G-90,
it is important to note the different characteristics of the internal coordination in the
Core Group and G-90, respectively. These coalitions were relatively independent, but
were able to undertake a degree of coordination among them. The Core Group was
initially established for the Singapore Issues, while the AG, ACP Group and LDCs
Group were based on groupings outside the WTO active in various issues. The
overlapping membership between these coalitions enabled them to coordinate on a
common platform, but they did not possess an overarching coordinator. The inter-
coalition relation between the Core Group and the AG, ACP Group and LDCs Group
therefore was a relatively loose coordination. Coordination was developed through
informal linkages between Core Group members who were also members of the AG,
ACP Group, and LDCs Group.

Table 22. The AG, ACP Group, and LDCs Group Members

| African Group | Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Congo, Ivory Coast, Democratic Republic of Congo, Djibouti, Egypt, Gabon, Gambia, Ghana, Guinea, Guinea Bissau, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, and Zimbabwe |
| African, Caribbean, and Pacific Group | African Group members, Antigua and Barbuda, Barbados, Belize, Cuba, Dominica, Dominican Republic, Fiji, Grenada, Guyana, Haiti, Jamaica, Papua New Guinea, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Solomon Islands, Suriname, and Trinidad and Tobago |
| Least Developed Countries Group | Angola, Bangladesh, Benin, Burkina Faso, Burundi, Central African Republic, Chad, Congo, Djibouti, Gambia, Guinea, Guinea Bissau, Haiti, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Myanmar, Niger, Rwanda, Senegal, Sierra Leone, Solomon Islands, Tanzania, Togo, Uganda, and Zambia |

The internal coordination of the AG, ACP Group, and LDCs Group displayed a
distinctive coordination mechanism in the WTO. The three coalitions developed a
network in order to overcome their lack of human and financial resources so that they
could effectively be represented and participate in the WTO negotiations. There was an
unprecedented overlapping of membership among these coalitions (see Table 22).\textsuperscript{583} Often these coalitions would assign a country as a focal point to represent and negotiate on behalf of the coalition on a particular issue. In some cases, two coalitions would assign the same country as their focal point, particularly between the AG and ACP Group.

In particular moments of negotiations, the AG, ACP Group, and LDCs Group coordination reflected an inter-coalition known as the Group of 90 (G-90) (later developed into the Group of 110). The G-90 was established during the Doha Ministerial Conference and became more active during the Cancún Ministerial Conference. According to several African delegates, the G-90 did not maintain a regular or formal coordination, but mostly relied on informal linkages and networking. The G-90 often began with an initiative from one of the coordinators of the AG, ACP Group or LDCs Group. The G-90 therefore consisted of a very diverse membership in terms of level of economic development, economic interests, and the region of origin. For this reason, coordination and development of a common platform could be established on broad themes of development and often in a form of political statements, but it would be difficult to discuss detailed and specific rules.\textsuperscript{584}

Coming back to the types of leadership, this thesis further argues that the Core Group together with the AG, ACP Group, and LDCs Group exhibited a structural-based leadership using its predominant instrumental frame during the agenda-setting process. The Core Group and G-90 used their aggregate material resources in terms of their numerical advantage and combined political-economic weight to translate them into bargaining leverage at a critical point of the negotiation. Their structural-based leadership was exhibited in full motion during the final days of the Cancún Ministerial Conference as discussed in detail later in this chapter.

Consistent with the conceptual understanding of a structural-based leadership, there was almost no evidence that the Core Group’s initial arguments provided substantial technical reasoning or well-researched counter-arguments on the Singapore Issues. They developed a relatively simple and broad common platform, which worked

\textsuperscript{583} The overlapping members are: 25 countries were members of all three coalitions, 25 countries were members of AG and LDCs Group, 42 countries were members of AG and ACP Group, and 27 countries were members of ACP and LDCs Groups.

well considering the heterogeneous members. As discussed earlier, the arguments rested on a tactical use of semantics, and predominant concerns regarding costs associated with negotiations and implementation processes. This was a relatively simple task of seeking a common platform of whether: to begin negotiations or to continue a clarification process.

After the Cancún Ministerial Conference, the Core Group had to adapt to the change in negotiation situation from an agenda-setting process to a modalities-setting process. The details of the negotiation process will be discussed later, but it is important to note that WTO members eventually agreed to drop three new issues and only begin negotiations on trade facilitation provided that members could agree on its modalities. This decision enabled the Core Group to really focus on producing development-oriented modalities.

As negotiations moved into the modalities-setting process, this thesis suggests that the Core Group used mixed instrumental-normative frames, but largely concentrated on a normative frame by developing specific parameters on SDT using a normative frame. The Core Group accepted obligations on trade facilitation with traditional SDT (rather than demanding total exemption) but expanded further the SDT concept related to TACB. In the past, there was never a direct linkage between obligation and provision of TACB and, as discussed in Chapter 2, SDT provisions were often ‘best endeavour’ or non-binding that depended on the goodwill of donors. The Core Group’s new approach linked obligations of developing countries together with their implementation capacity and adequate provision of TACB. It means, on the one hand, the Core Group’s argument would give similar implementation obligations for developed and developing countries that could enhance global trade facilitation reform and in turn reduce global transaction costs (the liberal trade principle). On the other hand, the Core Group recognised the fact that some developing countries might lack the capacity to implement their obligations. In such cases, developing countries or LDCs without capacity to implement their obligations would be assured of receiving TACB in order to comply with their obligations (the developmental principle).

In adapting to the changing negotiation environment, this thesis also suggests that the Core Group exerted a strategic-based leadership by developing this innovative
approach to SDT and TACB, and used its negotiation skills to promote cooperation and achieve mutual gains. The heterogeneity of the coalition proved useful in developing a relatively balanced proposal since the coalition was able to take into account the different interests and preferences among the Core Group’s members especially between countries with more-advanced and less-advanced trade facilitation capabilities. The coalition learnt and took full account of the difficult experience of implementing beyond-the-border rules under the Uruguay Round. The Core Group integrated the value claims of its members and translated them into technically viable and balanced modalities adhering to both the liberal trade and developmental principles. During the negotiations, the Core Group was able to convince negotiating counterparts, particularly potential donor countries, that the new approach would be mutually beneficial for all.

4.2.3 External Coalition Dynamic: Key Negotiators Strict Distributive Strategy Moving towards Mixed Distributive-Integrative Strategies Achieving a Compromise through Soft Bargaining

Taking into account the internal coalition dynamic, this sub-section will examine the external relations related to the Core Group and G-90 during the agenda-setting and modalities-setting processes looking at two milestones: (a) Cancún Ministerial Conference in 2003; and (b) July Package in mid-2004.

a) The Cancún Ministerial Conference in 2003: Key Negotiators Strict Distributive Strategy Leading to Hard Bargaining and a Deadlock

The agenda-setting and modalities-setting processes would eventually lead to determination of the overall ‘pie’ under the single undertaking. At the time, the package deal on the table consisted of: agriculture, NAMA, and all four Singapore Issues; nonetheless, there was increasing discontent with the overall negotiation process and package deal. The first revision of the draft ministerial declaration (Castillo text) for the Cancún Ministerial Conference in August 2003 exacerbated the disappointment at least on two fronts: agriculture (as discussed in Chapter 3) and Singapore Issues.

In regard to the Singapore Issues, the draft text incorporated the positions of the proponents and opponents of the Singapore Issues: (1) to commence negotiations based
on modalities introduced by proponents of the Singapore Issues; or (2) to continue a clarification process reflecting the position of the opponents of the Singapore Issues.\textsuperscript{585}

Proponents and opponents of the Singapore Issues maintained a distributive strategy during the General Council on August 2003. On the one hand, proponents of the Singapore Issues, such as the EC, US, and Korea, were keen to begin negotiations on all four new issues based on their modalities. Further, the US indicated its concern if the modalities were modified to include a clarification process.\textsuperscript{586} Additionally, the EC pressured developing countries to accept negotiations on all four Singapore Issues and purposely linked the Singapore Issue with its concessions on agriculture.\textsuperscript{587}

On the other hand, the Core Group members, such as Malaysia, India, and Indonesia, together with Botswana on behalf of the ACP Group were very disappointed that their position and concerns during informal consultations were not reflected in the modalities.\textsuperscript{588} The Core Group argued that the informal consultation only discussed the modalities for investment and did not discuss the modalities for the other three new issues.\textsuperscript{589} Other coalitions involving developing countries circulated papers with a similar platform on the Singapore Issues, such as China and G-77 as well as Arab states.\textsuperscript{590}

In the middle of the above conflicting camps, some countries were relatively flexible. Sri Lanka, for instance, was willing to support negotiations on government procurement and trade facilitation, while they demanded further clarification on investment and competition.\textsuperscript{591} Chile admitted that initially it supported negotiations on

\textsuperscript{585} Stein, "Getting to the Table: The Triggers, Stages, Functions, and Consequences of Pre-negotiation," 490.


\textsuperscript{587} World Trade Organization, "General Council - Minutes of Meeting - Held in the Centre William Rappard on 25, 26 and 30 August 2003," WT/GC/M/82 (November 13, 2003): 56, 64, 130.

\textsuperscript{588} Nanda, Expanding Frontiers of Global Trade Rules: The Political Economy Dynamics of the International Trading System: 115.

\textsuperscript{589} See World Trade Organization, "General Council - Minutes of Meeting - Held in the Centre William Rappard on 25, 26 and 30 August 2003," WT/GC/M/82: 37, 39, 44.


\textsuperscript{591} World Trade Organization, "Declaration of the Group of 77 and China on the Fifth WTO Ministerial Conference at Cancún, Mexico, 10 - 14 September 2003 - Communication from Thailand," WT/L/536 (August 25, 2003); World Trade Organization, "Recommendations of the Arab Ministerial Meeting in
all four Singapore Issues, but changed its position to only support negotiations on trade facilitation. Chile could shift its position on the other Singapore Issues given the positive development of other issues, such as agriculture.\footnote{592} It means Chile viewed the overall package or ‘pie’ and placed the other new issues as bargaining leverage for concessions on agriculture by the major developed countries.\footnote{593}

During the Cancún Ministerial Conference, the Core Group together with the G-90 and other developing countries worked on a common platform as an archipelagic coalition as mentioned earlier. The Core Group became the rallying point for resisting the launch of negotiations of the Singapore Issues. The Core Group, for instance, issued a paper demanding clarification on very specific elements on each new issue.\footnote{593} Many of the elements needing clarification were already discussed in the study and clarification process as discussed in this chapter, such as: application of the liberal trade principle, direct and indirect implementation costs, and loss of policy space. Further, the archipelagic coalition, under the leadership of Malaysia and India with approximately 70 countries, conveyed their deep concerns related to the implications of the four new issues, lack of capacity to implement the obligations, and concluded that without an explicit consensus there was no other option than to continue the clarification process.\footnote{594} Furthermore, the G-90 issued a separate paper on 12 September 2003 reiterating: the need for ‘explicit consensus’ to begin negotiations; rejected linking progress of the Singapore Issues with progress on other issues; and concluded that option two should be adopted to clarify all four new issues.\footnote{595}

Negotiations in the Cancún Ministerial Conference intensified between proponents and opponents of the Singapore Issues when a second draft ministerial declaration (Derbez text) was released on 13 September 2003 in an attempt to move WTO members into an integrative movement. The Derbez text on Singapore Issues

reflected the interests of proponents rather than opponents of the Singapore Issues. The wording of the Derbez text was slippery and implied that all new issues would be locked and eventually be negotiated. The Derbez text basically proposed that modalities on investment and competition should be established at the same time as modalities on agriculture and NAMA. Further, the text explicitly supported the commencement of negotiations on government procurement and trade facilitation based on modalities (Annex D and E). These modalities, however, had never been discussed before and contained very little substance.

Considering the Derbez text favoured the position of Singapore Issues proponents, a large number of developing countries expressed their discontent and exhibited the archipelagic coalition at work. Botswana on behalf of the G-90 viewed that the overall Derbez text was imbalanced and the text on the Singapore Issues was unacceptable considering an explicit consensus was not achieved. India indicated that the text ignored the will of the majority of developing countries, which wanted a further clarification. Barbados on behalf of the Caribbean Group reiterated its position to oppose the launch of negotiations even on government procurement and trade facilitation given the possible negative implementation implications.

In another attempt to move key negotiators into an integrative movement, the chairperson convened a small group meeting (the US, EC, Mexico, Brazil, China, India, Malaysia, Kenya, and South Africa) followed by a larger group meeting consisting of approximately 30 ministers on 14 September 2003. The chairperson decided to first move forward on negotiations on the Singapore Issues. According to a news report, the decision was made because there was still a wide divergence on the Singapore Issues, while agriculture and other issues were considered more manageable. Several developing countries questioned this decision since they had been informed that their movement on the Singapore Issues would be subject to the movement of the major developed countries in agriculture. This would mean that developing countries would

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have to first extend their concessions on the Singapore Issues rather than developed countries first placing their agriculture concessions on the table.

In the final hour of the Cancún Ministerial Conference, key negotiators engaged in hard bargaining in order to maintain their value claims. As discussions began, developing countries adamantly opposed the commencement of negotiations prior to the clarification process of all four Singapore Issues. Subsequently, Derbez proposed beginning negotiations on two new issues (government procurement and trade facilitation) and dropping the other two new issues (investment and competition). While the EC accepted this suggestion, some countries suggested dropping government procurement. Derbez then adjourned the meeting in order for ministers to consult with other WTO members and their coalitions. After a brief consultation process, the EC was willing to unbundle the Singapore Issues, but wanted to wait for the result of negotiations on other issues, Korea and Japan were persistent in negotiating all four new issues, and Botswana on behalf of the G-90 was unwilling to negotiate any of the new issues. As a result, Derbez terminated the conference because divergence among WTO members was too wide and a compromise could not be reached on the Singapore Issues.599

Viewing the last few days of the conference, the evidence reaffirms that the Core Group and G-90 exhibited a structural-based leadership as mentioned in the internal coalition dynamic. The thesis posits that the Core Group initially used mixed distributive-integrative strategies as it was willing to accept a degree of the value claim of proponents of the Singapore Issues. It did this by maintaining a clarification process and keeping the new issues in the Doha agenda, although eventually the coalitions imposed a strict distributive strategy. The structural-based leadership came in the form of an archipelagic coalition resembling islands of a veto coercive power. This veto-like power is viable when a consensus decision must be taken, especially the case with the notion of an 'active consensus', meaning a decision can be approved not only in absence of opposition, but also with explicit calls for support.

This thesis suggests that the structural-based leadership with a strict distributive strategy succeeded because it was employed in the final hours during a critical 'make or

break' moment taking advantage of the north-south tension surrounding the Cancún Ministerial Conference. As discussed in Chapter 2, a structural-based leadership could not be frequently used and should be applied in a particular time and in line with the particular ability of a negotiator. Some analysts argue that this coalition model is difficult to replicate and is only suited for special events and/or issues. The evidence suggests that north-south tension increased at least for two reasons: (1) developing countries were increasingly frustrated by the persistence of the major developed countries to launch negotiations on new issues coupled with a lack of progress in agriculture negotiations; and (2) the chairperson decided to begin negotiations on the Singapore Issues as issues of interest to developed countries rather than beginning with agriculture as issues of interest to many developing countries.

The discussions in the conference predominantly involved calculations of the size of the 'pie' or single undertaking in relation to future trade-offs. Coming back to the conceptual framework in Chapter 2, agenda-setting and modalities-setting processes have particular characteristics but often they are conducted very close from one to another or simultaneously. In this case, for instance, the decision to include or exclude an agenda depended on their modalities. In relation to the principles and norms under the regime, the Core Group questioned the application of the liberal trade principle for each of the new issues; but more importantly, they connected the application of the liberal trade principle with developmental costs associated with the implementation of new issues (e.g. costs associated with trade-offs, implementation, non-compliance, and loss of policy space).

The mode of negotiation among key negotiators therefore resembled hard bargaining leading to a deadlock in which each maintained a strict distributive strategy and used instrumental cost-benefit calculations looking at the future trade-offs under a single undertaking. On the one hand, the Core Group and G-90 together with their supporters were reluctant to begin negotiations on broad and flexible modalities and wanted further clarification in order to reduce uncertainties and risks. On the other hand, the EC and its supporters wanted to begin negotiations based on broad and flexible modalities, and hoped to include all new issues as leverage for future trade-offs between

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agriculture and new issues. For this reason, several developing countries were willing to unpack or unbundle new issues and evaluate the cost and benefit of individual issues, while the EC and its supporters imposed a tactical linkage by bundling the new issues. Although the EC eventually moved into mixed distributive-integrative strategies (while Korea and Japan maintained a strict distributive strategy), the prolonged tactical linkage proved counter-productive when the G-90 rejected negotiations on all four new issues altogether. As a result, the archipelagic coalition succeeded in stalling the negotiations and eventually was willing to continue negotiations provided key negotiators accepted the direction of the negotiations to the Core Group/G-90’s liking.

b) The 2004 July Package: Key Negotiators Mixed Distributive-Integrative Strategies Achieving a Compromise through Soft Bargaining

After the Cancún deadlock, it took several months to finally agree to continue negotiations on trade facilitation and drop altogether the other three new issues from the Doha Round. At first there were several options: ‘2+2’ formula meaning two new issues (government procurement and trade facilitation) would be negotiated, while the other two new issues (investment and competition) would undertake further clarification; or ‘2+1+1’ formula meaning the first two new issues would be negotiated multilaterally, one negotiated plurilaterally, and one taken to the working group for clarification. Proponents of the Singapore Issues (the EC, US, Canada, and Switzerland) favoured the ‘2+2’ formula. Several Latin American countries, such as Chile, Brazil, Argentina, Colombia, and Costa Rica, were more flexible and willing to discuss modalities on trade facilitation and if possible government procurement. The Core Group favoured negotiations on trade facilitation with further clarification and demanded the other three new issues be discarded. In January 2004, the Core Group finally proved influential as the US and EC eventually softened their position and moved into an integrative

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601 Bernal et al., "South-South Cooperation in the Multilateral Trading System: Cancún and Beyond," 23.
604 The paper was released by Bangladesh (on behalf of the LDCs Group), Botswana, China, Cuba, Egypt, India, Indonesia, Kenya, Malaysia, Nigeria, Philippines, Tanzania, Uganda, Venezuela, Zambia and Zimbabwe. See World Trade Organization, "General Council - Minutes of Meeting - Held in the Centre William Rappard on 15 - 16 December 2003," WT/GC/M/84 (February 27, 2004): 4, 7-8, 11-12, 49.
movement by accepting negotiations on trade facilitation and dropping the other three new issues.  

In developing the trade facilitation modalities, there were two main coalitions at work: (1) the Core Group (supported by the G-90); and (2) the Colorado Group. The Colorado Group consisted of both developed and developing countries including: Australia, Canada, Chile, Colombia, Costa Rica, EC, Hong Kong, Hungary, Japan, Korea, Morocco, New Zealand, Norway, Paraguay, Singapore, Switzerland, and the US. Developing countries in the Colorado Group tended to possess more-advanced trade facilitation capabilities; hence they were more ambitious in advancing reform and developing stronger binding obligations on trade facilitation. According to one of the delegates, Paraguay was the informal spokesperson (rather than coordinator) of the Colorado Group. Despite having a spokesperson, other delegates suggested that the group was not a formal coalition in the sense that one country (or coordinator) would intervene on behalf of the Colorado Group. The group served as an information exchange forum.

In early 2004, a drafting group was established to work out the trade facilitation modalities. The drafting group consisted of Brazil, Canada, China, Costa Rica, EC, India, Japan, Malaysia, the Philippines, Singapore, Tanzania, Trinidad and Tobago, and the US. The drafting group later included Bangladesh, Chile, Jamaica, Zimbabwe, Morocco, and Georgia. Members of the drafting group would develop a transmission belt wherein they would separately report the negotiation progress in the drafting group to the other members of their coalitions, such as the Core Group, Colorado Group, AG, ACP Group, and LDCs Group.

The WTO Secretariat released draft modalities on trade facilitation, in which both the Core Group and Colorado Group provided their inputs. The Core Group

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607 WTO staff and former WTO delegate from the Caribbean, interviewed by author, March 21, 2011.

608 WTO delegate from Southeast Asia, interviewed by author, October 7, 2010.

609 WTO delegate from a developed country, interviewed by author, March 11, 2011.

wanted to include: identification of the needs and priorities for developing countries; financial and technical assistance as a pre-condition to implementation; effective cooperation in case of violation of import-export laws; and provision concerning applicability or non-applicability to the DSM.\(^{611}\) The Colorado Group issued a paper indicating their concern that negotiations were moving away from Annex E of the Derbez text. Although it tried to redirect negotiations on the Derbez text, they eventually abandoned this effort due to a lack of support from other WTO members.\(^{612}\)

During the negotiations, there were at least four points of discussion. First, and the most controversial issue, the Core Group proposed to link a pre-condition of support in financial and infrastructure development prior to implementing obligations. Many developed countries, as potential donors, argued that the WTO is not an aid agency and therefore cannot provide financial support through the WTO. Developed countries further argued that TACB should be channelled through bilateral cooperation.\(^{613}\)

Second, the Core Group proposed exempting developing countries from dispute settlement. Those opposing this idea believed there should be no differentiated treatment among WTO members on dispute settlement. The issue of dispute settlement exemption was eventually dropped from trade facilitation modalities.\(^{614}\)

Third, India wanted to address the issue of cooperation among customs authorities in case of violation of import-export laws. Under the Agreement on Customs Valuation, India found it difficult to exchange information on custom values. Despite some resistance from several developed countries, the issue was eventually resolved in the modalities.\(^{615}\)

Fourth, Bangladesh (on behalf of the LDCs Group) proposed stronger language concerning LDCs including: the need to determine the needs and priorities of LDCs and, more importantly, assurances that LDCs would only be obligated to implement

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\(^{611}\) Priya, "Trade Facilitation: A Brief Negotiating History," 5.
\(^{612}\) The proposal was supported by Albania, Australia, Bulgaria, Canada, Chile, Colombia, Costa Rica, Croatia, El Salvador, EC, Guatemala, HK China, Iceland, Israel, Japan, Korea, Liechtenstein, Nicaragua, Mongolia, New Zealand, Norway, Pakistan, Paraguay, Peru, Romania, Singapore, Sri Lanka, Switzerland, Chinese Taipei, Turkey and the US. See Priya, "Trade Facilitation in WTO and Beyond," 8.
\(^{614}\) Ibid., 6-8.
\(^{615}\) Ibid., 6-8.
decisions subsequent to receiving adequate TACB.\textsuperscript{616} The demand by LDCs was largely accepted and incorporated into the draft Annex D.

In negotiating for the trade facilitation modalities, this thesis argues that key negotiators moved into mixed distributive-integrative strategies and a compromise was achieved through a lowest common denominator. The compromise represented soft bargaining since the compromise tilted towards the developmental claims of the Core Group and LDCs Group. The 2004 July Package indicated that negotiations on trade facilitation would commence based on the modalities in Annex D, while the other three new issues were finally dropped altogether from the Doha Round reflecting the position of the Core Group. The first paragraph of Annex D emphasised the main objective of negotiations was to: clarify and improve relevant aspects of Articles V (freedom of transit), VII (fees and formalities connected to importation and exportation), and X (publication and administration of trade regulations) of GATT. In accommodating the position of India, it stated that negotiations would aim at enhancing TACB and developing effective cooperation between customs or the appropriate authority on trade facilitation and custom issues.

The bulk of Annex D specified SDT parameters for developing countries and LDCs that largely reflected the value claims of the Core Group and LDCs Group. For instance, the second paragraph of the July Package provided the overarching blanket of SDT and recognised the inadequacy of traditional SDT (additional transitional period). The key contribution of the Core Group and LDCs Group was the recognition of the balance: obligations, implementation capacity, and provision of TACB. Annex D mentioned that “the extent and the timing of entering into commitments shall be related to the implementation capacities of developing and least-developed Members”\textsuperscript{617} and developing countries and LDCs are not required to implement infrastructure-related obligations if they did not possess the capacity to implement them or had not received adequate TACB. The modalities, however, fell short of creating a stronger binding obligation on developed countries and merely stated that developed countries should ‘make every effort’ to provide support and assistance to aid implementing infrastructure-related obligations; thus reflecting the value claims of the potential donor

\footnote{\textsuperscript{616} Ibid., 6-8.}  
\footnote{\textsuperscript{617} Khor, "The "Singapore Issues" in the WTO: Evolution and Implications for Developing Countries," 29.}
countries. Furthermore, with reference to the demands of the LDCs Group, Annex D stipulated that negotiations must address the needs and priorities of developing countries and LDCs, as well as address their implementation costs.\(^{618}\)

There are different scholarly interpretations regarding the linkage between obligations and provision of TACB by developed countries. Some scholars argue against the linkage because WTO members should not be compensated for adopting new rules, but they should have the self-confidence to implement their obligations and this should not be at the expense of donor countries.\(^{619}\) Others scholars argue in favour of TACB as a form of SDT to help developing countries address the adjustment costs of trade liberalisation considering that past SDT provisions used vague language or were only ‘best endeavour’ provisions.\(^{620}\)

In the context of the liberal trade and developmental principles, this thesis argues that Annex D was a fundamental change to the SDT norm and a beginning to a new approach to the developmental principle under the trade regime. For the first time in the history of the trade regime, this new approach attempted to address the past experiences of the deep integration and concerns related to the overwhelming implementation costs for developing countries. It also clearly recognised the inadequacy of traditional SDT. For instance, Annex D recognised that some of these implementation obligations require infrastructure development, which might require human, administrative, and financial capital. In such a situation, developing countries would only be bound to implementation when they possessed sufficient capacity to implement them or received adequate TACB to enable them to implement their obligations. In reference to Chapter 2, the new approach fully incorporated the sustainable development norm. Developing countries and LDCs lacking capacity to implement their obligations would not be forced to implement their obligations beyond their means and avoid non-compliance enforcement by other WTO members. This relatively strong developmental nuance of Annex D provided a greater sense of ownership and increased the level of confidence for developing countries to engage in negotiations and undertake WTO obligations.

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\(^{618}\) World Trade Organization, "Doha Work Programme - Decision Adopted by the General Council on 1 August 2004," WT/L/579: D-1.
\(^{619}\) Ibid., D-1.
This thesis further argues that Annex D became the embryo for a new and innovative approach to SDT under the trade regime. As mentioned above, the sustainable development norm was fully incorporated into the modalities for trade facilitation. The modalities tried to balance: obligations of members under a trade facilitation agreement (the liberal trade objective), actual trade facilitation infrastructure of members or capacity of members to implement their obligations, and provision of TACB for members with a lack of capacity to implement their obligations (development objective). The modalities provided a balance between the liberal trade and developmental principles leaning towards the developmental principle. It is worth noting, however, that Annex D provided only modalities, while specific rules needed further negotiations. The detailed rules could therefore bring a trade facilitation agreement leaning towards greater flexibilities providing ample policy space or more stringent rules creating a burdensome and inoperable mechanism.

4.3 The Core Group and G-90 Negotiating Rules for Trade Facilitation

As a follow-up to the trade facilitation modalities, the Negotiating Group on Trade Facilitation (NGTF) was established in late 2004—with Muhamad Noor Yacob, Ambassador of Malaysia, as the chairperson—to negotiate specific rules on trade facilitation. This thesis limits its analysis on coalitions developing specific rules for SDT and TACB because its objective includes understanding negotiating coalitions at different stages of negotiation. The Core Group and G-90 were largely active on the subject of SDT and TACB. For this reason, the proposals and coalition dynamic that were outside the subject of SDT and TACB (e.g. in clarifying and improving Articles V, VII, and X) are therefore beyond the scope of this thesis.

The deliberation for specific rules on trade facilitation is characterised as a rule-making process in which different rules would entail different distributive implications. In terms of coalition maintenance, the diverse interests and preferences among members, particularly differences between countries with more-advanced and less-advanced trade facilitation capabilities, would become more salient. Although negotiators would become more aware of the distributional implications, the trade facilitation negotiation atmosphere had shifted from a conflicting and hostile
negotiation climate during the agenda-setting and modalities-setting processes into an amicable negotiation climate during the rule-making process.

Considering the dramatic change of negotiation environment, the first sub-section briefly examines the impact of the amicable negotiation climate towards the coalition dynamic in trade facilitation negotiations. The subsequent sub-section investigates the internal dynamic within the Core Group and G-90 by examining the nature of argument and types of leadership as well as the increasing role of the AG, ACP Group and LDCs Group during the later rule-making process. The last sub-section investigates the external dynamic of the coalition by examining negotiation strategies and mode of negotiation.

4.3.1 The Amicable Trade Facilitation Negotiation Climate Affecting Coalition Dynamics

At the outset, it is worth noting that both developed and developing countries realised the overall potential benefits of a trade facilitation agreement. Such an agreement would complement the broader liberalisation efforts in the regime and could create benefits including: improved collection of revenue, enhanced border control and security, increased competitiveness of business at home and export markets, enhanced transparency and predictability in global trade, and encouraging trade and foreign investment.\(^{621}\)

There were two factors that created an amicable negotiation climate during the rule-making process compared to the previous agenda-setting and modalities-setting processes. First, the strong developmental dimension of the trade facilitation modalities (particularly the linkage: obligations, implementation capacity, and provision of TACB) provided a comfortable environment for negotiations. According to many delegates, developing countries became comfortable negotiating trade facilitation with the assurances that implementation obligations would only be applicable if a country possesses sufficient capacity or receives adequate TACB to implement those

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obligations.\textsuperscript{622} Second, there was a broad understanding that trade facilitation would not be exchanged for concessions or would not be part of the trade-offs despite being part of the single undertaking.\textsuperscript{623} These two factors created an amicable negotiation climate relaxing the north-south division, which in turn affected the coalition dynamics. In several cases, for instance, coalitions of developed and developing countries emerged to address specific rules, such as: India-US suggesting a multilateral mechanism to facilitate information exchange; US-Uganda proposing the abolition of consularisation; Switzerland-Swaziland-Mongolia proposal on transit matters; and Colorado Group proposal on SDT and TACB.

4.3.2 **Internal Coalition Dynamic: The Core Group and G-90’s Mixed Instrumental-Normative Frames and Strategic-Based Leadership**

As negotiations moved into the rule-making process, Malaysia requested handing over the coordinator role to the Philippines, although Malaysia remained a member of the Core Group. According to several sources, the Malaysian Ambassador requested the replacement after receiving a new assignment and wanted to concentrate on the new assignment.\textsuperscript{624} In early 2006 Ambassador Yacob ended his tenure as the chairperson of the NGTF and was assigned as the chairperson of the Dispute Settlement Body.

As negotiations moved to discussions on specific rules, different interests among the Core Group and G-90, particularly based on members’ trade facilitation capabilities, became more salient. The AG, ACP Group, and LDCs Group had relatively less-advanced trade facilitation capabilities and less capacity to implement obligations compared to larger Core Group members, such as the Philippines, Indonesia, Malaysia, and Egypt. In general, larger developing countries tended to have a greater capacity to implement information-technology related obligations, such as establishing websites, risk management systems, and timely publication for goods; although they might have difficulty in implementing more difficult obligations, such as a single window

\textsuperscript{622} WTO delegate from Southeast Asia, interviewed by author, March 1, 2011; WTO delegate from Africa, interviewed by author, February 22, 2011; WTO delegate from Africa, interviewed by author, February 25, 2011; and WTO delegate from Southeast Asia, interviewed by author, March 1, 2011.

\textsuperscript{623} WTO staff and former WTO delegate from the Caribbean, interviewed by author, March 21, 2011.

\textsuperscript{624} WTO delegate from Southeast Asia, interviewed by author, October 7, 2010; WTO staff, interviewed by author, March 2, 2011.
Many of these obligations, however, might be challenging for smaller developing countries and particularly LDCs.

In the initial stage of the rule-making process, the Core Group was less pronounced in advancing specific rules on SDT and TACB, while the AG and LDCs Group became more active. These coalitions put forward individual proposals reflecting their particular concerns and needs. By 2006, the Core Group together with proponents from the AG, ACP Group, and LDCs Group eventually circulated their proposal building on the proposal of the Colorado Group. The Core Group and G-90 came together to release a similar paper in mid-2007.

As the details of the proposals will be elaborated in the next sub-section, it is important to note that the Core Group provided mixed instrumental-normative frames. On the one hand, the Core Group accepted implementation obligations for all WTO members under a trade facilitation agreement (the liberal trade principle), but on the other hand, the Core Group also provided specific rules balancing WTO obligations with the capacity of members, and provision of TACB (the developmental principle).

This thesis suggests that the Core Group together with the AG, ACP Group, and LDCs Group exhibited a strategic-based leadership in order to maintain cohesion among its members. Taking into account that the Core Group did not produce any proposal until mid-2006, leadership here reflected the role of the Philippines (rather than Malaysia) as the new coordinator of the Core Group. Similar to the modalities-setting process, the Core Group tried to develop innovative solutions to accommodate the diverse interests and preferences among its members and to achieve mutual gains. The Core Group used mixed instrumental and normative frames, but largely focussed on developing specific rules on SDT and TACB using a normative frame. As mentioned in Chapter 3, the G-20 developed similar mixed instrumental and normative frames, but in contrast largely focussed on developing specific rules using an instrumental frame related to specific tariffs and subsidies reduction/elimination formulas.

This thesis further suggests that the internal compromise integrated the diverse interests and preferences among the Core Group and G-90 members by arguing through communicative action. During my interviews, a delegate indicated that Core Group

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members with more-advanced trade facilitation capabilities would benchmark the coalition’s position to its members from the AG, ACP Group and LDCs Group. The interviewee also mentioned that some of the larger developing countries could actually leave the Core Group but it would make it more difficult for the other (smaller) Core Group members to promote their agenda. This acceptance of a lower threshold by Core Group members indicated a form of solidarity among its members. In comparison to the socio-humanitarian claims of the G-33, the normative frame does not go as far as an issue of humanitarian survival, but a consensual understanding that WTO rules must take full account of the different levels of economic development, socio-economic considerations, and provide greater policy space for members undertaking obligations under the trade regime. In the past, WTO obligations were a relatively unilateral problem, even for small and more vulnerable developing countries. The Core Group and G-90 envisaged a multilateral trade regime that acknowledges the different capabilities among developing countries and developed a multilateral mechanism (rather than individual country solutions) to address these issues, including adequate provision of TACB, in order for these countries to undertake trade facilitation reform in a sustainable manner. The norm of sustainable development, as the better argument, became the foundation of the internal compromise among members of the Core Group and G-90. As mentioned earlier in Chapter 3, this solidarity among members of the Core Group and G-90 was also exhibited among G-20 members between countries with more-ambitious and less-ambitious positions on market access, as well as among G-33 members between countries demanding moderate and greater flexibilities.

After the Core Group and G-90 proposal in 2007, the role of the Core Group began to decline. Although the informal networking remained, according to an internal source, the coordinating role required substantial time and effort, while there were only a number of countries that were able to contribute substantively to the coalition. As discussed later, members began to concentrate on individual needs and assessment processes and there was a crucial change in the negotiation format after 2007 that impacted the coalition dynamics.

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626 WTO delegate from Southeast Asia, interviewed by author, October 13, 2010.
627 WTO delegate from Southeast Asia, interviewed by author, March 1, 2011.
The Core Group and G-90 members tended to move towards their traditional coalitions, such as the AG, ACP Group, and LDCs Group, which emphasised their normative frame by requesting ‘flexibilities over flexibilities’, and TACB assurances. These coalitions tried to acquire an absolute flexibility or greater policy space, in which a country would gain greater autonomy in determining the time and extent of WTO obligations under trade facilitation. According to an interviewee, the AG rotated the role of coordinator with each coordinator possessing differing levels of zeal. For instance, Egypt as the coordinator of the AG was more assertive and committed in demanding additional flexibilities compared to Rwanda as the AG coordinator. 628 Despite these different coordinators, the AG still portrayed the same position and normative frame as its main argument. As discussed in detail, the AG, ACP Group, and LDCs Group demands were largely incorporated in the trade facilitation consolidated texts, but divergence remained on their specific rules.

It is worth noting that China was part of the Core Group opposing the launch of negotiations on the Singapore Issues, but was not part of the Core Group on trade facilitation. This move was understandable considering China’s interest in trade facilitation was more attuned with those of countries possessing more-advanced trade facilitation capabilities. As discussed in the subsequent section, China worked together with several South Asian countries in developing their own proposals and later joined the Colorado Group.

4.3.3 External Coalition Dynamic: Key Negotiators Moving towards Integrative Strategy Reaching an Increasing Convergence through Arguing

After closely examining the internal coalition dynamic, this sub-section will examine the external relations related to the Core Group and G-90 during the rule-making process. It is important to note that negotiations on SDT in trade facilitation were conducted in parallel to negotiations related to Articles V, VII, and X. In other words, members were simultaneously learning about their future obligations, and at the same time, developing specific SDT rules. There were two important parts of negotiations during this period: (a) key negotiators submitting their technical proposals on SDT and

628 WTO delegate from a developed country, interviewed by author, March 11, 2011.
The Core Group and G-90 Negotiating Rules for Trade Facilitation

TACB between 2005 and 2007; and (b) negotiations through informal consultations led by friends-of-the-chair in post-2007.

a) Technical Proposals on SDT and TACB: Key Negotiators Gradually Moving to Mixed Distributive-Integrative Strategies towards an Increasing Convergence

During the rule-making process, at least four coalitions emerged proposing several approaches to SDT and TACB: the AG, ACP Group, China and several South Asian countries, and Latin American countries. Table 23 summarises key elements of the main proposals on SDT and TACB.

The early proposal of the AG emphasised the process of identifying needs and priorities taking into account the African basic characteristics (e.g. high transportation and communication costs, lack of capacity of custom administrations) and identifying costs related to obligations.629 The AG also outlined that TACB should be extended during the negotiation and post-negotiation periods. It also suggested that a mechanism or building upon existing mechanisms should be established for coordinating between recipient countries and donors in order to facilitate TACB.630 More importantly, the AG requested the adoption of a GATS-style positive list approach meaning members could commit only in areas in which they are comfortable to commit.631

The ACP Group, similar to the AG, perceived that TACB should be available during negotiation and post-negotiation periods. The coalition re-emphasised flexibilities for LDCs to determine the extent and timing of entering into obligation, which would be subject to their implementation capacity or upon receipt of adequate TACB. The ACP Group believed that an inter-agency coordination mechanism should be established as a ‘one-stop-shop’ or ‘single window’ facility supported by a ‘Trade Facilitation Technical Assistance and Capacity-Building Fund’.632

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629 Priya, "Trade Facilitation in WTO and Beyond," 32.
Table 23. Key Proposals on Special Differential Treatment and Technical Assistance and Capacity Building (2005-2006)

<table>
<thead>
<tr>
<th>Country/Membership</th>
<th>General principles</th>
<th>Implementation commitment</th>
<th>Technical Assistance and Capacity Building (TACB)</th>
<th>Dispute settlement</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>China and Pakistan (April 2005)</td>
<td>The WTO should develop standard criteria for assessment and evaluate existing trade facilitation differences among members; the self-assessment process should also recognise the different levels of trade facilitation between regions within a country.</td>
<td></td>
<td>Some members might require TACB during the self-assessment process.</td>
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<tr>
<td>African Group (April 2005)</td>
<td>Identify needs and priorities specific to African countries basic characteristics and identify cost implications of implementation, which should be directly linked to TACB.</td>
<td></td>
<td>TACB should include negotiation-oriented research and capacity-building projects, need and prioritisation exercises, and travel support of capital-based experts.</td>
<td></td>
<td>Enhance inter-agency cooperation particularly those with capacity to provide TACB in trade facilitation.</td>
</tr>
<tr>
<td>Latin American Countries (June 2005)</td>
<td>Identification of needs and priorities will be a compulsory benchmark to identify future commitment and serve to define TACB requirements; there will be a transition period and TACB in case there is no capacity to implement; members shall undertake a gradual implementation commitment following a certain timetable and procedure.</td>
<td></td>
<td>TACB should be directed to establish programmes to implement the outcome of the Agreement and guarantee the viability of their implementation; establish a mechanism to organise and coordinate TACB between donors, recipients, and other international organisations.</td>
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Table 23. Key Proposals on Special Differential Treatment and Technical Assistance and Capacity Building (2005-2006) (cont’d)

<table>
<thead>
<tr>
<th>General principles</th>
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<th>Technical Assistance and Capacity Building (TACB)</th>
<th>Dispute settlement</th>
<th>Others</th>
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<tbody>
<tr>
<td><strong>African Group (July 2005)</strong></td>
<td></td>
<td>There should be two types of TACB: (1) TACB during negotiations: simplification of needs and priorities identification process; the WTO compiles needs and priorities of members; and support for clarification and an educative process; (2) TACB beyond negotiations: TACB particularly by developed countries in implementing commitments</td>
<td></td>
<td>In relation to TACB in implementing commitments, the WTO should establish a coordination mechanism or build upon existing mechanisms involving relevant parties</td>
</tr>
<tr>
<td><strong>Pakistan and Switzerland (September 2005)</strong></td>
<td></td>
<td>TACB phases: (1) action plans; (2) pledging mechanism for TACB and funding; (3) multiple channels to provide TACB and funding; (4) WTO Trade Facilitation Committee approves action plans for obligation by members and commitment by donors; (5) multilateral endorsement of the implementation of capacities</td>
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<td><strong>ACP Group (November 2005)</strong></td>
<td>Re-emphasise the mandate on flexibilities extended to LDCs (e.g. flexibilities on determining possible format and final result of negotiations, as well as flexibilities on the extent and timing of entering into commitment related upon receipt of TACB and implementation capacity acquisition)</td>
<td>There should be two types of TACB: TACB during negotiations (identification of needs and priorities, negotiations support); and (2) after negotiations (commitment implementation support); TACB should be made operational by providing support (both financial and technical)</td>
<td></td>
<td>Establish an inter-agency coordinating mechanism by the WTO Secretariat ('one-stop shop' or 'single window'); establish a 'Trade Facilitation Technical Assistance and Capacity-Building Fund'</td>
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Table 23. Key Proposals on Special Differential Treatment and Technical Assistance and Capacity Building (2005-2006) (cont’d)

<table>
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<tr>
<th></th>
<th>General principles</th>
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<th>Dispute settlement</th>
<th>Others</th>
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<tbody>
<tr>
<td><strong>China, Pakistan,</strong></td>
<td></td>
<td>Create a module differentiating easy and difficult commitments</td>
<td></td>
<td>Resolve disputes to consultation or mediation, and use Dispute Settlement Mechanism as the last resort only</td>
<td>Establish a coordination/collaborative mechanism and if possible a mechanism related to financing</td>
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<tr>
<td><strong>India, and Sri Lanka</strong></td>
<td>(March 2006)</td>
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<tr>
<td><strong>Latin American countries</strong></td>
<td>(April 2006)</td>
<td>Propose 4 stages:</td>
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<td>(1) Self-assessment (between signing and entry into force), members identify immediate commitments, commitments needing a transitional period, and commitments needing capacity-building;</td>
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<td>(2) Notification, members begin binding commitments upon the Agreement’s entry into force, except for commitments needing a transitional period, and commitments needing capacity-building;</td>
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<td>(3) Capacity development, members request donors or relevant organisations in formulating and implementing capacity-building plans, and members that cannot formulate capacity-building plans must inform the WTO within three years after the Agreement came into force;</td>
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<td>(4) Verification mechanism, members confirm capacity acquisition and obligation fulfilment to the WTO within 6 months from the date of the verification</td>
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Table 23. Key Proposals on Special Differential Treatment and Technical Assistance and Capacity Building (2005-2006) (cont’d)

<table>
<thead>
<tr>
<th>General principles</th>
<th>Implementation commitment</th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>African Group (July 2006)</strong></td>
<td>Elements in SDT: flexibility to developing countries to fit countries' circumstances, respect policy space and level of development, set non-binding and long-term objective for trade facilitation and rules setting, future commitment should not be part of single undertaking and excluded from DSM</td>
<td>GATS-type approach: apply a 'positive list', apply principle of progressivity. Link commitment and TACB, commitment based on individual country basis, flexibilities for regional groupings</td>
<td>Elements of TACB: clear and precise diagnosis of each country, design well-targeted TACB, setting benchmarks that could verify necessary steps, TACB during negotiations, TACB in implementing commitments, facilitate regional integration and cooperation between border agencies, enhance TACB coordination etc.</td>
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</table>

Sources: TN/Tf/W/29, TN/Tf/W/33, TN/Tf/W/41, TN/Tf/W/56, TN/Tf/W/63, TN/Tf/W/73, TN/Tf/W/81, TN/Tf/W/82, TN/Tf/W/95
A China and Pakistan paper focussed on a self-assessment process, and in particular, developing standard criteria and assessing existing trade facilitation differences among members.\textsuperscript{633} In a subsequent paper, joined by India and Sri Lanka, they proposed establishing a module categorising obligations based on: the degree of implementation difficulty; the extent of which obligations required resources and capability; and possible impacts on members. However, this idea was never revisited.

The coalition also suggested establishing a coordination mechanism and if possible a financing mechanism. Similar to the earlier Indian position on the dispute settlement issue, these countries proposed disputes should be primarily settled through consultation or mediation, while the DSM should only be used as the last resort.\textsuperscript{634} Pakistan also worked together with Switzerland and proposed a mechanism related to TACB and financing, including a pledging mechanism for TACB and funding involving members and donors in which commitments on TACB would be exchanged for the implementation of obligations.\textsuperscript{635} However, this idea never gained traction.

A group of Latin American countries (Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Paraguay, Peru, and Uruguay) placed great significance on the process of identifying needs and priorities, which would basically determine a member's current capacity and determine if a member needs an additional transition period and TACB. The coalition wanted members to follow a stricter timetable and procedure in which members could gradually acquire capacity to implement their obligations. Similar to the above coalitions, the group requested the establishment of a mechanism to organise and coordinate TACB between recipient countries and donors.\textsuperscript{636} As a follow-up, a similar set of Latin American countries (Chile, Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, and Uruguay) envisaged a mechanism in which members


would undertake the following four steps: self-assessment; notification; capacity development; and confirmation of capacity acquisition and compliance to obligations.\(^{637}\)

As the above coalitions tabled their proposals, they consolidated into two major coalitions in July 2006: (1) the Colorado Group mainly subsumed the coalition consisting of China-South Asian countries, and Latin American countries; and (2) the Core Group and G-90 mainly subsumed members of the AG and ACP Group (see Table 24).

The Colorado Group used mixed distributive-integrative strategies by integrating value claims of previous proposals from Latin American, Asian, and African countries. The Colorado Group at this time consisted of Armenia, Chile, China, Dominican Republic, Ecuador, the EC, Georgia, Guatemala, Honduras, Japan, Kyrgyz Republic, Mexico, Moldova, Nicaragua, Pakistan, Paraguay, Sri Lanka, Switzerland, and Uruguay. In the general principle, the Colorado Group proposed the establishment of guidelines based on the Paris Declaration on Aid Effectiveness (2005) and the OECD/DAC guidelines on Harmonizing Donor Practices for Effective Aid Delivery, which took the value claims of potential donor countries in the coalition.\(^{638}\) Further, the Colorado Group believed a Committee on Trade Facilitation would be sufficient to serve as a joint platform to coordinate TACB.\(^{639}\)

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\(^{638}\) World Trade Organization, "Negotiating Group on Trade Facilitation - Communication from Chile, Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, and Uruguay - Special and Differential Treatment: Application and Inter-Relationship with Commitments Arising from the Negotiations on Trade Facilitation," TN/TF/W/81 (April 3, 2006): 2-3.

\(^{639}\) World Trade Organization, "Negotiating Group on Trade Facilitation - Communication from Armenia, Chile, China, Dominican Republic, Ecuador, the European Communities, Georgia, Guatemala, Honduras, Japan, Kyrgyz Republic, Mexico, Moldova, Nicaragua, Pakistan, Paraguay, Sri Lanka, Switzerland, and Uruguay - Implementation Mechanism of Trade Facilitation Commitments Including Key Elements for Technical Assistance," TN/TF/W/137 (July 21, 2006).
<table>
<thead>
<tr>
<th>General principles</th>
<th>Transitional provision (negotiation period)</th>
<th>Trade facilitation agreement (post-negotiation period)</th>
<th>Technical Assistance and Capacity Building (TACB)</th>
<th>Dispute settlement</th>
<th>Others</th>
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<tbody>
<tr>
<td>Stressed the principles contained in the Paris Declaration on Aid Effectiveness and the OECD/DAC guidelines on Harmonizing Donor Practices for Effective Aid Delivery; TACB shall take into account the overall development framework of recipient countries and regions; design TACB to mutually support trade facilitation taking into account ongoing programmes; coordinate with Integrated Framework for LDCs; designate focal points to coordinate implementation and establish in-country coordination structure</td>
<td>Steps taken during the transition period: (1) the Agreement would be signed as a Single Undertaking; (2) members shall complete a capacity self-assessment and, on request, assisted by donors; (3) members notify the WTO Secretariat, including for obligation needing TACB and obligations requiring an additional number of years transitional period, in which members could discuss this notification in a multilateral dialogue prior to entry into force</td>
<td>Steps taken after the Agreement: (1) members’ obligations apply from the date of the Agreement’s entry into force; (2) members formulate and notify capacity building plans and, on request, donors shall assist on mutually agreed terms; (3) members take actions as early as possible to comply with implementation, while implementation progress would be reviewed by members on a periodic basis; (4) members verify capacity acquisition at the end of implementing TACB and, if capacity not acquired, members and donors shall report and make recommendations; (5) members notify capacity acquisition at the latest six months or would apply automatically six months after capacity acquisition; (6) full implementation</td>
<td>During the transition period members undertaking self-assessment might request donors support; TACB in formulating capacity building plans should: take into account long-term assistance and post-implementation support, provide training and deployment of in-country advisors, support to regional or sub-regional integration; take into account implementation plans of neighbouring countries</td>
<td>WTO Committee on Trade Facilitation without creating a new body as a joint platform on TACB to coordinate donors and recipients, relevant international organisations etc.; ensure coordination to fill-in potential gaps</td>
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</table>

Table 24. Key Proposals on Special Differential Treatment and Technical Assistance and Capacity Building (2006-2007)
### Table 24. Key Proposals on Special Differential Treatment and Technical Assistance and Capacity Building (2006-2007) (cont’d)

<table>
<thead>
<tr>
<th>General principles</th>
<th>Transitional provision (negotiation period)</th>
<th>Trade facilitation agreement (post-negotiation period)</th>
<th>Technical Assistance and Capacity Building (TACB)</th>
<th>Dispute settlement</th>
<th>Others</th>
</tr>
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<tbody>
<tr>
<td>SDT shall fully reflect and take into account adoption and implementation of the Agreement; the extent and timing of entering into commitments shall be connected to their capacity and in case TACB not acquired, then implementation is not required; LDCs have the right to undertake obligations consistent with their development, financial, and trade needs or their administrative and institutional capabilities</td>
<td>Additional elements during the transition period: (1) self-assessment undertaken after signing of the Agreement, and upon receipt of support by developed countries or donors; (2) notification provided a certain number of months after the conclusion of the self-assessment exercise and may be modified prior to entry into force; (3) formulation of capacity building plans shall commence a certain number of months upon receipt of support by developed countries or donors</td>
<td>Additional elements include: (1) trade facilitation would come into force as a single undertaking at the same time as the other agreements come into force; (2) obligation shall be differentiated: developed countries apply full obligation, and more flexibilities for developing countries and LDCs (obligation during date of entry into force or deposit of ratification instrument, obligations applicable after a transition period, obligations requiring TACB, and LDCs would be exempted from obligation upon receipt of TACB); (3) members verify capacity acquisition at the end of implementing TACB and, if capacity not acquired, members notify the TFTACBSU, that will make a recommendation on appropriate action</td>
<td>Developed countries shall establish and notify the WTO concerning their mechanisms or modalities for TACB, including financial and TA resources; developed countries shall provide TACB within a certain number of months upon receipt of request for TACB; specify TACB during negotiations and post-negotiations; establish ten general principles for TACB</td>
<td>Developing countries, LDCs and low income economies exempted from dispute settlement to enforce compliance; members shall prioritise consultation, good offices, conciliation or mediation</td>
<td>Establish a TFTACBSU to facilitate and coordinate TACB (to monitor and report on members’ obligation and beneficiaries of bilateral provision, to inform relevant TACB, and serve as focal point for coordinating TACB), general and security exceptions</td>
</tr>
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</table>

**Core Group (July 2006)**
Table 24. Key Proposals on Special Differential Treatment and Technical Assistance and Capacity Building (2006-2007) (cont’d)

<table>
<thead>
<tr>
<th>Core Group and G-90 (July 2007)</th>
<th>General principles</th>
<th>Transitional provision (negotiation period)</th>
<th>Trade facilitation agreement (post-negotiation period)</th>
<th>Technical Assistance and Capacity Building (TACB)</th>
<th>Dispute settlement</th>
<th>Others</th>
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<tbody>
<tr>
<td></td>
<td>A balance between contributions of developed and developing countries; clarification of an operation mechanism to ensure TACB particularly WTO coordinating and facilitating TACB from donors provides adequate TACB</td>
<td>TACB during negotiations and identifying needs and assessments</td>
<td>New trade facilitation commitment should set a minimal level or standard of obligations; developing countries could decide progressively into higher levels of implementing obligations; obligation shall be differentiated in which developed countries apply full obligation, and developing countries differentiate into: (1) a minimal set of obligations implemented during entry into force; (2) obligations applicable after a transition period; (3) obligations as and when appropriate to their development context; propose GATS-rule type provisions</td>
<td>Request for TACB should be submitted to TFTACBSU with simple, transparent and non-burdensome procedures; TACB recipient should determine capacity acquisition or work on a mutual agreement with donors; WTO should coordinate and facilitate TACB</td>
<td>Developing countries, LDCs and low income economies exempted from dispute settlement to enforce compliance; members shall prioritise consultation, good offices, conciliation or mediation</td>
<td>General and security exceptions; LDCs exempted from commitment upon receipt of adequate TACB; LDCs determine capacity acquisition; establish an ‘early warning’ mechanism should there be any delay in implementation</td>
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</table>

Sources: TN/TF/W/137, TN/TF/W/142, TN/TF/W/147
Based on the proposal by Latin American countries, the Colorado Group believed that there should be several stages at work during the negotiation period (or transition period) as follows: (1) the agreement would be signed as a single undertaking; (2) members undertake self-assessment in which developing countries and LDCs could request donors’ assistance; (3) members notify obligations needing an additional transitional period and obligations needing TACB. After the agreement enters into force or post-negotiation period, there are follow-up steps, as follows: (1) obligations would apply when the agreement enters into force, except if members had notified pending obligations; (2) members formulate and notify capacity building plans in which developing countries and LDCs could request donors’ assistance; (3) members verify capacity acquisition at the end of implementing TACB and, if capacity was not acquired, members and donors shall report to the WTO; (4) members notify capacity acquisition within six months or, if members fail to notify, the provision would apply automatically six months after the end of the implementation period of the obligation.

Pertinent to these steps, the Colorado Group took the value claims of AG and ACP Group concerning the need for TACB during the negotiation and post-negotiation periods. However, the proposal required a very active participation of recipient countries in seeking donors, and in the final assessment of capacity acquisition, involved both recipient countries and donors.

The Core Group responded to the Colorado’s proposal by implementing mixed distributive-integrative strategies, but most importantly, building upon the proposal of the Colorado Group. In contrast to the Colorado proposal on the general principle, the Core Group re-emphasised passages stipulated in Annex D, such as linking between obligation and members’ capacity or adequate provision of TACB. Further, the Core Group believed that a ‘Trade Facilitation Technical Assistance and Capacity-Building Support Unit’ (TFTACBSU) was needed to provide a ‘one-stop shop’ or ‘single window’ for both recipient countries and donors.

The Core Group built its proposal based on the Colorado Group proposal, such as the stages during the negotiation and post-negotiation periods, but provided several amendments. One of the most innovative approaches to SDT was the Core Group’s

\[640\] Ibid.
\[641\] Ibid.
\[642\] See ibid.
proposal for ‘multi-level obligations’. All developed countries would undertake full obligations, while developing countries and LDCs would assume ‘multi-level obligations’: (1) obligations at the date of entry into force or deposit of ratification instrument; (2) obligations applicable after a transition period; (3) obligations requiring TACB; and (4) LDCs would be exempted from obligations upon receipt of TACB.

Another difference is that the Core Group provided greater leeway for recipient countries to verify capacity acquisition by proposing that the assessment process would be conducted by a member and, if agreed by parties, the other parties involved. Subsequently, a member (rather than recipient countries and donors) shall notify the TFTACBSU. In case the capacity is still not acquired, the TFTACBSU (rather than recipient and donors) shall make a recommendation within a certain number of months to the Committee on Trade Facilitation.643

In addition, the Core Group’s proposals imposed additional obligations for developed countries: to establish and notify the WTO of their mechanisms or modalities for TACB including financial and TA resources, and to provide TACB within a certain number of months upon receipt of the request by a recipient country. The coalition also suggested linking trade facilitation agreements with GATT’s general exceptions and security exceptions. Lastly, the Core Group took the idea of dispute settlement demanding members prioritise consultation, good offices, conciliation or mediation, as well as exempting developing countries, LDCs and low income economies in transition from dispute settlement.644

The negotiations on trade facilitation in mid-2006 were dragged down by unsuccessful negotiations on agriculture and NAMA that led to the temporary suspension of the overall Doha negotiations. The EC called for continuing negotiations on trade facilitation and SDT provisions, such as DFQF and Aid for Trade. However, the US and a large number of developing countries opposed the idea and argued that

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643 World Trade Organization, "Negotiating Group on Trade Facilitation - Communication from the Core Group of Developing Countries on Trade Facilitation - Proposal on Implementation Mechanism for Special and Differential Treatment (S&D) and Technical Assistance and Capacity Building (TACB) Support," TN/TF/W/142 (July 31, 2006).
644 Ibid.
trade facilitation negotiations could not continue in isolation and were against efforts to take trade facilitation out of the single undertaking.645

In subsequent negotiations in 2007, divergent views remained concerning the issues of multi-level obligations and the role of TACB. The Core Group and the G-90 put forward another paper in July 2007 re-emphasising their earlier positions and adding specific elements to the discussion. The Core Group maintained its position on a multi-level obligation approach. The approach was directly linked to a GATS-type approach; however, the approach was modified. The Core Group suggested that a minimal level or standard of obligations should be established. Developing countries would then have discretion to progressively apply a higher level or standard of obligations in parallel to their implementation capacity. A slight departure from its previous position, the Core Group proposed separating multi-level obligations into: (1) a minimal set of obligations determined by members as the agreement enters into force; (2) obligations applicable after a transition period; and (3) obligations as and when appropriate to their development context. This innovative contribution influenced the development of the consolidated text as discussed later. The paper added specific provisions on LDCs by stipulating that LDC’s obligations shall be determined by LDCs.646

According to a report, members of the Colorado Group, such as the EC, and Switzerland, conveyed criticism of the Core Group’s latest paper. Some critics considered that WTO members should not be extended optional obligations (multi-level obligations) and considered this proposal as a step backward. Another point of criticism is the Core Group’s proposal for members to determine capacity acquisition, while the critics favoured a multilateral mechanism to assess implementation capacity.647 At this stage, the Colorado Group, however, did not present a joint statement or proposal counter-arguing the Core Group’s paper.

645 Ibid.
This thesis argues that key negotiators implemented mixed distributive-integrative strategies, and more importantly, the overall mode of negotiation resembled arguing through communicative action. There are two main reasons for this argument.

The first reason for arguing is that the Colorado and Core Group built their proposal and integrated the diverse value claims of existing proposals seeking a 'better' SDT model. There were two steps of integrative movement. The first step was when the Colorado Group integrated various proposals from countries from Latin America, Asia, and Africa with the participation of some developed countries as potential donors. The Colorado Group applied mixed distributive-integrative strategies by maintaining its value claim and integrating the value claim of other coalitions. The basic structure of the proposal (particularly the different stages from self-assessment to implementation and WTO body to facilitate TACB between recipient countries and donors) derived largely from Latin American countries earlier proposals. The guidelines on aid practices would come from developed countries in the coalition. The Colorado Group took elements of the AG proposal regarding the need to provide TACB during the negotiation and post-negotiation periods as well as concerning efforts to enhance regional and sub-regional integration. The heterogeneity of the Colorado Group highly influenced the relatively balanced proposal of mixed instrumental-normative frames.

The second step was when the Core Group used mixed distributive-integrative strategies by building upon the architecture of the Colorado Group proposal. The Core Group accepted the multi-stage process from self-assessment to an implementation process. The Core Group asserted its value claims on several issues such as: multi-level obligations; establishment of TFTACBSU (in addition to a Committee on Trade Facilitation); general and security exceptions; an early warning system; and dispute settlement procedures. As mentioned earlier, the strategic-based leadership within the Core Group attempted to develop a proposal taking into account the diverse interests and preferences of its members. It means proposing greater flexibilities for its members with less-advanced trade facilitation capacities and therefore paid special attention of the needs and concerns of the AG, ACP Group, and LDCs Group.

The second reason for arguing is that there was limited evidence of bargaining through exchange of concessions or issue linkages. According to several interviewees, the opposing sides did exchange concessions, such as accepting multi-level obligations
(proposed by the Core Group and G-90) in exchange for a less binding TACB commitment (by donor countries), but there was almost no evidence that members demanded exchange of concessions between trade facilitation and other issues.\(^{648}\) This is in extreme contrast to the negotiations on agriculture in which almost all elements of the negotiations underwent a process of trade-offs and exchange of concessions, either among elements in agriculture or between agriculture and NAMA.

Given the above evidence, this thesis suggests that the negotiation climate tended to reflect a process of arguing through communicative action through constructive dialogue in seeking a ‘better’ SDT model in the direction of the negotiation discourse (or tabled proposals), which influenced the interests and preferences among negotiators. Despite minor reservations and the fact that there was no consolidated text at the end of 2007, divergence among key negotiators in trade facilitation was less severe compared to the agriculture negotiations. In trade facilitation, divergence remained on the pace of reform and implementation process, rather than conflicting principles or frames of reference. According to several sources, divergence among WTO members rested on the pace of the reform process, in which the Core Group together with the AG, ACP Group, and LDCs Group favoured a more moderate approach (with less binding obligations), while countries with more-advanced trade facilitation capabilities preferred a rapid approach (with comprehensive and strict binding obligations).\(^{649}\)

b) The Friends-of-the-Chair and Informal Consultation: Key Negotiators Moving to Integrative Movement towards an Increasing Convergence through Arguing

After 2007, there were two major factors affecting the coalition dynamic in the trade facilitation negotiations, particularly related to SDT and TACB. Firstly, individual members began to undertake needs and assessment processes providing a clearer understanding of their individual distributive implications on specific obligations under negotiation. As many as 60 out of 84 developing countries and 27 out of 32 LDCs had

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\(^{648}\) WTO delegate from a developed country, interviewed by author, March 11, 2011; WTO delegate from Southeast Asia, interviewed by author, March 1, 2011.

\(^{649}\) WTO delegate from Southeast Asia, interviewed by author, October 1, 2010; WTO staff and former WTO delegate from the Caribbean, interviewed by author, March 21, 2011.
already completed their needs and assessments process between 2007 and 2010.\textsuperscript{650} It also meant that individual members would develop a clearer understanding of which obligations were implementable, those obligations needing an additional transition period to implement, or obligations needing TACB. As a consequence, divergence of interests and preferences within the Colorado and Core Groups became more apparent, particularly when viewing their implementation capacities on various elements under Articles V, VII, and X. Several sources indicated that WTO members tended to work on an individual basis or work in micro-coalitions on specific issues under Articles V, VII, and X. The Core Group’s role began to decline and Core Group members began to rely on traditional coalitions: the AG, ACP Group, and LDCs Group.\textsuperscript{651} At this stage of negotiation, WTO members preferred to align with coalitions of similar levels of economic development, characteristics, and trade facilitation capabilities.

Secondly, negotiations began to move into informal consultations rather than formal negotiations. In the first three years of negotiations on SDT, formal discussions could not move into a text-based discussion. In mid-2008, negotiations began to move forward when Argentina hosted an informal meeting to discuss the tabled proposals on SDT and TACB. The outcomes of the informal consultation were circulated outlining key issues of the framework for SDT and TACB, such as specification of the multi-level obligations similar to the Core Group’s proposal.\textsuperscript{652} The NTGF chairperson saw that these informal consultations were positive and assigned Matthew Wilson of Barbados as a friends-of-the-chair in early-2009 to continue these informal consultations and bring members closer to a convergence.\textsuperscript{653} The friends-of-the-chair as a mediator conducted a series of informal consultations throughout 2009. An anonymous internal source indicated that there was no bilateral consultation with either the Core Group or Colorado Group. Informal consultations were conducted with the US, EC, Japan and


\textsuperscript{651} WTO staff and former delegate from the Caribbean, interviewed by author, March 21, 2001; WTO delegate from Southeast Asia, interviewed by author, March 1, 2011; WTO delegate from Africa, interviewed by author, February 25, 2011; WTO delegate from a developed country, interviewed by author, March 11, 2011.


\textsuperscript{653} World Trade Organization, "Negotiating Group on Trade Facilitation - Communication from Argentina - Issues emerging from the informal exchange on S&D - Revision," JOB(08)/44/Rev.1 (June 2, 2008): 1-3.

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more traditional coalitions (the AG, ACP Group, and LDCs Group). These informal consultations therefore further lessened the significance of the Core Group and Colorado Group as negotiating coalitions.

There were four main elements under discussion in the informal consultations that took many elements of the Core Group and Colorado Group proposals. First, issues related to the multi-level or categorisation of obligations. During the informal consultations members agreed on three categories of obligations similar to the Core Group's proposal: ‘category A’ consisting of measures members implement when agreement enters into force; ‘category B’ consisting of measures in which developing countries or LDCs required additional time to implement; and ‘category C’ consisting of measures in which developing countries or LDCs require additional time and TACB to implement. Divergent views remained regarding specific rules concerning each category, such as timing to notify obligations under category A (between the time of signature or entry into force), inclusion or exclusion of implementation timeframes when members notify their obligations under categories B and C, and inclusion or exclusion of possible agreement with donors when members notify their implementation plans under category C. Members also discussed how to formulate additional flexibilities for LDCs for the above issues. This was important considering that Annex D stipulated not only the need for greater flexibilities for LDCs, but also to encourage greater commitments from donors to help LDCs. Moreover, members discussed specific procedures on how to shift from category B to category C, and to shift from category C to category B.655

Second, there were issues related to an early warning mechanism in conjunction to the proposal by the Core Group and G-90 which were difficult to complete. In the informal consultations, members agreed to establish an early warning mechanism when members would not be able to implement obligations under category B or category C within the agreed timeframe and request an extension. Divergences remained on specific rules on the usage of this provision, such as timing to notify and apply for an

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654 WTO staff and former delegate from the Caribbean, interviewed by author, March 21, 2011.
extension, as well as whether a first extension would be automatically extended or each extension should be subject to review by the Trade Facilitation Committee.

Third, issues related to a peace clause or temporary exemption from dispute settlement posed problems in negotiations. The request by the Core Group and G-90 for a peace clause was accepted, but divergence remained on specific rules on the type of exemptions for particular obligations. For instance, category A became the focus of discussion on whether temporary exemptions would include exemption from panel proceedings or exemption from all elements of the DSM process. There was no agreement whether the peace clause would also be extended to obligations under categories B and C.

Fourth, issues related to the WTO body responsible for the TACB on trade facilitation. In previous proposals, the Core Group and G-90 believed that a TFTACBSU was needed to overview TACB, particularly serving as a hub between recipient and donor countries, while the Colorado Group considered a Trade Facilitation Committee would be sufficient to undertake this task. Both positions were discussed without a compromise. In relation to TACB, the consultation could not agree on an earlier proposal by the ACP Group to establish a central fund where donors would contribute to trade facilitation managed by the TFTACBSU.

It is worth noting that traditional coalitions, such as the AG, ACP Group, and LDCs Group, became more active during these informal consultations, and concentrated on their normative frame, similar to the proposal of the Core Group and G-90 in 2007, particularly: (1) flexibilities over flexibilities; and (2) TACB assurances. First, according to an internal source in the WTO, these traditional coalitions strongly advocated ‘flexibilities over flexibilities’, such as an early warning system enabling requests for an extension, and shifting obligations between categories B and C; automatic extension for a first request; and a peace clause. Second, taking into account past experiences, a delegate indicated that they were concerned that developed countries would merely provide ‘lip service’ with regard to the provision of TACB and financial assistance. During my interviews, several delegates indicated that some developing countries that had historical relations with particular donor countries, such

656 WTO staff, interviewed by author, March 2, 2011.
657 WTO delegate from Southeast Asia, interviewed by author, March 1, 2011.
as the EC and ACP Group, or Australia and New Zealand with the Pacific countries, could expect assistance from their traditional partners. Some countries, however, were concerned that TACB would not be forthcoming either because they do not have traditional ties with donors or other socio-political issues might have arisen in the future.  

As a follow-up to the informal consultation the chairperson circulated, for the first time, a consolidated negotiating text on trade facilitation in December 2009. Given the evidence of the revised consolidated text in the end of 2010, this thesis posits that the informal consultation process was similar to a process of arguing through communicative action in which key negotiators engaged in constructive dialectic communication seeking a ‘better’ SDT model. There are two reasons for this argument. First, the consolidated text incorporated the many elements of the Core Group and G-90 proposal that concentrated on a normative frame adhering to the developmental principle. For instance, the general principles in the consolidated text used very similar language to the Core Group proposal, which stressed the central concept of SDT and TACB as stipulated in Annex D. Further, important elements of the Core Group and G-90 proposal were integrated into the architecture of the consolidated text reflecting an increasing convergence on the concepts of: multi-level obligations, early warning system, and peace clause. It is worth noting that divergences remained on their technical details, very similar to the outstanding issues in the informal consultation, such as: specific rules on commencement of obligations under each category; timing and usage of an early warning mechanism; the extent and timing of a peace clause; and format of the WTO body responsible for trade facilitation and TACB. This evidence implies that larger developing countries with more-advanced trade facilitation capacities and potential donor countries in principle were willing to refrain themselves or redefine their interests and preferences to integrate the value claims of countries with less-advanced trade facilitation capacities or less capacity to implement the obligations.

Second, there is limited evidence that the consolidated text was achieved through exchange of concessions or trade-offs. ‘Concessions’ for smaller developing countries were largely decoupled from other elements in trade facilitation and other

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issue areas even though trade facilitation was part of the single undertaking. In my interviews, only one interviewee perceived that trade facilitation might be used as part of a trade-off by relaxing their demands for more flexibilities on trade facilitation in exchange for better concessions on other issues. As I put forward the idea, many delegates dismissed the notion that trade facilitation could be used as an exchange of concessions on other issues.

In the context of the nexus between the liberal trade and developmental principles, there was a slight concern regarding an overemphasis on the developmental objective. In the case of the G-33 in Chapter 3 and later the AG and the CDC in Chapter 5, an overemphasis on an instrumental frame related to the liberal trade principle which downgrades the original proposal of these coalitions and even nullifies their humanitarian objectives. In contrast to these cases, the overemphasis on a normative frame relating to the developmental principle in trade facilitation modalities and rules could downgrade or even nullify the trade objective under trade facilitation. In my interviews, several delegates were concerned that ‘flexibilities over flexibilities’ could be unhelpful because it shows a lack of commitment and lack of political will to undertake this reform process. In other words, the overly strong SDT provisions could provide a disincentive for WTO members to undertake obligations under the trade facilitation agreement.

This thesis, however, suggests that the modalities and rules on trade facilitation (reflected in the consolidated text in 2010) were a revolutionary SDT approach in the history of the trade regime as it maintained a balance between the liberal trade and developmental objectives. The revolutionary SDT approach provided a balance: obligations, capacity of WTO members, and provision of TACB, which included additional flexibilities. The approach reflected the sustainable development norm, in which WTO obligations were aimed to create better trade facilitation infrastructures to enhance global trade, but the new obligations should not result in a backward or unsustainable development. The new SDT approach took into account the most vulnerable entities in the system and ensured new WTO obligations would not

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659 WTO delegate from Africa, interviewed by author, February 25, 2011.
660 WTO delegate from Latin America, interviewed by author, March 3, 2011; WTO delegate from a developed country, interviewed by author, March 11, 2011.
661 WTO delegate from Latin America, interviewed by author, March 3, 2011; and WTO delegate from a developed country, interviewed by author, March 11, 2011.
overburden smaller members beyond their human, administrative, and financial capacities. The WTO was also given a greater role in facilitating recipient countries and donors in order to assist members to implement their obligations. In other words, the trade facilitation modalities and rules ensure the objective of facilitating international trade flow, and ensure the objective of smaller developing countries achieving their multilateral obligations at the multilateral level, rather than leaving obligation matters to individual countries. Some of the delegates perceived this new approach was a ‘change in paradigm’ and a new ‘model for SDT’ or ‘template for SDT’ for future agreements.\textsuperscript{662} The new SDT approach therefore could bring greater sense of ownership on the part of developing countries and LDCs and in turn provide greater confidence to undertake new WTO obligations.

4.4 Key Findings: The Core Group and G-90

This case study demonstrates the nature and role of the Core Group and G-90 negotiating on new ‘Singapore’ issues and later trade facilitation. Similar to the previous case study, this chapter examined the Core Group and G-90 at different stages of negotiation from the agenda-setting, modalities-setting, and rule-making processes. The Core Group and G-90 maintained a common platform for a relatively long period of time throughout the Doha Round, although they possessed a relatively looser coordination mechanism compared to the G-20 and G-33.

There are several key findings from this case study related to the changing nature of the coalition’s argument, changing types of leadership, strategies by key negotiators, and overall mode of negotiation, which in turn impact the nexus between the liberal trade and development principles. These key findings were observed in light of the different stages of negotiation.

\textsuperscript{662} At the time of the interview, the new SDT approach was being discussed over fishery subsidies. WTO delegate from a developed country, interviewed by author, March 11, 2011; WTO delegate from Southeast Asia, interviewed by author, March 1, 2011; WTO delegate from Latin America, interviewed by author, March 3, 2011.
The Nature of Argument

During the agenda-setting process, the Core Group and G-90 developed a predominantly instrumental frame related to cost-benefit calculations. The Core Group and G-90 believed that the expansion of the WTO agenda needed their explicit call of support, each new issue should be evaluated on its own costs and benefits, and there were still uncertainties and risks related to new obligations. Despite the Core Group’s request for specific clarification, there was limited evidence that the Core Group and G-90 tried to really engage in substantive counter-arguments or a higher level of discourse during the Cancun Ministerial Conference.

During the modalities-setting process after the Cancun Ministerial Conference, the Core Group and LDCs Group were more active and developed mixed instrumental-normative frames focussing mainly on a normative frame. The Core Group and LDCs Group created a balanced proposal taking into account the issues of: obligations, implementation capacity, and provision of SDT, and taking special account of LDCs. The trade facilitation obligations would match the individual member implementation capacities, and members without the capacity to implement their obligations would be provided adequate TACB. The new SDT approach is a leap forward because in the past there was never a direct linkage between WTO obligations, members’ implementation capacity, and TACB provisions. Although there were some reservations by several donor countries, the basic elements of the Core Group provided balanced liberal trade and developmental objectives that were eventually accepted in the 2004 July Package.

During the rule-making process, the Core Group and G-90 re-emerged in 2007 proposing several new elements to the discussion by developing arguments based on instrumental-normative frames, and again largely focussed on the latter. The Core Group and G-90 building upon the Colorado’s proposal maintained a balanced proposal in linking: a multi-level obligations approach, implementation capacity, TACB provision, and additional flexibilities. As negotiations progressed to informal consultations, the AG, ACP Group, and LDCs Group pushed even further for additional flexibilities, such as an early warning system, a peace clause, and assurances of TACB commitment by the potential donor countries.
The Types of Leadership

Similar to the changing argument of the coalition, the Core Group and G-90 developed two types of leadership throughout the Doha negotiations. During the Cancún Ministerial Conference, the Core Group and G-90 together with other developing countries (e.g. China and G-77 as well as Arab states) exhibited a structural-based leadership resembling an archipelagic coalition with loose coordination through informal networking among coalitions, rather than a large coalition with an overarching fixed coordination mechanism. The Core Group and G-90 became a rallying point opposing the launch of negotiations on the new ‘Singapore’ issues. The archipelagic coalition was built on its numerical advantage and relied on its aggregate political-economic weights. The coalition used a coercive union veto power causing the Cancún Ministerial Conference to breakdown. The coalition used the negotiation momentum of the increasing north-south divide and applied the blockage at a critical moment of the negotiations. The structural-based leadership proved effective because the impasse caused the major developed countries to take seriously the needs and concerns of developing countries and LDCs. The coalition was willing to move forward once the coalition was satisfied with the direction of the negotiations. Eventually, the coalition was willing to negotiate on trade facilitation, while dropping the other three new issues.

During the modalities-setting process, the Core Group adapted to the negotiation situation by portraying a strategic-based leadership. The Core Group developed an innovative technical proposal on the trade facilitation modalities taking into account the different trade facilitation capabilities of WTO members, particularly smaller developing countries and LDCs. The changing nature of argument and type of leadership caused China to leave the Core Group because it was more attuned with the position of countries with more-advanced trade facilitation capabilities.

During the rule-making process, the AG and ACP Group initially were active pushing for additional flexibilities for smaller developing countries and LDCs. In 2007, the Core Group and G-90 exhibited a strategic-based leadership in which the coalition benchmarked its position against the AG and LDCs Group members with less-advanced trade facilitation capacity. Again, as mentioned above, the Core Group and G-90 used mixed instrumental-normative frames, but there was a stronger tendency towards their normative frame. The Core Group and G-90 developed an innovative SDT approach by
balancing: multi-level obligations, implementation capacity, provision of TACB, and additional flexibilities for members with less-advanced trade facilitation capacities. After 2008, the role of the Core Group began to decline and countries turned to more traditional coalitions, such as the AG, ACP Group, and LDCs Group. These coalitions have greater interest in securing additional flexibilities.

The Strategy of Coalitions and Overall Mode of Negotiation

The Core Group and G-90’s strong instrumental frame and structural-based leadership arises partly because Singapore Issues proponents imposed a strict distributive strategy. The EC and other Singapore Issues proponents were adamant to begin negotiations on all four Singapore Issues, while they tended to dismiss the value claims of many developing countries nearing the Cancún Ministerial Conference. The Core Group and G-90 were initially willing to integrate the value claims of Singapore Issues proponents by maintaining the new issues under the Doha negotiations through a further clarification process. Nevertheless, the EC held a distributive strategy until the final hours of the Cancún Ministerial Conference. Although the EC eventually was willing to move into an integrative movement by dropping some new issues, the G-90 replied with a strict distributive strategy and opposed negotiations of any of the Singapore Issues causing a deadlock. The Core Group and G-90’s structural-based leadership together with a strict distributive strategy proved effective.

In its aftermath, key negotiators (Core Group together with the EC and US) were willing to move into mixed distributive-integrative strategies by accepting negotiations on trade facilitation and dropping the other three new issues. During the modalities-setting process, the Core Group and LDCs Group’s strategic-based leadership and mixed instrumental-normative frames developed an innovative solution with precise and clearer parameters for SDT and TACB, in particular the linkage between members’ obligations, members’ actual implementation capacity, and provision of TACB. The major developed countries as potential donors, however, would not accept legally binding commitments in the provision of TACB. The integrative movement of key negotiators succeeded in achieving a compromise on the trade facilitation modalities tilting towards the position of the Core Group and G-90, through soft bargaining. Many
of the Core Group and G-90’s value claims were incorporated, while the coalitions had to accept a non-binding commitment or best endeavour provisions for TACB.

The mode of negotiation during the trade facilitation rule-making process ran contrary to conventional wisdom, in which negotiators would most likely move into bargaining through rhetorical action during the rule-making-process because the interests and preferences among negotiators became more salient and distributive implications became clearer. In 2006 and 2007, the dialectic conversation reached a relatively high point wherein different coalitions were largely consolidated into two major coalitions that implemented mixed distributive-integrative strategies. The Colorado Group consisting of mixed developed and developing countries began to integrate the value claims of several coalitions and developed a relatively advanced proposal with clearer steps in the negotiation and post-negotiation periods. Subsequently, the Core Group and G-90—building upon the Colorado proposal—inserted their value claims, namely multi-level obligations, additional flexibilities, and stronger donor commitments. The informal consultations in 2009 brought key negotiators to further integrative movement. Despite the declining role of the Core Group and Colorado Group during this period, the basic architecture and elements of the consultations could be traced back to the proposals of both coalitions. The consultations eventually brought WTO members closer into convergence on the issue of SDT and TACB. The friends-of-the-chair eventually developed trade facilitation consolidated texts based on the previous proposals and informal consultations. During this period, the role of major developed countries and potential donors together with the AG, ACP Group, and LDCs Group became more salient.

The mode of negotiation therefore resembled a process of arguing through communicative action rather than rhetorical action. Key negotiators engaged in dialectic communication and higher level of discourse, in which negotiations moved into the direction of the tabled proposals and discussions were directed in seeking a ‘better’ SDT model. The larger developing countries with more-advanced trade facilitation capacities and potential donors were largely willing to refrain themselves or redefine their interests and preferences to accommodate the value claims of countries with less-advanced trade facilitation capacities or less capacity to implement the obligations. At the end of 2010, all of the ingredients and basic architecture of the trade facilitation agreement were put
together taking many elements of the Colorado Group and Core Group, and negotiations focussed on very specific rules related to very technical elements of the SDT and TACB provisions.

The Nexus between the Liberal Trade and Developmental Principles

The case study demonstrates the constant nexus between the liberal trade and developmental principles. The Core Group and G-90 scrutinised the application of the liberal trade principle of the new ‘Singapore’ issues and related them to the developmental costs associated with trade-offs, implementation costs, non-compliance costs, and loss of policy space or flexibilities. Many developing countries thought that the inclusion of the new ‘Singapore’ issues would be detrimental to the overall developmental objectives of the Doha Round. Consequently, after the failure in the Cancún Ministerial Conference, WTO members agreed to negotiate a trade facilitation agreement that could bring benefits for all.

During the modalities-setting and rule-making processes, the sustainable development norm was fully incorporated into the trade facilitation modalities and consolidated texts. Despite a small number of delegates concerned with overemphasis on ‘flexibilities over flexibilities’ that might offset or nullify the liberal trade objective of trade facilitation reform, this thesis suggests that Annex D became the embryo of a revolutionary SDT approach under the trade regime. The norm of sustainable development was fully incorporated into the modalities and later into the specific rules for trade facilitation. Both trade facilitation modalities and rules tried to balance between: obligations of members to undertake trade facilitation obligations (the liberal trade objective), actual trade facilitation capacity of members, and provision of TACB for members with lack of capacity to implement their obligations (the developmental principle). The trade facilitation modalities and rules provided a balance between the liberal trade and developmental principles leaning towards the developmental principle. The new SDT approach therefore could serve as a new model or template for future WTO agreements.
Chapter 5. Negotiating Coalitions on TRIPS and Public Health

This chapter investigates the nature and role of the CTPH negotiating for the DTPH and subsequently examines the AG and CDC negotiating for a solution to paragraph 6 of the DTPH. Negotiations on TRIPS and public health issues did not exactly replicate the different stages of negotiation in the conceptual framework since it discussed the interpretation of already existing institutionalised rules. For this reason, I analogise the actual negotiation situation with the conceptual distinctions. The negotiations for the DTPH were similar to agenda-setting and modalities-setting processes because it involved discussion on the principles in interpreting TRIPS flexibilities for public health purposes, while negotiations for a solution to paragraph 6 were similar to rule-making and deal-making processes since it involved discussing detailed and specific rules concerning the operationalisation of TRIPS flexibilities.

This chapter will demonstrate that coalitions involving developing countries (the CTPH, AG, and CDC) used a constant normative frame throughout the negotiations. Further, this chapter will demonstrate the types of leadership that were applied during negotiations. The CTPH exhibited a strong and persuasive knowledge-based leadership during its negotiations for the DTPH. In negotiating for a solution to paragraph 6 of the DTPH, the AG and CDC had limited success in developing a strategic-based leadership and in turn weakened cohesion among developing countries.

Furthermore, this chapter will demonstrate strategies employed by key delegations and the overall mode of negotiation. In the context of the nexus between the liberal trade and developmental principles, there were at least two main sides using contradicting frames of reference: normative frame adhering to the developmental principle; and instrumental frame adhering to the liberal trade principle. The former reflected the position of coalitions involving developing countries, while the latter reflected the position of the US, EC, and a number of developed countries. In the case of the DTPH, the CTPH gained the upper hand when the US and its supporters became rhetorically entrapped by the humanitarian claims of the CTPH to maintain their reputation and to gain future benefits. In regard to a solution to paragraph 6 of the DTPH, negotiations resembled bargaining through rhetorical action between competing frames and the outcome (Decision and Chair's Statement) tilted the equation back
towards the commercial claims of the major developed countries and their pharmaceutical industries.

The first section starts with a brief background of the TRIPS Agreement under the trade regime, which serves as the foundation of negotiations on the interpretation of TRIPS flexibilities. The subsequent section closely investigates the nature and role of the CTPH negotiating for the DTPH in 2001 and the following section examines the AG and CDC negotiating a solution to paragraph 6 of the DTPH particularly between 2002 and 2005. This chapter ends with the main key findings in this chapter.

5.1 Background: The TRIPS Agreement and Its Emphasis

In the 1980s, the US believed that widespread Intellectual Property Rights (IPR) infringements in developing countries caused huge losses to its businesses. This caused a change in established US policies; during the 1960s, US companies quite happily sold IPR to developing countries in East Asia, including Japan, South Korea, and Taiwan. Mounting trade deficits and declining competitiveness in manufacturing sectors drove a reversal. According to a study by the US International Trade Commission, worldwide IPR infringement on goods was estimated to cause US$4.9 billion loss in revenue and US$754.9 million loss in profit in 1986.663 The US Government promoted efforts to ‘combat piracy’ and enhance global IPR protection.

The rationale behind IPR protection is that the public could benefit from innovation—largely developed by the private sector through research and development (R&D)—only in the presence of adequate protection of those innovations for a reasonable period.664 In the absence of IPR protection, innovations could easily be used or copied at a cheaper cost compared to the initial innovation cost.665 The lack of global IPR protection would induce IPR infringements and in turn discourage investment in

developing countries. 666 A multilateral agreement on TRIPS would therefore be beneficial for developing countries and could encourage domestic innovation and attract investment in developing countries.

In 1986, the US joined by the EC succeeded in introducing TRIPS as a possible agenda for the new Uruguay Round. 667 Initially, many developing countries resisted the inclusion of TRIPS. India, for instance, wanted developing countries to be exempted from patents in particular sectors, such as pharmaceutical, chemical, and foodstuffs, arguing that enforcement of these patents could create serious repercussions on future social, economic, and technological developments for developing countries. 668 Developing countries eventually agreed to expand the new issues in the Uruguay Round as a trade-off between agendas of interest to developed countries (TRIPS, GATS, and TRIMS) and agendas of interest to developing countries (agriculture, textile and clothing, tropical products, and safeguard). 669

By 1990, there were two approaches on the table for the TRIPS Agreement. First, TRIPS proponents (the EC, US, Japan, and Switzerland) circulated their proposals, largely based on the EC proposal, which envisaged binding rules to enforce IPR protection. The US and EC proposals elaborated very specific enforcement provisions through the establishment of relevant domestic laws and enforcement measures. 670 The proposals were designed to ensure strong protection for IPR owners with very limited exceptions and a limited account of the public interests.

Second, a group of developing countries (Argentina, Brazil, Chile, China, Colombia, Cuba, Egypt, India, Nigeria, Peru, Tanzania, and Uruguay) released their own proposal. The coalition believed that the objectives and purposes of a TRIPS Agreement should be balanced between the rights of IPR holders and issues of public

Background: The TRIPS Agreement and Its Emphasis

concern, such as health, nutrition, agriculture, and national security. The coalition also proposed the creation of simple, effective, and adequate enforcement procedures according to the administrative resources and capabilities of contracting parties. Further, dispute settlement should be resolved through consultation and amicable methods. 671

It is important to note that the final TRIPS Agreement was hugely influenced by and favoured the position of its proponents. In refining the draft agreement, negotiations moved into smaller negotiating meetings often involving both developed and developing countries, but always involving the US and EC. 672 The final decision was largely determined by the major powers, such as the US, EC, and Japan, despite efforts by developing countries to influence the outcome. 673

Before moving on, it is worth noting that the TRIPS Agreement, in one stroke, enforced a minimum IPR standard on all WTO members and it became the most comprehensive IPR instrument covering seven elements: copyrights, trademarks, geographical indicators, industrial design, patent, layout designs of integrated circuits, and undisclosed information. 674 In some cases TRIPS possesses narrower rules compared to international IP conventions. 675 The IPR standard was similar to the high

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672 General Agreement on Tariffs and Trade, "Uruguay Round - Group of Negotiations on Goods - Negotiating Group on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods - Communication from Argentina, Brazil, Chile, China, Colombia, Cuba, Egypt, Nigeria, Peru, Tanzania and Uruguay," MTN.GNG/NG11/W/71 (May 14, 1990).


standard applied in major developed countries. The TRIPS Agreement only provided limited SDT in terms of transitional period and did not allow lower standards of IPR protection. In other words, countries could no longer apply a lower level of IPR protection on specific areas (e.g. pharmaceuticals) despite their level of economic development, technological development or income. Further, the TRIPS Agreement provided detailed provisions on IPR enforcement rules and legally binding provisions in contrast to the voluntary nature of dispute settlement in the World Intellectual Property Organization (WIPO).

Coming back to the formulation of the TRIPS Agreement and considering its final decision-making procedures, it is not surprising that the TRIPS Agreement placed great clarity and specific rules related to IPR protection and enforcement, but lacked specific provisions related to public rights and interests. Theoretically, the main justification for IPR protection, either at the national or international level, is to provide a balance between sufficient but limited private monopoly for IPR holders to promote innovations (the liberal trade objective) and, an adequately relaxed IPR protection regime to maximise benefit for public interests through the dissemination of those innovations (developmental objective). These balanced objectives were enshrined in Articles 7 and 8 under the TRIPS Agreement, similar to the proposal by developing countries. However, studies found that the TRIPS Agreement tended to tilt towards the interests of IPR owners rather than providing a balance between IPR protection and public interest. A study by the UNCTAD found that the TRIPS Agreement provided mandatory language for provisions related to IPR holders, while using non-mandatory or best endeavour language for provisions related to public interest, such as public health, transfer of technology, and socio-development objectives. More importantly, a harmonised global IPR protection standard could generate serious long-term consequences. A study considers that the TRIPS Agreement could freeze the world distribution of comparative advantage by ensuring technology would be difficult to access or extremely expensive to acquire. Deardoff argues that when innovation

678 Carlos M. Correa, Intellectual Property Rights, the WTO and Developing Countries: The TRIPS Agreement and Policy Options (Penang: Third World Network, 2000), 2.
derived from one part of the world (e.g. developed countries) was extended to another part of the world (e.g. developing countries) global patent protection would extend monopoly pricing and distort consumers’ price. The cost of global patent protection would eventually outweigh the benefits of new inventions.680 Stronger critics argue that the TRIPS Agreement enforced the poor to pay rent or provided a tax to the rich.681 In sum, the TRIPS Agreement resembled stronger protectionism rather than a liberalisation process through dissemination of innovations.

5.2 The CTPH Setting the Agenda for TRIPS and Public Health

Negotiations on the DTPH involved a norm setting process with relatively broad parameters, rather than a complex rule-making process. The discussion concentrates on the interpretation of several TRIPS provisions related to their flexibilities. The negotiation environment therefore resembled agenda-setting and modalities-setting processes, which involve identifying the agenda or problem at hand and clarifying the principles behind the interpretation of the TRIPS flexibilities. In terms of coalition internal management, the negotiation environment enabled the coalition to develop broad commitments with a view of the long-term objective of the trade regime, members within a coalition should commit to relatively abstract distributional implications without determining cost-sharing arrangements among them.

In investigating the CTPH, the first sub-section illustrates the increasing public awareness of the adverse impact of the TRIPS Agreement on the HIV/AIDS crisis as a trigger for the CTPH formation. The second sub-section closely investigates the internal dynamics of the CTPH that consists of the AG together with several developing countries by looking at the nature of argument and leadership role within the CTPH. The third sub-section examines the external dynamic related to strategies among key negotiators and the overall mode of negotiation.

680 Correa, Intellectual Property Rights, the WTO and Developing Countries: The TRIPS Agreement and Policy Options: 4.
The TRIPS Agreement does not specifically differentiate the implications of IPR protections in different sectors, including its different developmental implications. For instance, IPR on pharmaceutical products would likely have a greater developmental impact compared to IPR on music or movies. In the case of pharmaceutical patents, in theory, patent protection should encourage R&D for new medicines by providing higher than competitive market returns for successful inventors for a reasonable period. In parallel to IPR protection, the production of generic medicines (often off-patent products or if patent is not yet in force) tend to increase competition and lower prices as they could be produced by multiple companies. The creation and dissemination of innovations could therefore enhance the provision of public goods and benefit the overall society.682

In the past, the decision to adopt IPR protections on particular sectors was a sovereign decision. Italy, Japan, and Switzerland, for instance, adopted IPR protection on the pharmaceutical sector when their income per capita reached US$20,000.683 Many developing countries had not extended IPR protection of the pharmaceutical sector in order to maintain low medicine prices, taking into account their population’s low level of purchasing power.684 However, the TRIPS Agreement compelled developing countries to adopt a minimum IPR protection standard, including the pharmaceutical sector, when poorer countries income per capita was at US$500 or middle-income countries at US$2,000-4,000. Some scholars argue that the adoption of patent protection of pharmaceutical products by these countries was 50-100 years premature.685

In this vein, various non-state actors warned of the ramifications of the TRIPS Agreement on the access to medicines in developing countries. Médecins Sans Frontières (MSF) were concerned that the adoption of patents in pharmaceuticals would

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682 Wade, "What Strategies are Viable for Developing Countries Today? The World Trade Organization and the Shrinking of 'Development Space'," 622.
684 Birdsall, Rodrik, and Subramanian, "How to Help Poor Countries," 144.
inter alia increase drug prices, create a negative effect on local manufacturers, and remove generic drugs from the market, and yet was unlikely to create sufficient profit to induce R&D in developing countries.\textsuperscript{686} According to Joseph Stiglitz when he was a member of the Council of Economic Advisors, the Council together with the US Office of Science and Technology Policy opposed the formulation of the TRIPS Agreement, which represented the interests of the pharmaceutical and film industries. They were concerned that patent enforcement in pharmaceutical products would affect access to life-saving medicines and restrict the production of generic medicines, which would in turn limit access to medicines in developing countries.\textsuperscript{687}

Before moving on, it is important to point out several TRIPS provisions that are vital for the following discussions (Table 25). Article 6 addresses IPR exhaustion and parallel importation. These concepts will be elaborated later in the discussion. Articles 7 and 8 provide principles and objectives of the TRIPS Agreement. It stipulates balanced objectives between rights of patent owners (the liberal trade principle) and rights to achieve broader non-trade and developmental objectives, such as public health, nutrition, and socio-economic and technological development (the developmental principle). It is worth noting that the broader non-trade and developmental objectives were not written as an exception (or a strong legal basis). Some analysts argue that there should be a general exception provision related to universally-accepted public objectives, such as protection of human, animal, or plant life or health.\textsuperscript{688} Articles 27 and 28 provide the basis of the patentable products or process, and the exclusive rights of patent holders. Articles 30 and 31 provide flexibilities to rights of patent holders. Article 30 refers to limited exceptions to exclusive rights of patent holders, while Article 31 addresses compulsory licensing or the use of patents without the authorisation of the patent owners.

\textsuperscript{686} Birdsall, Rodrik, and Subramanian, "How to Help Poor Countries." 144.
Table 25. Summary of Relevant Articles on TRIPS and Public Health

| Article 6 (exhaustion) | The TRIPS Agreement cannot be used in dispute settlement related to the issue of IPR exhaustion, except if it relates to non-discrimination norms (MFN and NT). |
| Article 7 (objectives) | IPR protection and enforcement should contribute to technological innovation and transfer of technology for the mutual benefit of producers and users. |
| Article 8 (principles) | A country might adopt necessary measures to protect public health and nutrition, and to promote vital public interests for their socio-economic and technological development provided they are consistent with the TRIPS Agreement. A country may adopt measures to prevent abuse of IPR by rights holders, or practices of unreasonable trade restraint, or practices negatively affecting technological transfer. |
| Article 27 (patentable subject matter) | Patent shall be available for any invention (process or product) with limited exceptions. Patent shall be available and patent rights enjoyable without discrimination based on place of invention, field of technology, and whether products manufactured by import or locally produced except under certain conditions. |
| Article 28 (rights conferred) | Patent holders have exclusive rights to prevent third parties from making, using, offering for sale, selling, or importing a patented product without its consent. |
| Article 30 (exceptions to rights conferred) | A country may extend limited exceptions to the rights of patent holders provided the exception does not unreasonably conflict with a normal patent exploitation and does not unreasonably prejudice the legitimate interests of patent holders. |
| Article 31 (compulsory licensing) | Countries may issue a compulsory licensing or use a patent without authorisation of patent holders for the government or for a third party authorised by the government provided several conditions, such as: It must initially try to obtain authorisation from patent holders through voluntary licensing or regular commercial arrangement. This requirement could be waived under a condition of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use, in which it must afterward notify patent holders (Article 31b); Scope and duration of a compulsory licensing must be limited, non-exclusive, and non-assignable (Article 31c); Compulsory licensing should predominantly be used to supply the domestic market (Article 31f); Patent holders must be paid adequate remuneration taking into account its economic value (Article 31h). |


The TRIPS Agreement became a hindrance when a number of developing countries tried to use TRIPS flexibilities to provide affordable medicines to their citizens, but the US Government and its pharmaceutical companies perceived that those measures infringed IPR. In the wake of the HIV/AIDS pandemic, Thailand planned to produce genetic AIDS medicines, but eventually abandoned the plan after the US threatened to impose trade sanctions on the main Thai exports to the US.\(^{689}\) Similarly, South Africa adopted a medicine Act in 1997 allowing the government to import patent medicine from foreign countries (or parallel importation). In reaction, 49

pharmaceutical companies brought the case to the Pretoria High Court arguing that South Africa was in violation of the constitutional guarantee of IPR, and patent holders were not compensated. The US Government then suspended South Africa’s duty-free privilege under GSP and placed South Africa on the section 301 ‘watch list’. After intensive campaigns by northern NGOs and extensive media coverage on the South African case, the US dropped South Africa from the watch list and the US Pharmaceutical Research and Manufacturers of America (PhRMA) abandoned its legal charges.

In 1996, Brazil adopted a pre-TRIPS Paris Convention interpretation in which patent protection would be extended provided that a ‘local working’ requirement (or goods to be locally produced) would be established within three years or the government would issue compulsory licensing. Brazil succeeded in using the new patent law to negotiate a significant price decline for two patented HIV/AIDS medicines. The US Government on behalf of PhRMA then launched a case against Brazil for violating TRIPS Article 27.1 for the local working requirement but in response Brazil argued the US had committed similar violations. The US eventually withdrew its case in June 2001.

These cases triggered an open public debate, which questioned the balance between the liberal trade and developmental principles under the TRIPS Agreement. PhRMA, with the support of the US Government, used an instrumental frame by emphasising the need for strong patent protection in order to maintain flows of income as an incentive for expensive R&D. The approximate cost of investing a new drug was on average more than US$400 million. PhRMA suggested focussing instead on addressing high tariffs and corruption in developing countries as the causes for high drug prices. In contrast to the instrumental frame by pharmaceutical companies, the northern NGOs, through mass media, used a normative frame by stressing the strong

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691 Sherry S. Marcelin, The Political Economy of Pharmaceutical Patents (Farnham, Burlington: Ashgate, 2010), 146-47.
Chapter 5. Negotiating Coalitions on TRIPS and Public Health

‘humanitarian face’ of the poor HIV/AIDS victims by highlighting that drug producers chose to let people die to maintain their profit margin, while the US Government prevented developing countries from taking measures to save or prolong the lives of poor HIV/AIDS victims.695

The role of northern NGOs and western media was invaluable in increasing the awareness of TRIPS and access to affordable medicine. According to a former delegate, HIV/AIDS medicines at the time were very expensive and they were largely on patent. The HIV/AIDS outbreak in sub-Saharan Africa created an incentive to exert pressure on pharmaceutical companies to reduce the price of medicines.696 The open public debates in western countries on TRIPS and access to affordable medicine spilled-over into the WTO. The increasing awareness of the adverse impact of the TRIPS Agreement was later brought into the WTO.

5.2.2 Internal Coalition Dynamic: The CTPH’s Normative Frame and Knowledge-Based Leadership

During a TRIPS Council, Zimbabwe on behalf of the AG, took the lead to propose a special session to address the issues of TRIPS, patents, and access to medicines. Zimbabwe stressed the need for the WTO to engage with the public outside the WTO and address the ongoing HIV/AIDS pandemic that caused 11 million deaths each year from preventable and treatable infectious diseases. Zimbabwe perceived that the TRIPS Agreement was heavily tilted towards IPR holders rather than public interest and demanded discussions to rebalance this condition. Zimbabwe challenged the WTO members to address the legitimacy crisis of the TRIPS Agreement and called for members to clarify the interpretation and application of TRIPS flexibilities.697

The CTPH emerged in April 2001 consisting of the AG together with several developing countries, namely: Barbados, Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, Honduras, India, Indonesia, Jamaica, Pakistan, Paraguay, the Philippines, Peru, Sri Lanka, Thailand, and Venezuela.698 The CTPH advocated an appealing and

695 Ibid., 98.
696 WTO staff and former delegate from South Asia, interviewed by author, March 12, 2011.
persuasive normative frame by stressing the urgency of the HIV/AIDS pandemic as a humanitarian crisis needing an immediate policy response. As discussed in Chapter 2, a coalition using a normative frame could develop a common lifeworld that creates a sense of solidarity based on a common understanding corresponding to basic human rights and protection of the most vulnerable people. The coalition therefore aimed to create a sense of empathy for the victims of the HIV/AIDS pandemic in poor developing countries. This common lifeworld was expected to transcend national boundaries and world cultures.

This thesis suggests that the coalition’s normative frame was appealing and persuasive at least on four fronts. First, a normative frame would be easier to communicate and be absorbed by a wider public provided it possessed simple and direct chains of cause and effect. The coalition essentially argued that medicines for HIV/AIDS were actually available but these medicines were inaccessible because patent holders maintained a high price due to IPR protection under the TRIPS Agreement. In the meantime, developing countries trying to apply TRIPS flexibilities to help poor HIV/AIDS victims were constantly challenged by the US and its pharmaceutical industry. In other words, the cause (inaccessibility of medicines due to the TRIPS Agreement) and effect (ongoing HIV/AIDS crisis) was simple and direct, and the solution to the crisis was clear. Putting it simply, it was a choice between “price of medicines seen as profit-bringing commodities and the value of human life.”

Second, a normative frame would most likely be persuasive, provided there was a failure in the previous ‘generation’ of policies or norms. The TRIPS Agreement was perceived by developing countries and NGOs as hindering access to affordable medicines in poor countries. This runs contrary to the norm of sustainable development in which the liberalisation process should not jeopardise the well-being of the world’s poorest and most vulnerable. Although there were TRIPS flexibilities, the facts suggested that developing countries cannot use them because of constant pressure and

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even threats by major developed countries which in turn limit their ability to address the HIV/AIDS crisis. This serious policy failure therefore required a new interpretation and application of flexibilities under the TRIPS Agreement.

Third, HIV/AIDS is a global phenomenon and many components within western society could relate and be empathetic towards HIV/AIDS victims. According to a former delegate, the HIV/AIDS pandemic in Africa was raised by the HIV/AIDS communities in the western countries. The community was well-organised and eventually supported the anti-TRIPS movement. In comparison to the G-33 in Chapter 3, western public opinion could not easily relate to the severity of the food security issue, and in turn would be less likely to empathise with people experiencing food insecurity.

Fourth, related to the third point, the intense media coverage of the HIV/AIDS crisis increased public awareness and brought the issue as a priority agenda. The spontaneous and consensual support to convene a special session by the majority of WTO members was unprecedented. In a non-crisis situation, it would be very difficult to begin negotiations to reinterpret codified WTO rules. The momentum of an ongoing crisis and immense public awareness in western countries proved invaluable in the agenda-setting process. The agenda was promptly accepted in comparison to the agenda-setting efforts detailed in previous chapters.

In addition to the CTPH normative frame, this thesis further suggests that the CTPH exhibited a persuasive and strong knowledge-based leadership. As mentioned in Chapter 2, the reputation of a neutral or morally motivated knowledge-based leadership is imperative in determining the validity of its knowledge or normative claims. The coalition’s leadership would be less persuasive if it was considered a self-interested or biased actor. In this vein, the coalition developed a unique internal management system. The AG became the face of the coalition in order to show a morally motivated actor and to create an empathetic attitude towards African countries facing the HIV/AIDS crisis. In a negotiation situation, the weaker actor could gain more should it be perceived as defending against injustice by a stronger actor. An African delegate stated that other countries tend to be more sympathetic with the African countries or smaller developing

702 WTO staff and former delegate from South Asia, interviewed by author, March 12, 2011.
countries. The image (or reputation) of a larger country could be jeopardised if it opposed the demands of African countries or smaller developing countries.\textsuperscript{704} At the same time, the coalition was able to use the political and technical weight of some of the larger and more influential members. Brazil was central during the negotiation process and India was very active in providing technical support.\textsuperscript{705}

The knowledge-based leadership within the coalition maintained a very strong cohesion among its members despite the heterogeneous membership and several efforts to divide-and-conquer by the major powers. Members had different levels of economic development and pharmaceutical capacity, but according to a former delegate, at this stage, there was no such distinction among members within the coalition.\textsuperscript{706} Another delegation confirmed that developing countries were focussed on ensuring that members could obtain the most cost effective medicines to address the pandemic and were not focussed on the commercial aspect of medicines.\textsuperscript{707} There were indications that the US tried to divide the AG by proposing side-payments to Kenya, Botswana, and Nigeria as part of the African Growth and Opportunity Act (AGOA), but did not succeed.\textsuperscript{708} This evidence indicates a form of social identity trust among members and a strong conviction of the coalition’s normative or moral justification. Despite the potential short-term benefits for individual members, the CTPH maintained its cohesion and pursued relatively ambitious normative claims as discussed in the next sub-section.

5.2.3 External Coalition Dynamic: A Normative Frame versus an Instrumental Frame Achieving a Compromise through Rhetorical Entrapment

After evaluating the internal coalition dynamic, the following sub-section will investigate the CTPH’s external dynamic. In negotiating for the DTPH, there were two main events: (a) The Special Discussion on Intellectual Property and Access to Medicine in mid-2001; and (b) draft declaration on TRIPS nearing the 2001 Doha Ministerial Conference.

\textsuperscript{704} WTO delegate from Africa, interviewed by author, February 18, 2011.
\textsuperscript{706} WTO staff and former delegate from South Asia, interviewed by author, March 12, 2011.
\textsuperscript{707} WTO delegate from Africa, interviewed by author, March 23, 2011.
a) The Special Discussion: Key Negotiators Strict Distributive Strategy between a Normative Frame versus an Instrumental Frame

There were two main sides during the Special Discussion on Intellectual Property and Access to Medicine on 18-22 June 2001: (1) the CTPH, at this stage joined by Bangladesh and Haiti, stressing the importance of broader non-trade objectives of IPR protection, and (2) the US and its supporters emphasising the importance of the IPR protection and rights of patent holders. The former used a normative frame by emphasising that IPR protections should be upheld provided it promoted the attainment of the broader objectives of development, such as public health. The latter employed an instrumental frame by arguing that IPR protection is the source of innovation and R&D, and a loose interpretation of TRIPS flexibilities would be detrimental to innovation. Some countries were more ambiguous taking a relatively ‘safe’ position. Table 26 provides a summary of the important proposals and documents for the DTPH.

There were four issues raised in the discussion: (1) scope of the problem; (2) application of compulsory licensing; (3) possible measures for importation; and (4) additional flexibilities.
<table>
<thead>
<tr>
<th>Scope of declaration</th>
<th>Coalition on TRIPS and public health</th>
<th>US-led coalition</th>
<th>EC</th>
<th>Declaration</th>
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<tbody>
<tr>
<td>Public health problems (unlimited)</td>
<td>Access to medicine for HIV/AIDS and other pandemics; A country could declare pandemics of life-threatening communicable diseases such as HIV/AIDS, malaria, and tuberculosis, as situations of 'national emergency' or as a 'circumstance of extreme urgency'.</td>
<td>Access to affordable medicine for all in the context of public health policies; Epidemic life-threatening communicable diseases would qualify as a 'national emergency' or 'circumstance of extreme urgency'.</td>
<td>Public health problems, especially those resulting from HIV/AIDS, tuberculosis, malaria, and other epidemics.</td>
<td></td>
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<tr>
<td>Principle and objective</td>
<td>Each TRIPS provision should be read in light of the objectives and principles in Articles 7 and 8; IPR protection and enforcement should benefit society as a whole; Where the patent rights over medicine are not exercised in a way that meets the objectives of Article 7 members may take measures to ensure that they will be achieved; Nothing in the TRIPS Agreement will prevent a country from adopting measures to protect public health.</td>
<td>Each TRIPS provision should be read according to customary rules in interpreting international law as reflected in the Vienna Convention on the Law of Treaties.</td>
<td>Each provision of the TRIPS Agreement should, in accordance with Article 31 of the Vienna Convention on the Law of the Treaties, be read in the light of its object and purpose as set out in Articles 7 and 8 of the TRIPS Agreement; Articles 7 and 8 provided a country with a margin of discretion although they were not considered as general exception provisions; TRIPS Agreement should be implemented to ensure access to affordable medicine for all in the context of public health policies.</td>
<td>IPR protection is important for the development of new medicines, and recognise concerns about its effects on prices; TRIPS Agreement does not and should not prevent members from taking measures to protect public health; TRIPS 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.</td>
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Table 26. Key Proposals for the Declaration in TRIPS and Public Health (DTPH) (cont’d)

<table>
<thead>
<tr>
<th>Proposals</th>
<th>Coalition on TRIPS and public health</th>
<th>US-led coalition</th>
<th>EC</th>
<th>Declaration</th>
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</thead>
<tbody>
<tr>
<td><strong>Compulsory licensing</strong></td>
<td>A government is free to determine the grounds upon which to issue compulsory licensing; A country may grant compulsory licensing in case of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use; A country could grant compulsory licensing for export and be waived from Article 31 (b) and (f); LDCs and smaller economies with limited manufacturing capacity and limited domestic market (economic of scale) should not be prevented from granting compulsory licensing for foreign suppliers.</td>
<td>A country has the freedom to determine the grounds of compulsory licensing; Compulsory licences may be granted without initial negotiation with a patent holder under situations of national emergency or extreme urgency, such as war, civil unrest, natural disaster, and including the ongoing HIV/AIDS pandemic; A country that has not provided patent protection for pharmaceutical products does not need to grant a compulsory licence.</td>
<td>A country has the freedom to determine the grounds for granting compulsory licensing; Compulsory licensing could be used for any reason, including public health, at the discretion of a country but the measure should follow the procedural mechanism under Article 31 and other relevant TRIPS provisions.</td>
<td><strong>TRIPS flexibilities:</strong> (a) apply customary rules to interpret TRIPS provisions that should be read in light of the objectives and principles of the TRIPS Agreement; (b) members have the right to grant compulsory licensing and the freedom to determine the grounds for such licensing; (c) each member has the right to determine what constitutes national emergency or other circumstances of extreme urgency.</td>
</tr>
<tr>
<td><strong>Basis for importing medicines (Articles 6 and 30)</strong></td>
<td>Article 6 relating to IPR exhaustion could be used as the foundation of parallel importation, particularly to prevent anti-competitive practices by patent holders and in situations where local manufacture is not feasible and compulsory licensing may be ineffective; A country has the right to determine its own IPR exhaustion regime; Article 30 indicating that a country could exercise exception to rights of patent holders and authorise production and export of medicines by non-patent holders to address public health issues for an importing country.</td>
<td>Article 6 does not provide authorisation for parallel imports; Parallel importation discourages a patent holder to differentiate prices in different markets based on their level of economic development; Article 30 implies that each country could determine its IPR exhaustion regime and encourage members to prevent diversion of pharmaceuticals for the poorest population under discounted price or aid schemes to other unintended market destinations.</td>
<td>Under Article 6, IPR are exhausted when the goods have been put on the market by the right holder and/or with the consent of the right holder; Members would consider taking all necessary measures to prevent pharmaceuticals imported under a tiered pricing scheme or supplied under aid schemes where they are diverted or re-enter markets that are not eligible for lower prices.</td>
<td>Members are free to establish their own IPR exhaustion regime (e.g. national, regional, or international); TRIPS Council to find an expeditious solution for countries with no or insufficient manufacturing capacity in making use of compulsory licensing, and report to the General Council before the end of 2002.</td>
</tr>
<tr>
<td>Additional flexibilities</td>
<td>Coalition on TRIPS and public health</td>
<td>US-led coalition</td>
<td>EC</td>
<td>Declaration</td>
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<td>Extension of a transitional period to implement the TRIPS Agreement; Non-violation complaints should be applied to measures related to protection of public health; Nothing in the TRIPS Agreement should prevent members from establishing or maintaining marketing approval procedures for generic medicines, and other healthcare products; Nothing in the TRIPS Agreement shall prevent members from disclosing or using information by authorities or patent holder where it is required for public interests; Restrain or moratorium against countries applying public health policies from DSM.</td>
<td>Technical assistance for implementation by LDCs; Close coordination between the WTO, WIPO, and WHO.</td>
<td></td>
<td>Extend transitional period for LDCs until 1 January 2016.</td>
</tr>
</tbody>
</table>

Sources: IP/C/W/296, IP/C/W/312, IP/C/W/313, JOB(01)/137, JOB(01)/97/Add.5, IP/C/W/280, JOB(01)/97/Add.7, AIDS Coalition to Unleash Power (2001), WT/MIN(01)/DEC/2
In response to the issues under discussion, first, the CTPH believed that the scope of the problem should encompass the broad public health issue. Each TRIPS provision should be read in light of the objectives and principles of Articles 7 and 8 that reflect a balance between the rights of patent holders (the liberal trade principle) and broader developmental objectives, such as protect public health and nutrition, as well as public interests vital to their socio-economic and technological developments. In the discussion, India argued that such reading was consistent with the Vienna Convention on the Law of Treaties. IPR protection is not an end in itself, but its effectiveness should be benchmarked to the attainment of the public policy objectives under Articles 7 and 8. The coalition therefore argued that nothing in the TRIPS would prevent members from adopting measures to protect public health.

Second, the CTPH suggested that a country has the freedom to determine the grounds for compulsory licensing, including ensuring accessible and affordable medicines, as part of TRIPS flexibilities based on Article 31 and the Paris Convention (Article 5A). In compliance with Article 31, India argued that compulsory licensing are available for public non-commercial use, which includes government healthcare for the poor. According to Brazil’s experience, it was able to negotiate a significant price reduction for two patented anti-retroviral drugs because it threatened to use compulsory licensing. In addition, Article 31(f) stipulates that compulsory licensing could predominantly be used for a domestic market. The CTPH therefore proposed that developing countries could make use of the licensing from cheaper foreign suppliers.

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713 Ibid., 7.
714 Brazil was able to receive 64 per cent and 59 per cent price decreases for two separate patent medicines since it placed the possibility of using compulsory licences for those medicines. See World Trade Organization, "Council for Trade-Related Aspects of Intellectual Property Rights - Intellectual Property and Access to Medicines - Statement of India at the TRIPS Council Meeting on 20 June 2001 on Public Health and Access to Medicines," JOB(01)/97/Add.9: 5.
the discussion, India acknowledged that the EC was willing to consider and negotiate possible rules for this option.715

Third, the coalition also envisaged that countries could determine their own IPR exhaustion regime and therefore allow parallel importation based on Article 6. Countries generally employed a national exhaustion system in which patent rights would be ‘exhausted’ within one country when such products are sold in that market. An international or regional exhaustion system could in fact permit ‘parallel importation’, meaning that products which have been put in a first market with the permission of patent holders could be imported into a second market without the permission of patent holders. For instance, the EC employs a regional exhaustion system in which products sold in one country could be sold in another country inside the single market. According to the CTPH, parallel importation could be beneficial to prevent anti-competitive practices that set unreasonably high prices in local markets and therefore ensure access to affordable medicines.716

Fourth, the coalition asked for additional flexibilities in terms of extra time for implementation and a moratorium from dispute settlement. In this vein, Zimbabwe argued that many developing countries needed to extend the transitional arrangement to implement the TRIPS Agreement, and a moratorium from dispute settlement to allow developing countries to adopt measures to protect public health.717 In addition to the above issues, the coalition wanted a political statement during the Doha Ministerial Conference reassuring that the TRIPS Agreement would not undermine the rights of countries to pursue public health policies.718


Chapter 5. Negotiating Coalitions on TRIPS and Public Health

In formulating its argument, the CTPH received invaluable support within and outside the WTO. Many studies pointed out the crucial role of networking between CTPH and non-state actors, such as Oxfam, Consumer Project on Technology (CPTech), MSF, and Quaker United Nations Office (QUNO), in providing technical support and disseminating awareness to the public.\(^{719}\) Over 100 NGOs issued a joint statement indicating almost identical policy recommendations: strengthen public health safeguards in the TRIPS Agreement to override patents for public health purposes; provide pro-public health interpretation for the right of a country to grant compulsory licensing for local use, import and export, and rights for parallel importation; extend TRIPS implementation deadline for developing countries; and a moratorium from dispute settlement against developing countries. This is consistent with Chapter 2, which indicated that a normative frame tends to be formulated by middle power and small democracies together with a civil society movement. Moreover, Norway and the Netherlands provided financial and logistical supports to developing countries despite not being members of the coalition.\(^{720}\)

In contrast to the CTPH position, a number of developed countries used an instrumental frame by emphasising incentives for IPR holders or commercial aspects of IPR protection. Switzerland argued that TRIPS must ensure incentives for private sectors as stipulated under Articles 27 and 28. For this reason, TRIPS flexibilities must not take away the incentive for research in new drugs and vaccines. Switzerland also argued that price is not the core problem because many people could not afford medicine even if the price was offered at half or even one-tenth of the original price.\(^{721}\) In this vein, the US went further by arguing that many countries do not possess adequate infrastructure and monitoring mechanisms, even if sufficient free drugs were available, for every HIV-positive person. For this reason, each country must develop


medical and public health infrastructures, and increase its healthcare resources.\textsuperscript{722} The US’s argument essentially took the position of US PhRMA that argued that the problem of access to medicine is not part of the TRIPS Agreement, considering price is only one of the many determining factors.\textsuperscript{723} India counter-argued that medical infrastructure issues in developing countries were beyond the TRIPS Council’s mandate.\textsuperscript{724}

In regard to the scope of the problem, the US recognised that compulsory licences may be granted without initial negotiations with patent holders under situations of national emergency or extreme urgency, such as war, civil unrest, natural disaster, and including the ongoing HIV/AIDS pandemic. The US fell short of mentioning a third situation in Article 31, namely ‘public non-commercial use’ as highlighted by several members of the CTPH. However, the US reminded the prior-conditions and post-conditions for compulsory licensing under Article 31, such as the obligation to negotiate with and to provide adequate remuneration for patent holders.

In reading Article 31 on compulsory licensing, the US argued that a country that has not provided patent protection for pharmaceutical products does not need to grant compulsory licences. Further, compulsory licensing must take into account Article 27.1 in which patent rights cannot be discriminated based on whether it is imported or locally produced. This means that a compulsory licensing cannot be justified based on the location of the production of the product.\textsuperscript{725}

Pertinent to the possibility of parallel importation, the US argued that Article 6 does not provide authorisation for parallel imports. Parallel importation discourages patent holders from differentiating prices in different markets based on their level of economic development. The lack of parallel importation protection would be prone to

\textsuperscript{724} Abbott, "The Doha Declaration on the TRIPS Agreement and Public Health: Lighting a Dark Corner at the WTO," 482.
counterfeit and unapproved drugs. 726 Similarly, Switzerland argued that the incentive for patent holders to sell at lower prices in developing countries is the assurance that the products would not be re-exported to developed countries. 727

In addition to the positions of the CTPH and US together with its supporters, the EC was playing a relatively ‘safe’ position. In some elements, the EC reflected a sympathetic attitude towards the CTPH. In terms of the scope of the problem, the EC recognised that Articles 7 and 8 provided a country with a margin of discretion, although they were not considered as a general exception provision. 728 For compulsory licensing, the EC recognised that the licensing could be used for any reason, including public health, at the discretion of a country (similar to the position of the CTPH) but reminded that countries should follow procedural mechanism under Article 31 and other relevant TRIPS provisions. 729 Furthermore, the EC argued that Article 31 does not provide a legal certainty for a smaller country with no or insufficient manufacturing capacity to import cheaper medicine and was willing to discuss and find a solution on this matter. 730

In subsequent negotiations, the following evidence suggests that the CTPH and US-led coalition (excluding the EC) maintained a strict distributive strategy as they released their proposal for the declaration on TRIPS in September 2001 based on their distinctive value claims reflecting the four main issues above. 731

First, in regard to scope of the problem/declaration, the CTPH perceived the declaration should cover the broader scope of ‘public health’. In the following

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727 Ibid., 9.
730 Ibid., 2.
731 The first paper by US-led coalition together with Australia, Canada, Japan, and Switzerland provided the preamble of the draft Ministerial Declaration. It was followed by a second paper by the US together with Canada, the Czech Republic, Japan, and New Zealand providing operational paragraphs for the draft Ministerial Declaration. See World Trade Organization, "Council for Trade-Related Aspects of Intellectual Property Rights - Intellectual Property and Access to Medicines - TRIPS Council Discussion on TRIPS and Health, 20 June 2001 Speaking Notes for Mr. Trojan," JOB(01)/97/Add.7 (July 2, 2001): 3.
The CTPH Setting the Agenda for TRIPS and Public Health

operational paragraph, the coalition proposed that “nothing in the TRIPS Agreement shall prevent Members from taking measures to protect public health”. As discussed above, this passage was based on the coalition’s reading of Articles 7 and 8. It implies that public health issues as a developmental objective could overturn other rules under the TRIPS Agreement, including patent rights. In this matter, the US-led coalition favoured a narrower scope of ‘access to medicine for HIV/AIDS and other pandemics’. In this vein, the US was careful in its proposal stating that each TRIPS provision should be read according to customary rules in interpreting international law as reflected in the Vienna Convention on the Law of Treaties, without referring directly to Articles 7 and 8.

Second, in regard to compulsory licensing and related to the point above, the CTPH mentioned all conditions for countries granting compulsory licensing without initial efforts to obtain authorisation from patent holders: national emergency, other circumstances of extreme emergency, and in cases of public non-commercial use. In comparison to the CTPH, the US-led coalition limited the declaration by specifying that a country could declare pandemics of life-threatening communicable diseases such as HIV/AIDS, malaria, and tuberculosis, as situations of ‘national emergency’ or as a ‘circumstance of extreme urgency’. The US-led coalition left out the condition of ‘public non-commercial use’ in this matter.

Third, as discussed previously, WTO members acknowledged the problem for developing countries with minimal or no manufacturing capacity. The CTPH did not pursue parallel importation (Article 6), but focussed instead on Articles 30 and 31 as the


basis of exportation/importation. The coalition proposed that countries under Article 30 could exercise exceptions to the rights of patent holders as well as authorise production and export of medicines by non-patent holders to address public health issues in an importing country. In addition, the coalition also proposed altering or modifying Article 31 to enable exportation/importation under compulsory licensing.\(^{736}\) In comparison to the CTPH, the US-led coalition reaffirmed that each country could determine its IPR exhaustion regime and encouraged members to prevent diversion of pharmaceuticals to the poorest populations under discounted prices or aid schemes to other unintended market destinations.\(^{737}\) In other words, the US-led coalition maintained its value claim by implying that Article 6 could not justify parallel importation.

Fourth, the CTPH requested additional flexibilities. The coalition requested WTO members refrain from efforts to curtail developing countries in applying policy options to promote public health or to bring those countries to DSM.\(^{738}\) There was no parallel proposal on this matter by the US-led coalition.

Similar to the Special Discussion, the EC also released an informal non-paper positioned between the CTPH and US-led coalition. The proposal was relatively ambiguous and did not take any sides. As an illustration, the EC proposed the declaration should cover ‘TRIPS and access to affordable medicine’, which is not as broad as ‘public health’, but not as narrow as ‘medicines for HIV/AIDS and other pandemics’. The EC perceived that Article 31 should be read in the light of Articles 7 and 8, similar to the position of the CTPH. In interpreting Article 31, the EC stated that members have the freedom to determine the grounds for compulsory licensing provided they were in compliance with the TRIPS Agreement. The EC then pointed out that current epidemic life-threatening communicable diseases would qualify as a national emergency or circumstance of extreme urgency similar the position of the US-led


\(^{737}\) World Trade Organization, "Council for Trade-Related Aspects of Intellectual Property Rights - General Council - Proposal by the African Group, Bangladesh, Barbados, Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, Haiti, Honduras, India, Indonesia, Jamaica, Pakistan, Paraguay, Philippines, Peru, Sri Lanka, Thailand, and Venezuela," IP/C/W/312: 3.

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coalition. However, the EC non-paper was eventually withdrawn as it was not formally cleared by its members.

b) The Doha Ministerial Conference in 2001: Key Negotiators Moving to Integrative Movement Achieving a Compromise through Rhetorical Entrapment

Since key negotiators maintained their distributive strategy, the negotiations were brought to the General Council and a draft declaration on TRIPS (separate from the Doha Ministerial Declaration) was circulated. The declaration would reflect a final political interpretation by the ministers of TRIPS flexibilities. Although the declaration was not designed as modalities for future negotiations, the language in the declaration resembled the language in modalities. In effect, paragraph 6 of the DTPH would serve as modalities in subsequent negotiations, as discussed later. The draft declaration principally would provide principle guidance or a norm setting rather than detailed rules concerning TRIPS flexibilities.

In order to facilitate the ministers in making their decision and encourage them into an integrative movement, the draft declaration only provided two main options. First, the declaration would encompass a broad focus of ‘public health’ using the proposed language of the CTPH. Option one reads “nothing in the TRIPS Agreement shall prevent Members from taking measures to protect public health... shall be interpreted and implemented in a manner supportive of WTO Members’ right to protect public health and, in particular, to ensure access to medicines for all”. Second, the declaration would entail a narrow focus based solely on public health crisis, effectively taking the position of the US-led coalition. Option two reads that members are given “…flexibility to address public health crises such as HIV/AIDS and other pandemics,


and to that end, that a Member is able to take measures necessary to address these public health crises, in particular to secure affordable access to medicines...".742

The following operational paragraphs were presented without brackets with the assumption that there were broad consensuses on these issues. It included a paragraph stating that each TRIPS provision should be read in light of the objectives and principles of the agreement under customary law (a combination of CTPH, and the US-led coalition proposals). The text stated that the TRIPS Council would find an expeditious solution to members with insufficient or no manufacturing capacity in the pharmaceutical sector by making use of compulsory licensing. As part of the US proposal, the draft provided additional flexibilities for smaller developing countries: an extension of the transitional period for LDCs until 1 January 2016 and a moratorium for five years for developing countries in sub-Sahara Africa.743 During the discussion in the General Council, members basically maintained their distributive strategy despite some members indicating a willingness to work on the language.

The real negotiations were conducted during the Doha Ministerial Conference in a small group meeting of 25 members in mid-December 2001. The US and Brazil became the central actors during the negotiations. A report indicated that the CTPH remained steadfast in pushing for option one despite efforts to divide developing countries with an extension of the transitional period for LDCs and a moratorium for sub-Sahara Africa.744 Developing countries were united in rejecting a discriminatory moratorium since it would apply to one region, while neglecting other regions.745 There was also a report of a divide within the EC, in which the UK, Ireland, Italy, and Denmark favoured option one.746 According to a former delegate, the EC tried to help developing countries by not joining the US-led coalition.747 A report indicated that the MSF and other NGOs successfully persuaded the EC to rethink its position based on a

743 See ibid., 3.
744 Ibid., 1. See also International Centre for Trade and Sustainable Development, "Doha WTO Ministerial Conference - Daily Update - 12 November 2001."
746 Abbott, "The Doha Declaration on the TRIPS Agreement and Public Health: Lighting a Dark Corner at the WTO," 488.
747 WTO staff and former delegate from South Asia, interviewed by author, March 12, 2011.
public health-oriented perspective (rather than the perspective of pharmaceutical companies). Some scholars argued that the US-EC misalignment made it possible for the CTPH to play a more important role, and even weaken the US-led coalition.748

Nearing the end of the conference, the US eventually employed an integrative strategy by accepting the value claims of the CTPH, marking a substantial departure from their previous position, in which the US was willing to begin negotiations based on option one. A former delegate indicated that the US had a difficult time defending the interests of pharmaceutical companies while at the same time not being too harsh on developing countries.749 Both CTPH, and the US-led coalition employed mixed distributive-integrative strategies, leaning towards the value claims of developing countries.

The final DTPH was adopted on 14 November 2001. WTO members agreed to use option one reflecting the position of the CTPH. The passage, “nothing in the TRIPS Agreement shall prevent...” was altered to “...the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health... 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”.750 The declaration also stated that each provision should be read in light of the objectives and purposes under the TRIPS as advocated by the CTPH. Some paragraphs reflected a broad consensus among WTO members, such as the right of members to grant compulsory licences and freedom of members to determine the grounds for the licensing, and give leeway for members to determine what constituted a national emergency or other circumstances of extreme urgency (including HIV/AIDS, tuberculosis, malaria and other pandemic diseases). The declaration reaffirmed Article 6 concerning the right of members to determine its IPR exhaustion regime, without incorporating issues of parallel importation (initially proposed by CTPH) or efforts to prevent diversion of medicines under discount price or aid schemes (proposed by the US-led coalition). The declaration provided additional flexibilities in terms of a

749 WTO staff and former delegate from South Asia, interviewed by author, March 12, 2011.
transitional period for LDCs until 1 January 2016, but dropped the moratorium for sub-Saharan African countries. As an outstanding issue under paragraph 6 of the DTPH, the TRIPS Council would negotiate a solution for members with no or insufficient manufacturing capacity in order to make use of compulsory licensing.  

Reflecting this evidence, this thesis argues that the CTPH and the US-led coalition used contradicting value claims in interpreting TRIPS flexibilities, similar to the G-33 case study. The CTPH used a normative frame stressing the humanitarian claims of the HIV/AIDS crisis, while the US-led coalition used an instrumental frame stressing commercial claims related to IPR protection and rights of patent owners. These different frames also reflected the choice of articles being used for their argument and in turn affected their interpretation of TRIPS flexibilities. For instance, the CTPH emphasised Articles 7 and 8 prescribing to the non-trade objectives under the TRIPS Agreement, including in interpreting Article 31. The US-led coalition relied heavily on Articles 27 and 28 governing the rights of patent holders and re-emphasised the long requirements for compulsory licensing under Article 31, such as prior effort to obtain authorisation and remuneration from patent holders. With reference to the problems of developing countries with no or insufficient manufacturing capacity, the CTPH attempted to use Article 6 and later focussed on Articles 30 and 31 to justify importation of cheaper medicines, while the US-led coalition argued against efforts for parallel importation (although the EC was more open to discussing available options).

During the conference, the CTPH reflected a the strategy of a communicative actor, as discussed in Chapter 2, highlighting the humanitarian significance of the Declaration to persuade the US and its supporters to change their behaviour. The coalition, particularly the AG, tried to create a sense of empathy from other negotiators and the wider public audience. During the conference, the US was willing to move into mixed distributive-integrative strategies by maintaining its commercial claims for option two, but was willing to accept the value claims of smaller developing countries by providing an extension for a transitional period and moratorium for sub-Saharan Africa. The effort to divide developing countries, however, was not well-received. In the final days of the conference, the US made a crucial integrative movement towards

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the value claim of the CTPH by accepting negotiations based on option one. This was a remarkable and unexpected integrative move by the US, which resulted in the adoption of the DTPH.

In addition to the contradictory value claims among key WTO members, this thesis further argues that the US-led coalition was rhetorically entrapped, as discussed in Chapter 2, in which the change of behaviour was a strategic move motivated by efforts to maintain their reputation and motivated by future incentives.

There were three plausible reinforcing explanations for the rhetorical entrapment. First, there was limited evidence that the US-led coalition and other WTO members actually argued against the humanitarian claims of the CTPH, particularly African countries confronting the HIV/AIDS pandemic. The US was forthcoming in acknowledging the HIV/AIDS crisis in Africa and was even willing to provide an extended transitional period and moratorium for sub-Saharan African countries. Nonetheless, the US-led coalition tried to limit the scope of the declaration to deal with the pandemic crisis and was unwilling to extend flexibilities for larger developing countries. Those sympathisers, such as the EC and several European countries, were to some degree supporting the humanitarian claims of the CTPH by not joining the US-led coalition. Nonetheless, they remained cautious in interpreting TRIPS flexibilities by re-emphasising the significance of IPR protection in conjunction with the developmental objectives.

Second, the US and its supporters needed to maintain their reputation as a genuine actor (rather than a biased or self-motivated actor) since they were under intense scrutiny by the international community and by their own constituency. As mentioned in Chapter 2, the process of arguing through communicative action might be more effective under the scrutiny of a public audience as an external or third party authority. Studies have reached similar conclusions with regard to the invaluable role of public opinion, particularly in western countries, in helping to push for the DTPH.752 There were two important exogenous factors amplifying scrutiny by the international community, namely the aftermath of the 9/11 tragedy and the need to launch the Doha Round. After the 9/11 tragedy, the US and Canada threatened to grant a compulsory

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752 Ibid.
licensing for ciprofloxacin (Cipro) in facing a large-scale terrorist anthrax attack. Bayer, as the patent owner, eventually agreed to reduce the price of its antibiotics up to half of the original price. As a consequence, many countries were displeased by this hypocrisy or double standard. The reputation of the US and other developed countries was therefore under public scrutiny and was in danger of being considered a biased or self-interested actor if they maintained a strict distributive strategy. This conclusion is similar to the study by Morin and Gold, in which all WTO delegates were perceived to be entrapped between communicative action and strategic action (rhetorical action). All actors were already committed to seeking a common solution and the majority of delegates took into account the reputational cost when deciding their strategic objectives.

Third, and in relation to the second point, the major powers needed to maintain their reputation in order to successfully launch the Doha Round in order to gain future benefits. According to Mike Moore, former WTO Director-General, there was an increasing sense of urgency and solidarity to launch a new round in facing the danger of economic and political uncertainties after the failure of the 1999 Seattle Ministerial Conference and the 9/11 tragedy. In conforming to the demands of developing countries, the DDA and the interests of the poor were placed as the central theme of the new round. The DTPH represented one of the important development elements of the Doha Round, in which the declaration was “a shot in the arm for global efforts to address the public health problem.” Similar to the G-33 in Chapter 3, the CTPH’s negotiating counterparts were rhetorically entrapped to accept the normative claims, but the main difference was the public health issue was boosted with exogenous factors, such as greater public scrutiny, which was well-utilised by the CTPH.

In the context of the nexus between the liberal trade and developmental principles, this thesis together with many studies acknowledges that the DTPH placed the developmental objective a degree higher (or at least equal) to the commercial

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interests of pharmaceutical patent holders.\textsuperscript{756} The political statement was a breakthrough in the history of the trade regime. Prior to the DTPH, some members used a strict or limited interpretation of TRIPS flexibilities focussing on the commercial interests of IPR holders. The CTPH through the DTPH reaffirmed that TRIPS flexibilities should be interpreted in a way that supports the rights of WTO members to protect public health. Although the DTPH does not itself amend the TRIPS Agreement and is not a strong legal document, the DTPH provided an example of a favourable interpretation of TRIPS flexibilities for the broader developmental objectives. Such an accomplishment could impact the longer trajectory of the rule-development process and future negotiations under the trade regime. It also provided the precedent that agreements under the trade regime are not carved in stone because they could be amended or modified to take into account broader non-trade objectives. The DTPH provided the foundation to develop specific rules related to the usage of compulsory licensing for countries with no or insufficient manufacturing capacity, as discussed in the next section.

5.3 The AG and CDC Negotiating Rules for a Solution to Paragraph 6

As a follow-up to the DTPH, negotiations continued to seek an 'expeditious solution' by the end of 2001 for paragraph 6 of the DTPH, which recognised the difficulties of members with no or insufficient manufacturing capacity in making effective use of compulsory licensing because Article 31(f) limits compulsory licensing to be predominantly used for the domestic market.

The exercise of seeking a solution to paragraph 6 had moved away from a norm setting process with broad parameters (when negotiating the DTPH) into a situation similar to rule-making and deal-making processes. As a result, the internal management of coalitions needed to be adjusted to the characteristic of rule-making and deal-making processes. The diverse interests and preferences among members within a coalition would be more salient because different rules tend to have different implications for countries with different levels of economic development or administrative capacities, and in this case, different levels of pharmaceutical manufacturing capacities.

The subsequent sub-section will examine the internal dynamic of the two coalitions: the AG and CDC. The last sub-section will investigate strategies employed by WTO members and overall mode of negotiation during the negotiations for a solution to paragraph 6.

5.3.1 Internal Coalition Dynamic: The AG and CDC’s Normative Frame and Lack of Strategic-Based Leadership

In the follow-up negotiations for a solution to paragraph 6, there were two main coalitions involving developing countries: the AG and CDC. The AG was led by several members, such as Kenya, Nigeria, and Rwanda, based on its own internal arrangement system. The CDC was led by Brazil, which consisted of Bolivia, Cuba, China, Dominican Republic, Ecuador, India, Indonesia, Pakistan, Peru, Sri Lanka, Thailand, and Venezuela. In early 2002, both coalitions released separate proposals regarding a solution to paragraph 6.

As discussed later in more detail, the AG and CDC used the same normative frame by emphasising simpler flexibilities for the importation/exportation of pharmaceutical products, but in several instances they used or emphasised different technical approaches reflecting the fact that they were working on different platforms. As discussed in Chapter 2, one of the main features of a coalition is that members work on a common platform. The incoherent platform and lack of coordination among them was later capitalised by the US and EC.

There were two main reasons for the declining cohesion among developing countries. First, there was a lack of strategic-based leadership and coordination between the AG and CDC. As mentioned earlier, the negotiations resembled rule-making and deal-making processes in which different rules might generate different distributive implications for each country and in turn the diverse interests and preferences become more salient. This is similar to the negotiations on trade facilitation discussed in Chapter 4 in terms of the relation between the Core Group together with the AG, ACP Group, and LDCs Group. In this case, the AG and CDC needed to move away from a knowledge-based leadership into a strategic-based leadership in order to develop innovative solutions to accommodate the diverse interests and preferences among developing countries. Neither of these coalitions was able to step up as a leader in
developing innovative and broadly accepted solutions. The dichotomy between potential exporters and importers of medicines became more salient. An interviewee indicated that the main stakeholders or potential importers (e.g. the AG and ACP Group) became more active in pursuing a solution to their problem, while developing countries with relatively good manufacturing capacity or potential exporters (e.g. Brazil and India) were less active. According to another anonymous source, the division among potential exporters and importers created a lack of trust on the part of the AG towards potential exporters, such as Brazil and India. As further evidence, news reports indicated that the AG and CDC submitted different but complementary proposals because the former reflected the position of potential importers facing a pandemic crisis, whilst the latter reflected the position of potential exporters with generic industries. Further, there was limited evidence that leadership in the AG or CDC attempted to bring these coalitions together, despite that throughout the negotiations many developing countries supported and were willing to wait for the AG’s lead. However, there was evidence of a lack of coordination between the AG and other developing countries, as I will discuss later in this chapter.

Second, delegations encountered negotiation fatigue and overstretch. Drahos found that negotiation fatigue was one of the reasons for the lack of success of coalitions involving developing countries as the negotiations involved complex issues and tight deadlines, which eventually overwhelmed the capacities of developing countries. Similarly, developing countries were tired of antagonising the US due to possible bilateral sanctions and repeated debates with the US. Partly as a result, the AG and CDC lack of coordination was capitalised by the major powers. In addition, negotiation overstretch might also provide a viable reason for the fragmentation among developing countries. Any form of informal coalition building and maintenance requires substantial time, work, and innovation, particularly on the part of the leader within the

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757 Former WTO delegate from Africa, interviewed by author, March 8, 2011.
758 WTO staff and former delegate from South Asia, interviewed by author, March 12, 2011.
coalition. Such leadership is required to arrange meetings and to negotiate among its members, as well as to develop a common platform based on mutual gains. In parallel to the negotiations on paragraph 6, negotiations in preparing the 2003 Cancún Ministerial Conference also involved other important issues, such as agriculture and Singapore Issues. As illustrated in the previous case studies, some of the key developing countries, or in this case potential exporter countries, were very active in coordinating other coalitions on agriculture and Singapore Issues. The limitations of a number of delegates and capabilities for many developing countries appeared to overstretch or overwhelm them in this moment of negotiation.

5.3.2 External Coalition Dynamic: A Normative Frame versus an Instrumental Frame Achieving a Compromise through Bargaining

In addition to the internal coalition dynamic, this sub-section will focus on the external coalition dynamic related to the AG and CDC. There were two main events related to these coalitions during this period of negotiations: (a) a compromise to a temporary solution to paragraph 6 known as the Decision of 30 August 2003 (hereinafter ‘the Decision’) and Chair’s Statement; and (b) a compromise to a permanent solution in 2005 and its aftermath. As mentioned earlier, negotiations for a solution to paragraph 6 was similar to the rule-making and deal-making processes entailing negotiations on specific and detailed rules with clearer distributive implications.

a) A Temporary Solution to Paragraph 6: Key Negotiators Moving to Integrative Movement in Achieving a Compromise through Bargaining

In 2002, there were several key proposals on the table reflecting the two main sides using different frames. On the one hand, the AG and CDC used a normative frame by highlighting the possibility of using and/or revising TRIPS provisions to better facilitate the exportation/importation of cheaper medicine in order to achieve public health objectives. The AG and CDC therefore tried to develop simpler flexibilities rules. On the other hand, the US and EC used an instrumental frame by highlighting the need to maintain IPR protection and enforcement to reflect the interests of their pharmaceutical industries. The EC was more forthcoming towards TRIPS flexibilities, but tried to place stricter safeguards against trade diversion, while the US persistently tried to limit TRIPS
flexibilities. Table 27 provides the key elements of proposals by the EC, US, AG, and the CDC.

The elements of discussion could be divided into at least six issues. The first issue concerns the scope or coverage of the solution. The debate between broad or narrow coverage was repeated again. The AG proposed that the solution should cover pharmaceutical products, including medicines, related technical processes, and related technical equipment. The CDC argued that the solution should cover patented public health-related products, including active pharmaceutical substances and diagnostic kits. The EC was willing to accept a slightly broader coverage including patented pharmaceutical products and pharmaceutical products manufactured through a patented process, including diagnostic test kits. The US was adamant on confining the scope of diseases to those defined in the DTPH. In late 2002, Rosa Whitaker, US Trade Representative for Africa, pressured the AG to accept the US’s proposal to limit the scope of diseases to HIV/AIDS, tuberculosis, and malaria without referencing ‘other epidemics’.

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Table 27. Key Proposals for a Solution to Paragraph 6

<table>
<thead>
<tr>
<th>Coverage</th>
<th>EC</th>
<th>US</th>
<th>AG</th>
<th>CDC</th>
<th>30 August decision</th>
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<tr>
<td>Pharmaceutical products needed to deal with public health problems</td>
<td>Patented pharmaceutical products needed to address a public health problem, especially HIV/AIDS, malaria, tuberculosis, and other epemics; It would cover patented pharmaceutical products, and pharmaceutical products through a patent process, including diagnostic test kits.</td>
<td>Patented pharmaceutical products including medicines, related technical process, and related technical equipment.</td>
<td>Patented public health-related products, including active pharmaceutical substance and diagnostic kits.</td>
<td>Pharmaceutical products (any patented product or product manufactured through a patented process) including active ingredients and diagnostic kits.</td>
<td>LDCs and any other member that has made notification to the TRIPS Council; Some members indicated they would only use the mechanism under national emergency or other circumstances of extreme urgency.</td>
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<td>LDCs, especially HIV/AIDS, malaria, and other epemics; It would cover</td>
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<td>patented pharmaceutical products, and pharmaceutical products through</td>
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<td>a patent process, including diagnostic test kits.</td>
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<td>Coverage</td>
<td>High income economies would be excluded from the scheme; LDCs and low income members with no or insufficient domestic manufacturing capacity would be eligible; Other developing countries depending on certain conditions (e.g. developing countries in which only the patent holder possesses the needed manufacturing capacities); Proposal assessing manufacturing capacities for non-LDCs, such as active ingredient and formulations,</td>
<td>Eligible importers include developing countries and LDCs that are afflicted by public health problems, especially resulting from HIV/AIDS, malaria, tuberculosis, and other epemics, and developing countries that have insufficient or no manufacturing capacity; A country without a patent in force could request a developing country or LDCs to manufacture and export the needed pharmaceutical product.</td>
<td>Any country, particularly developing countries, and LDCs that need support to address public health concerns.</td>
<td>Need not and should not be limited to a specific category of countries.</td>
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<td>Importing countries</td>
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<td>High income economies would be excluded from the scheme; LDCs and low</td>
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<td>income members with no or insufficient domestic manufacturing</td>
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<td>Any country, particularly developing countries, and LDCs that need support to address public health concerns.</td>
<td>Need not and should not be limited to a specific category of countries.</td>
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<td>manufacturing capacity would be eligible; Other developing countries</td>
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<td>Any country, particularly developing countries, and LDCs that need support to address public health concerns.</td>
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<td>the patent holder possesses the needed manufacturing capacities);</td>
<td>Importing countries can be high-income economies or developing countries depending on certain conditions (e.g. developing countries in which only the patent holder possesses the needed manufacturing capacities); Proposal assessing manufacturing capacities for non-LDCs, such as active ingredient and formulations,</td>
<td>Any country, particularly developing countries, and LDCs that need support to address public health concerns.</td>
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<td>Proposal assessing manufacturing capacities for non-LDCs, such as active</td>
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<td>Need not and should not be limited to a specific category of countries.</td>
<td>Need not and should not be limited to a specific category of countries.</td>
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<td>Condition for import</td>
<td>EC</td>
<td>US</td>
<td>AG</td>
<td>CDC</td>
<td>30 August decision</td>
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<td>Condition for import</td>
<td>A country with a patent in force should issue a compulsory licensing, and a country without a patent in force does not need to comply with patent rules; An importing country should take all necessary regulatory and administrative measures to ensure the entirety of products be exported to designated country, to ensure the product is offered for sale, sold or distributed solely in designated country, and not re-exported.</td>
<td>An importing developing country with patent on the pharmaceutical products should take measures in compliance with TRIPS Article 31 (a) to (l).</td>
<td>A country’s rights to import could be based on doctrine of regional or international IPR exhaustion (Article 30), or based on compulsory licensing (Article 31).</td>
<td>Notify the TRIPS Council: names and quantities of products, non-LDCs establish it has no or insufficient capacities, and confirms it has or intends to grant compulsory licensing; Non-LDCs undertake assessment of manufacturing capacity (in Annex); Take reasonable measures within their means, proportionate to their administrative capacities and risk of trade diversion to prevent re-exportation.</td>
<td></td>
</tr>
<tr>
<td>Exporting countries</td>
<td>All WTO members.</td>
<td>Developing countries with sufficient manufacturing capacity to export needed pharmaceuticals.</td>
<td>No limitation on exporting country.</td>
<td>No basis in the DTPH to exclude developed countries.</td>
<td>Members using the mechanism (no limitation).</td>
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</tbody>
</table>
Table 27. Key Proposals for a Solution to Paragraph 6 (cont’d)

<table>
<thead>
<tr>
<th>Condition for export</th>
<th>EC</th>
<th>US</th>
<th>AG</th>
<th>CDC</th>
<th>30 August decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>All requirements under Article 31 would apply except Article 31(f); A member granting a licensing for export should take all necessary regulatory and administrative measures to ensure the entirety of products be exported to designated country, to ensure the product is offered for sale, sold or distributed solely in designated country, and not re-exported,</td>
<td>Exporters shall comply with each provision under Article 31 except for Article 31(f), including providing notification to right holder under Article 31(b).</td>
<td>Under Article 31, a country could export based on a modification to Article 31(f) (see legal mechanism below) and based on the modification of the understanding of a 'domestic market' (see others below).</td>
<td>Article 30-based on authoritative interpretation would apply; Article 31 would need a compulsory licensing in both importing and exporting countries.</td>
<td>Obligation under Article 31 except Article 31(f); Notify the TRIPS Council: quantity of product and ensure entirely of production would be exported to the intended country, clearly identify specification of products, post a website related to specification of products prior to shipment, and confirm it has granted compulsory licensing.</td>
<td></td>
</tr>
<tr>
<td>Remuneration</td>
<td>Remuneration should be based on Article 31(h).</td>
<td>The amount could take into account any compensation paid to the right holder under licensing issued by the member exporting the product because the exporting country clearly has more resources.</td>
<td>Members shall provide for adequate remuneration to the right holder in compliance with Article 31 and the need to place an international mechanism to assist funding the compensation.</td>
<td>Avoid double remuneration for patent holders; Remuneration should be determined in the country where the product is consumed (importers).</td>
<td>Adequate remuneration pursuant to Article 31(h) taking into account the economic value to the importing member, and the obligation would be waived if the remuneration is paid by exporters.</td>
</tr>
</tbody>
</table>
### Table 27. Key Proposals for a Solution to Paragraph 6 (cont'd)

<table>
<thead>
<tr>
<th></th>
<th>EC</th>
<th>US</th>
<th>AG</th>
<th>CDC</th>
<th>30 August decision</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Trade diversion</strong></td>
<td>Exporting and importing countries should take all necessary measures to avoid trade diversion; All WTO members should be responsible for preventing importation to other markets.</td>
<td>All WTO members should ensure means to prevent diversion into their markets; These obligations already exist under Articles 28 and 44.1.</td>
<td>Members should provide domestic laws and measures against infringement of re-export; Producers under compulsory licensing may use labels for the designated domestic market.</td>
<td>Place the burden of safeguards against trade diversion on the patent owner under existing TRIPS provision.</td>
<td>All WTO members should ensure effective legal means to prevent the importation into and sale in, their territories, and diverted to their markets consistent with its provisions using available TRIPS provisions.</td>
</tr>
<tr>
<td><strong>Legal mechanism</strong></td>
<td>Initially the EC proposed two options: (1) amend Article 31 to carve out an exception to Article 31(f) to enable export with sufficient safeguards; or (2) Article 30 by providing limited exception to the rights of patent holders to allow production for export; Later the EC favoured using Article 31 by adding a new paragraph to Article 31 that would allow a country to export under compulsory licensing and provide a moratorium or waiver from dispute settlement before the amendment enters into force.</td>
<td>Moratorium from dispute settlement or waiver of the obligation under Article 31(f).</td>
<td>Modification of Article 31 with three options: (1) revise Article 31; (2) delete Article 31(f); or (3) modify Article 31(f) to enable export by redefining the condition of ‘domestic market’ (see below); Under Article 30 a limited and reasonable exception to patent rights could be used for exportation.</td>
<td>Favours authoritative interpretation of Article 30 because it avoids burdensome procedures; Application of Article 31 would be more burdensome but the use of Article 31 should eliminate Article 31(f).</td>
<td>Waiver against dispute settlement until amendment of the TRIPS Agreement replaced the Decision (moratorium-plus-amendment).</td>
</tr>
</tbody>
</table>
Table 27. Key Proposals for a Solution to Paragraph 6 (cont’d)

<table>
<thead>
<tr>
<th>Others</th>
<th>EC</th>
<th>US</th>
<th>AG</th>
<th>CDC</th>
<th>30 August decision</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Enable countries to consider economies of scale to reduce production costs and provide more affordable prices; Developed countries should provide incentives to enterprises and institutions to promote technology transfer to LDCs.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Enable the use of compulsory licensing for regional trade arrangement, particularly among LDCs, to harness economy of scale; Provision of technical cooperation by developed countries, and promotion of technology transfer and capacity building; Annual review by the TRIPS Council.</td>
</tr>
</tbody>
</table>

The second issue relates to legal foundations for the solution. There were basically two legal foundations under negotiation: Article 30 related to limitation or exception to rights of patent holders, and Article 31 related to compulsory licensing. On the one spectrum, the AG envisaged the solution could be based on Article 31 or Article 30 without indicating its preferences. For an Article 31-based solution, the AG proposed revising Article 31 or deleting or modifying Article 31(f) to enable countries to export under compulsory licensing by redefining the condition of ‘domestic market’.\(^{766}\) The AG reaffirmed the understanding of the ‘domestic market’ to include: 51.1% of production (meaning that 49.9% of production could be exported), free trade areas or custom unions, collective territories taking part in an interim arrangement, and all LDCs.\(^{767}\) In comparison to the AG, the CDC favoured an authoritative interpretation of Article 30 which recognised the rights of countries to authorise third parties to make, sell, and export patented products without the consent of the patent holders in order to address public health issues in another country. The CDC perceived that an Article 31-based solution would be administratively complex and burdensome. For instance, the importing and exporting countries would have to issue compulsory licences before they can import/export the needed pharmaceutical products.\(^{768}\)

On the one hand, the EC and US eventually favoured compulsory licensing (rather than using Article 30). Their position was developed throughout the negotiations. Initially the EC weighed different legal foundations based on Articles 30 and 31.\(^{769}\) The EC eventually favoured using an Article 31-based solution. It proposed adding a new paragraph allowing countries to export under compulsory licensing. A temporary arrangement through a moratorium on dispute settlement or a waiver of obligation under Article 31(f) could be placed before the TRIPS amendment entered into force.\(^{770}\) Similarly, the US weighed the pros and cons between Articles 30 and 31,

\(^{766}\) Matthews, "WTO Decision on Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health: A Solution to the Access to Essential Medicines Problem?", 86.
\(^{768}\) Ibid., 7.
but from the outset it favoured an Article 31-based solution. The US also preferred the provision of a moratorium against dispute settlement or waiver from obligations under Article 31(f) without amending the TRIPS Agreement.\textsuperscript{771}

The third issue relates to eligible exporters. The AG, CDC, and EC believed that the DTPH does not exclude developed countries as eligible exporters.\textsuperscript{772} In contrast to the other key negotiators, the US wanted to limit eligible exporters to developing countries with sufficient manufacturing capacity.\textsuperscript{773}

The fourth issue relates to eligible importers. On the one side, the AG and CDC perceived that any country could be an eligible importer and all LDCs should automatically be eligible.\textsuperscript{774} On the other side, the EC wanted to exclude high income economies from the solution and limit eligible importing countries to: LDCs, low income countries with no or insufficient manufacturing capacity, and other developing countries under certain conditions.\textsuperscript{775} In comparison to the above positions, the US tried to link eligible importers with limitation of disease coverage. Eligible importers should consist of developing countries and LDCs that are afflicted by public health problems,
especially from HIV/AIDS, malaria, tuberculosis, and other pandemics, and those countries with no or insufficient manufacturing capacity. 776

The fifth issue relates to remuneration to patent holders. The AG suggested that patent holders should be provided with ‘just compensation’ and further proposed an international mechanism to assist funding for compensation. 777 The CDC highlighted that patent holders should not receive double remuneration, and remuneration should be determined by the importing country. 778 The EC had a relatively neutral position on this matter indicating that remuneration should be in accordance with the TRIPS Agreement. 779 Contrary to the above positions, the US perceived that the burden of compensation should fall on the “exporting country...[that] clearly has more resources than the importing country”. 780

The sixth issue concerns measures to prevent trade diversion. The CDC proposed that safeguard burdens should be placed on patent holders based on the existing TRIPS Agreement. 781 The AG proposed a more complex safeguard in which members would develop domestic laws and measures against re-exportation, with producers labelling the product connected to a designated domestic market. 782 The EC wanted to place stricter, complex safeguards, such as assurances that the entire production would be exported to designated countries; importers/exporters develop regulation and administrative measures to ensure products are not exported outside the
designated country; and place safeguard responsibilities on all WTO members.\textsuperscript{783} Surprisingly, the US only requested that the entire production should be directed to the designated country and all WTO members must prevent trade diversion based on existing obligations under the TRIPS Agreement.\textsuperscript{784}

In addition to the above six issues, there were also other issues that were brought up by the AG and CDC, such as economy of scale, transfer of technology, and moratorium from dispute settlement. In regard to economies of scale, the CDC perceived that developing countries with manufacturing capacities might find it impractical to produce small quantities of pharmaceutical products since it would increase the production price and the solution must therefore take the issue of economies of scale into account.\textsuperscript{785} The AG perceived that the redefinition of ‘domestic market’ as discussed above would address the problem of economies of scale.\textsuperscript{786} Moreover, the AG requested the transfer of technical skills and technical products to develop sustainable innovations and domestic production.\textsuperscript{787} The CDC proposed that developed countries should provide incentives to promote and encourage technological transfer.\textsuperscript{788} Furthermore, the AG insisted on a comprehensive moratorium on dispute settlement as part of the solution.\textsuperscript{789}

Nearing the end of the 2002 deadline, the TRIPS Council chairperson Eduardo Pérez Motta of Mexico proposed a moratorium-plus-amendment solution as the legal foundation for the solution that was broadly accepted, but divergence remained on the timeframe and the content of the solution.\textsuperscript{790} This means that a temporary solution

\textsuperscript{788} Ibid., 4.
would be applied by extending a moratorium or waiver until a permanent solution or TRIPS amendment entered into force, similar to the proposal by the EC.

In order to facilitate negotiations and in an attempt to move key negotiators into an integrative movement, Motta circulated a draft Decision reflecting the six issues above. First, the Motta text incorporated the value claim of the EC and CDC concerning the scope of the solution. The solution would cover any patented product or product manufactured through a patented process including active ingredients for its manufacture and diagnostic kits.

Second, as mentioned above, WTO members agreed on a moratorium-plus-amendment solution based on Article 31 (rather than Article 30).\textsuperscript{791}

Third, eligible importers would include all LDCs and other members that notified the TRIPS Council. The Motta text clearly stated that members could use the system for a national emergency, or other circumstances of extreme urgency, or in cases of public non-commercial use. In other words, it acknowledged all of the conditions for the use of compulsory licensing without effort to obtain authorisation from patent holders under Article 31 that reflected the position of the AG and CDC. The Motta text also noted some members would not use the system as importers and some members would only use the system under conditions of a national emergency, or other circumstances of extreme urgency.\textsuperscript{792} Taking into account the EC’s proposal, the Motta text placed an annex related to the clarification process of manufacturing capacities for non-LDCs.

Fourth, the Motta text stated all WTO members were eligible exporters, which reflected the position of the AG, CDC, and EC. In relation to the conditions which must be fulfilled by exporters and importers, the Motta text provided very precise and complex technical conditions taking many elements of the EC proposal. Some of the conditions included: the obligation of importers to notify the specification of products and manufacturing capacity to the TRIPS Council, as well as the obligation for


\textsuperscript{792} Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom and United States of America.
exporters to notify and launch a website concerning the specification of the products and other information.\textsuperscript{793}

Fifth, the Motta text stated that adequate remuneration should take into account the economic value for importers. It also ensured that patent owners would not receive double remuneration taking the value claim of the CDC.\textsuperscript{794}

And sixth, all WTO members must prevent trade diversion as proposed by the EC. Importers must take reasonable measures in accordance to their means and administrative capacities and, if needed, with the assistance of developed countries. The rest of the WTO members were required to establish effective legal means to prevent trade diversion.\textsuperscript{795}

In addition to the seven issues above, the Motta text also incorporated the issue of economies of scale within a regional trade agreement that shares the same health problem taking into account the proposal by the AG and CDC. Moreover, the issue of technological transfer was reformulated as a ‘best endeavour’ effort.\textsuperscript{796}

This thesis argues that the Motta text incorporated various elements of the proposals on the table and pushed members to engage in mixed distributive-integrative strategies. The evidence suggests that many elements of the solution actually incorporated the proposal by the AG and CDC, such as: scope of the solution, eligible importers and exporters, remuneration, economies of scale and regional free trade areas, as well as technological transfer. The language of some of these elements, however, was modified or downgraded from its original proposal, such as the issue of transfer of technology and economies of scale. In addition, many elements of the EC proposal and to a lesser degree the US proposal were incorporated. The legal foundation eventually used an Article 31-based solution (favoured by the US and EC) instead of Article 30 (favoured by the CDC and NGOs as discussed later). The moratorium-plus-amendment solution reflected the position of the EC (and to some extent the AG). The main contribution by the EC was the complex and strict trade diversion prevention measures for exporters, importers, and other WTO members. Although the US and EC failed to

\textsuperscript{794} Ibid.
\textsuperscript{795} Ibid.
\textsuperscript{796} Ibid.
The AG and CDC Negotiating Rules for a Solution to Paragraph 6

directly limit eligible importers, the annex indirectly attempted to limit non-LDCs, particularly more-advanced developing countries. In sum, coalitions involving developing countries gained some value claims (scope of the solution, eligible importers and exporters, remuneration, economies of scale and regional free trade areas, as well as technological transfer), while the EC and to a lesser degree the US gained some value claims (stricter conditions against trade diversion and stricter conditions for non-LDC eligible importers).

By mid-December 2002, there was broad consensus on the Motta text despite minor reservations, but the US became the major stumbling block when it rejected the consensus. This is not surprising considering that many elements of the US proposal were not included. The US maintained a strict distributive strategy concerning the scope of the diseases although it could accept all of the other paragraphs. The US tried to add a footnote concerning the scope of diseases but this was rejected by the other WTO members. The US believed that the Motta text did not provide the legal certainty it needed. The US wanted to limit the scope of diseases (HIV/AIDS, malaria, tuberculosis, and similar infectious diseases) in order to appease the US pharmaceutical industry and to exclude broader diseases, such as cancer or asthma.

In response to the US opposition to the Motta text, the majority of WTO members were disappointed that a consensus could not be reached. Kenya on behalf of the AG stated that the US proposed footnote would redefine and limit the scope of the DTPH. In this vein, Brazil stated that the TRIPS Council could not re-examine the scope of the DTPH. India harshly questioned whether the TRIPS Council was discussing “how to facilitate access to drugs at affordable prices to poor people or how to restrict the scope and ambit of the intended solution. It seemed that commercial interests had become increasingly predominant”. China supported the AG, Brazil, and

797 Ibid.
801 Ibid., 8.
India and considered the Motta text relatively balanced and that further changes would disrupt that balance.\textsuperscript{802} These comments reflected that many developing countries thought that the Motta text was relatively successful in balancing between the humanitarian (the developmental principle) and commercial (liberal trade principle) objectives.

In contrast to the broad support by developing countries, numerous NGOs (e.g. CPTech, Oxfam, MSF, TWN, and International Advocacy) were very critical towards the Motta text. Similar to the position of the AG and CDC, the NGOs rejected the limitation of the scope of disease since it would exclude other diseases, such as cancer, heart diseases, or asthma. Further, they pointed out efforts to discriminate among developing countries to exclude more-advanced developing countries as eligible importers, such as Kenya, Ghana, Zimbabwe, South Africa, Brazil, Malaysia, Argentina, Chile, Mexico, and the Philippines. They believed that the modification of Article 31(f) (notably integrating the EC proposal) would provide even stricter requirements and in turn raise the cost of generic products and obligate developing countries to police trade diversion, even though there was no evidence of generic products being diverted to OECD countries.\textsuperscript{803} The NGOs favoured the use of an Article 30-based solution similar to the position of the CDC because it is considered the most “direct, administratively simple, and least contentious approach”.\textsuperscript{804} Countries would be able to limit the rights of patent holders through a national law without infringing IPR and compensation would be based on national norms. Further, exporting countries could cover a large number of countries without taking extra procedural requirements in the exporting country.\textsuperscript{805}

Reflecting the evidence above, there was a lack of coordination between the AG, CDC, and NGOs in comparison to their close coordination during negotiations for the DTPH. For instance, in regard to the legal foundation for the solution, the CDC and NGOs perceived Article 30 as the more efficient and simple solution, while the AG did

\textsuperscript{802} Ibid., 8.
\textsuperscript{803} Ibid., 8-9.
not place greater emphasis between Articles 30 and 31. Further, there was also limited cohesion on the matter of discrimination between LDCs and non-LDCs. NGOs were critical, pointing out that the Motta text would discriminate against eligible importers particularly more-advanced developing countries. Neither the AG nor CDC seemed to demand more lenient conditions on this matter. A possible explanation is that more-advanced developing countries were less likely to use compulsory licensing as importers since they might have sufficient manufacturing capacity or could be potential exporters.

In order to move developing countries and the US into an integrative strategy, the EC and later Japan attempted to break the deadlock in early 2003 by proposing a minimum number of (almost identical) diseases that could be used under the solution, but the proposal was not well-received by many developing countries. During an informal meeting, the AG supported by Brazil and India could not accept a limitation of scope of diseases. South Africa argued that pharmaceutical industries should be directly approached and assured that the solution would not weaken IPR protection rather than going backward with the issue of the scope of diseases. Later, the ACP Group issued a paper stating that the ACP Group could not accept the EC’s limitation and highlighted SARS as an example of a new disease outbreak excluded from the proposed diseases.

By February 2003, Motta again tried to move key negotiators into an integrative movement and suggested that the solution could be presented to the General Council together with a Chair’s Statement. The Chair’s Statement would highlight his understanding that the solution was essentially designed to address national emergencies or other circumstances of extreme urgency. Latin American countries were willing to accept Motta’s proposal but would wait on the reaction of the AG. This time

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806 This EC and Japan proposed that the solution should cover inter alia: HIV/AIDS, malaria, tuberculosis, yellow fever, plague, cholera, meningococcal disease, African trypanosomiasis, dengue, influenza, leishmaniasis, hepatitis, leptospirosis, pertussis, poliomyelitis, schistosomiasis, typhoid fever, typhus, measles, shigellosis, haemorrhagic fevers and arboviruses. See ibid. See also World Trade Organization, "Council for Trade-Related Aspects of Intellectual Property Rights - Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health - Communication from the European Communities and their Member States," JOB(03)/9 (January 24, 2003).


the proposal was rejected by the US in December 2002 because a Chair’s Statement would not be legally binding under WTO rules.\textsuperscript{809}

In mid-August 2003, a number of countries convened a small group meeting consisting of the US, Kenya, South Africa, Brazil, and India to bridge the gap among them.\textsuperscript{810} According to a former delegate, Kenya represented the AG as potential importers, while Brazil, India, and South Africa represented potential exporters.\textsuperscript{811} The US eventually decided to accept the Motta text together with the Chair’s Statement.

During the TRIPS Council in late August 2003, WTO members moved into mixed distributive-integrative strategies and agreed that the Decision would be adopted and the Chair’s Statement would be read in the General Council.\textsuperscript{812} However, the Philippines then indicated that the Chair’s Statement did not represent the shared understanding of all WTO members. For instance, some members considered that trade diversion measures are best endeavour efforts, and exporters should bear the additional costs of safeguards (e.g. packaging, colouring or shaping).\textsuperscript{813}

The Decision was finally adopted by the General Council together with the Chair’s Statement on 13 November 2003. The Chair’s Statement reiterated several salient points: the solution was established in good faith to protect public health and not as an industrial or commercial instrument; members must prevent trade diversion, members would resolve any issues in an expeditious and amicable manner; and implementation of this solution would be reviewed annually. The Chair’s Statement included 23 developed countries that would not use the Decision, and ten members that agreed to use the Decision in case of a national emergency situation until they accede into the EU. The earlier draft statement included a list of more-advanced developing countries indicating that they would only use the system under emergency situations, but was dropped from the final statement. The statement also included an annex related


\textsuperscript{811} WTO staff and former delegate from South Asia, interviewed by author, March 12, 2011.

\textsuperscript{812} Matthews, "WTO Decision on Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health: A Solution to the Access to Essential Medicines Problem?" 95.

to the ‘best practices guideline’ to prevent trade diversion taking the example of pharmaceutical companies, such as Novartis, GlaxoSmithKline, Merck, and Pfizer.\footnote{See ibid., 1-2. See also World Trade Organization, "Council for Trade-Related Aspects of Intellectual Property Rights - Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health - Note from the Chairman," JOB(03)/177 (August 27, 2003).}

There were mixed reactions to the outcome. The US, EC, the European Federation of Pharmaceutical Industries and Associations (EFPUA), and PhRMA welcomed the outcome.\footnote{International Centre for Trade and Sustainable Development, "WTO Members Expected to Agree on TRIPS & Health Pre-Cancún," Bridges Weekly 7, no. 29 (August 28, 2003), http://ictsd.org/i/news/bridgesweekly/7225/ (accessed February 1, 2013).} An observer considers that the Decision provided legitimacy for developing countries to access cheaper pharmaceutical products in case of emergencies, and enabled developing countries to negotiate directly with pharmaceutical companies.\footnote{Matthews, "WTO Decision on Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health: A Solution to the Access to Essential Medicines Problem?," 97.} Some observers argue that the Decision was an attempt to discourage generic manufacturing in developing countries, such as Brazil and India, from producing cheaper copies for other developing countries.\footnote{Rolland, "Developing Country Coalitions at the WTO: In Search of Legal Support," 547.} However, a former delegate recognised that several NGOs were critical of the final outcome, but according to those involved in the negotiations, it was the best outcome they could achieve at the time.\footnote{Former WTO delegate from Africa, interviewed by author, March 8, 2011.}

Given the above evidence, this thesis posits that the mode of negotiation resembled bargaining through rhetorical action in which each side attempted to maximise their interests by using different frames of reference. The compromise reflected a lowest common denominator through exchanges of concessions among elements within the Decision and Chair’s Statement. As mentioned earlier, the Decision/Motta text itself was a compromise between the proposal by the AG and CDC with the EC and to a lesser degree the US. The Chair’s Statement reflected the concerns and understanding of the US and EC and their pharmaceutical companies, particularly related to trade diversion prevention and safeguard measures. The content of the Chair’s Statement therefore tilted the balance towards the commercial interests of the major powers even though it was not a legally binding document. Similar to the G-33 case study in Chapter 3, both sides moved into mixed distributive-integrative strategies and accepted a certain value claim loss, but considering the disproportionate material
capabilities among the major powers and developing countries, there was a possibility that the compromise would cost disproportionately more for weaker actors compared to stronger actors. In terms of the nexus between the liberal trade and developmental principles, this could mean that the solution appears to ensure sufficient IPR protection for patent holders, but might be impractical for smaller and poorer developing countries to use the system in the future. This would therefore undermine the developmental objective of the system itself.

b) A Permanent Solution to Paragraph 6 and its Aftermath: TRIPS Amendment as a 'Status Quo' to the Temporary Solution in August 2003

After concluding negotiations on a temporary solution to paragraph 6, the major sticking point of negotiating for a permanent solution was whether the TRIPS amendment would be based on: (1) the entirety of the Decision and Chair’s Statement preferred by the US, EC and a number of developed countries; or (2) the AG proposal that suggested modification to the temporary solution supported by many developing countries.

First, the US and its supporters believed that the TRIPS amendment process should be a purely technical exercise, in which the entirety of the agreement (the Decision and Chair’s Statement) should be maintained by inserting them as a footnote. According to the US, the consensus on the Decision would not be reached without the Chair’s Statement. The US together with the EC, Japan, Canada, and Switzerland criticised the AG for reopening the substance of the Decision because it already represented a delicate balance.

Second, the AG circulated a paper concerning the permanent solution to paragraph 6. The paper rejected the notion that the Chair’s Statement was an integral part of the Decision. A footnote referring to the Chair’s Statement would elevate its

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legal status and cause an unbalanced outcome. The AG favoured that the permanent solution would be a textual amendment to the body of the TRIPS Agreement. The AG suggested several textual modifications to the Decision supported by its legal arguments, including streamlining complex obligations by exporters and safeguard measures against trade diversion, as well as removing redundant sentences that had already been covered by other TRIPS provisions. Brazil questioned references by some members that perceived the agreement as an agreed package (the Decision and Chair's Statement). Further, a number of developing countries, such as Brazil, India, and Argentina, were willing to work based on the AG proposal.

The US and EC then tried to isolate and pressure the AG into accepting the entirety of the temporary solution without any amendment. According to a news report, negotiations had moved into an informal trilateral meeting process by October 2005 between the AG, US, and EC in an effort to seek a permanent solution. It appears that the trilateral negotiations entailed significant power asymmetry. According to an interviewee, there was tremendous pressure from the major developed countries against the AG to accept a solution. Evidence supporting this argument: during the TRIPS Council, Nigeria on behalf of the AG wanted a permanent solution prior to the 2005 Hong Kong Ministerial Conference, while Kenya as a member of the AG denied the accusation that it was blocking consensus for a permanent solution. Several developing countries, such as Brazil and India, were concerned that the plurilateral

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827 Former WTO delegate from Africa, interviewed by author, March 8, 2011.
consultations did not involve countries interested in the issue. However, according to
the chairperson, the informal consultation was not entirely under his auspices, but a
spontaneous process initiated by the EC.\footnote{World Trade Organization, "Council for Trade-Related Aspects of Intellectual Property Rights - Minutes of Meeting - Held in the Centre William Rappard on 25 - 26 and 28 October, 29 November and 6 December 2005," IP/C/M/49: 35-36.} This evidence indicated that there was a lack
of coordination between the AG and other interested developing countries, which could
explain the lack of participation by developing countries outside the AG, such as Brazil
and India. This lack of cohesion among developing countries was then fully exploited
by the major powers.

The negotiations took a new direction when the AG moved into a strict
integrative strategy and accepted the whole value claims of the US and EC without
pushing further its own value claim. Amina Mohamed of Kenya, chairperson of the
General Council, began to appeal to other WTO members to amend the TRIPS
Agreement based on the entirety of the Decision and re-reading of the Chair’s Statement
without any reference or footnote in the amendment. The AG totally dropped its
original demand to modify several elements in the Decision and made a strong appeal to
other developing countries to achieve a compromise prior to the Hong Kong Ministerial
Conference.\footnote{Ibid 30-32} During the consultation, the US insisted that no members should make
any statement prior or subsequent to the re-reading of the Chair’s Statement in order to
prevent any member from conveying their interpretation or understanding to the
amendment or Chair’s Statement. The US had learnt from previous experience when the
Philippines conveyed its understanding on the Chair’s Statement in the TRIPS Council
in August 2003. During the consultation, it was assured that the process of adopting the
amendment and re-reading of the Chair’s Statement would be tightly choreographed.\footnote{Saneeeta Shashikant, "Rushing through a 'Permanent Solution' for TRIPS and Health," \textit{TWN Info Service on WTO and Trade Issues} (December 6, 2005), http://www.twnside.org.sg/title2/twninfo320.htm, (accessed February 1, 2013).}

On 6 December 2003 TRIPS chairperson, Choi Hyuck of South Korea, informed
the TRIPS Council that a deal was struck and WTO members agreed to submit a
permanent solution to the General Council.\footnote{Ibid.} The amendment itself consisted of an
'Article 31 bis', annex, and appendix. The Article 31 bis included paragraphs on: a
limited exception to Article 31(f) enabling export of pharmaceutical products under
compulsory licensing; a limited exception to Article 31(f) for developing countries or
LDCs belonging to a regional trade agreement; rules to avoid double remuneration; and a permanent moratorium or waiver on members undertaking measures in conformity to this system. The annex reflected identical provisions under the Decision, such as scope of pharmaceutical products, eligible exporters/importers, conditions for exporters/importers, trade diversion measures, and TRIPS Council annual review. The appendix reflected the process for assessing manufacturing capacity in potential importers. The Protocol Amending the TRIPS Agreement (hereinafter “The Protocol”) was therefore open for acceptance by WTO members until 1 December 2007.833

Several reports indicated that some delegates were puzzled by the urgency for a prompt decision on a permanent solution considering the waiver under the Decision would still be in effect, while other delegations believed the system needed to be tested prior to adopting it as a permanent solution.834 It is worth noting that consensus on a permanent solution was not part of the single undertaking; hence there was no real concern of issue linkages. Prior to the consensus, a joint statement by over 50 NGOs strongly criticised the procedures in the Decision, which were too burdensome and unworkable in practice. The NGOs supported the AG proposal for removing many of the procedural requirements and considered the AG proposal a sound basis for a permanent solution. They also emphasised that “this issue is too important for countries to quickly agree to an amendment just to be able to claim that the WTO system still works and can deliver for development”.835 Some observers even suggested that the US and EC were desperate to redirect attention due to the lack of progress in agriculture and more anti-development progress in NAMA and services.836

This thesis suggests that the AG and US tried to re-claim some of their lost value claims, but the AG eventually gave in and agreed to elevate the temporary solution to a permanent solution reflecting a status quo. Despite initial efforts by the AG to modify

835 Shashikant, "Rushing through a 'Permanent Solution' for TRIPS and Health."
the temporary solution, there seemed to be a lack of coordination between the AG, interested developing countries, and NGOs. The US and EC then utilised the situation to their advantage and asserted influence on the AG to accept the entirety of the Decision and Chair’s Statement. This time around, the US ensured that no other member would put on the record another interpretation or understanding during the adoption of the Protocol. The AG moved into a strict integrative strategy by dropping all of its original demands. Many developing countries eventually also gave in to the appeal by the AG considering that they were the main stakeholder in this solution. The overall outcome therefore reflected a status quo to the outcome of the temporary solution to paragraph 6. The main difference is that this time the solution would be permanent, subject to acceptance by WTO members.

As mentioned earlier, the integrative movement towards a compromise might cost disproportionately more for weaker actors compared to stronger actors. This conundrum could be answered to some degree with the implementation of paragraph 6. Initially there was high expectation for the solution to work, and be used by many developing countries. In the first seven years, the Decision was only used once for two shipments of an HIV/AIDS drug from Canada to Rwanda in 2008 and 2009. In late 2009, several developing countries, such as Egypt on behalf of the AG, Tanzania on behalf of the LDCs, and India, Ecuador, Pakistan, Brazil, China, Venezuela, and Angola, raised two concerns related to implementation of the Decision: slow acceptance processes for the Protocol, and the fact that the Canada-Rwanda case was the only implementation of the Decision. India was concerned that the stringent conditions created a burdensome mechanism in channelling medicines at a reasonable price. The majority of countries that had notified acceptance of the Protocol were not the potential beneficiary or importers of the system and questioned why the mechanism was only used once. Many developing countries called for an informal consultation or review to evaluate these problems. The US responded that the number of cases did not reflect the success or failure of the system, but reflected the practicability of the system. It meant that developing countries gained access to medicines outside the system. The US and other developed countries then highlighted their bilateral and multilateral developmental aid outside the system. 837

837 Matthews, "From the August 30, 2003 WTO Decision to the December 6, 2005 Agreement on an Amendment to TRIPS: Improving Access to Medicines in Developing Countries?," 111-12.
In the aftermath, the acceptance process for the Protocol had been extended several times because there were few countries that notified their acceptance of the Protocol. By the end of 2010, 11 countries made the necessary amendments to their national laws, and only 31 countries had notified acceptance of the Protocol. An amendment requires ratification of two-thirds of WTO members (over 100 countries).  

By the end of 2010, the TRIPS Council embarked on a heated informal consultation. It is important to note that this exercise was a consultation and was not a renegotiation process. The post-negotiation debates would go beyond the scope of this thesis; however it is worth noting that negotiations reflected the previous dichotomy. On the one hand, a number of developed countries, such as the US, Canada, Japan, and Switzerland, demonstrated that the mechanism was working well. Canada, for instance, considered the mechanism efficient, effective, and timely, particularly on its side. One interviewee from a developed country believed that the solution was beneficial for provisions of medicines in developing countries because pharmaceutical companies were more engaged with developing countries and were able to agree on an appropriate price. On the other hand, a number of developing countries, such as India, Brazil, and South Africa, considered the mechanism complicated and burdensome. India, for instance, encountered difficulties when one least-developed country tried to acquire three patented medicines from India, but eventually gave up due to the stringent conditions under the Decision. One delegation indicated that the solution was somewhat impractical because pharmaceutical company Apotex had already reduced its price and accepted a commercial loss because it had to compete with alternative generic medicines from Indian companies. Further, the solution does not provide any incentive

840 WTO delegate from a developed country, interviewed by author, February 21, 2011.
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for generic producers and is considered too burdensome for many developing countries. 842

5.4 Key Findings: The CTPH, AG, and CDC

The negotiation process on TRIPS and public health differs from the previous case studies, although there were some similar characteristics. Negotiations on DTPH resembled agenda-setting and modalities-setting processes, in which discussion emphasised norm setting and establishing broad parameters in relation to the interpretation of TRIPS flexibilities. Negotiations on paragraph 6 of the DTPH resembled rule-making and deal-making processes based on the DTPH 'modalities', which involved discussion on specific rules with clearer distributive implications.

Coalitions involving developing countries negotiating TRIPS and public health were not unified throughout the negotiation process. The CTPH that consisted of the AG together with a number of developing countries was active during negotiations for the DTPH. Afterward, the coalition split into: the AG and CDC. The former reflected the interests of potential importers and the latter reflected the interests of potential exporters of cheaper pharmaceutical products.

There are several key findings from this case study related to the nature of the coalition’s argument, changing types of leadership, strategies by key negotiators, and overall mode of negotiation, which in turn impact the nexus between the liberal trade and development principles.

The Nature of Argument

The nature of the argument of coalitions involving developing countries was relatively stable. During the negotiations for the DTPH, the CTPH exhibited a very appealing and persuasive normative frame. The coalition tried to develop a sense of solidarity among delegates based on the basic notion of human rights and protection for the most vulnerable people. This sense of solidarity was designed to transcend national boundaries and world cultures. The coalition highlighted the urgency of the HIV/AIDS pandemic as a humanitarian crisis faced by many developing countries. The normative

842 WTO delegate from Latin America, interviewed by author, March 2, 2011.
claims were appealing and persuasive because: the argument was simple and had direct chains of cause and effect; the argument pointed to the failure of the TRIPS Agreement to address the ongoing humanitarian crisis; the HIV/AIDS pandemic is a global phenomenon in which the western public and media could relate; and the crisis helped increase public awareness and became a priority agenda. The argument links closely to the norm of sustainable development, in which the attainment of the liberal trade objectives should not compromise the essential needs of the world’s poorest and most vulnerable.

As negotiations progressed to paragraph 6 of the DTPH, coalitions involving developing countries, namely the AG and CDC, maintained their normative frame. As these negotiations involved a rule-making process and clearer distributive implications, the different interests and particularly different manufacturing capacities among developing countries became more salient. The AG and CDC used different technical approaches in dealing with the problem, despite remaining faithful to the normative frame. The lack of technical coherence and lack of cohesion among developing countries were fully exploited by the major powers.

**The Types of Leadership**

The CTPH exhibited a persuasive and strong knowledge-based leadership using an undisputed moral justification, which became the basis for its internal cohesion and external argument of the coalition. The CTPH was able to use both the moral and material weights of its members. The AG became the face of the coalition in order to enhance the reputation of the coalition as a morally motivated actor. The aim was to create an empathetic attitude towards its negotiating counterparts and wider public audience. Brazil and India’s political and technical capacities were central and were fully utilised during the negotiation process. The unique and creative internal management of the CTPH proved successful in maintaining cohesion among its heterogeneous members despite constant efforts to divide them.

In the subsequent negotiations for the temporary and permanent solutions to paragraph 6, the CTPH could not be maintained. The AG was led by several members (Kenya, Nigeria, and Rwanda) based on its own internal arrangement system, while the
CDC was led by Brazil. The AG and CDC were unable to maintain a strong cohesion among themselves. There were two main reasons for the decline of cohesion among developing countries. First, a lack of strategic-based leadership and coordination between the AG and CDC. The negotiation environment called for a strategic-based leadership to seek an innovative solution in order to accommodate the diverse interests among developing countries, particularly between potential importers and exporters. There was also limited evidence of strong coordination among developing countries, and several evidence of miscommunication among them. Second, delegations encountered negotiation fatigue and negotiation overstretch. The former relates to the lack of persistency in repeating the same debates over time and constant pressure applied by the major powers. The latter relates to the overwhelming activities by key developing countries on other important issues, such as agriculture and Singapore Issues.

**The Strategy of Coalitions and Overall Mode of Negotiation**

The negotiations on the DTPH and paragraph 6 constantly involved contradicting frames of reference between normative and instrumental frames. On the one side, the majority of developing countries (the CTPH, AG, and the CDC) used a normative frame stressing the humanitarian claims of the public health issue, including the HIV/AIDS pandemic. On the other side, the US, EC, and a number of developed countries used an instrumental frame stressing commercial claims related to IPR protection and rights of patent owners. During negotiations for the declaration on TRIPS, each side maintained a distributive strategy until the final hour of the conference when the US was willing to negotiate based on 'option one' in which the declaration would encompass the broader definition of public health rather than the narrower public health crisis. In other words, the US eventually moved into integrative strategy by accepting the humanitarian claims of the CTPH.

The compromise on the DTPH reflected rhetorical entrapment in which the US and its supporters accepted the humanitarian claims of the CTPH as a strategic consideration rather than an internalisation of the claims. There were three plausible explanations for the rhetorical entrapment. First, there was limited evidence that the US and its proponents argued against the humanitarian claims, even though some WTO
members tried to minimise the commercial impacts on their pharmaceutical industries. Second, the US and its supporters needed to maintain their reputation as a genuine actor (rather than biased or self-interested actor) since they were heavily scrutinised by the international community and their own constituencies. Third, the major powers needed to maintain their reputation in order to launch the Doha Round to gain future benefits.

The negotiations for a solution to paragraph 6 remained divided into contradicting normative versus instrumental frames. On the one hand, the AG and CDC advocated a normative frame by attempting to develop rules with greater flexibilities. On the other hand, the US, EC, and the majority of developed countries advocated an instrumental frame by attempting to create stricter conditions for the use of TRIPS Agreement flexibilities.

Nearing the 2002 deadline, Motta tried to integrate various value claims into a draft solution pushing members into mixed distributive-integrative strategies. The Motta text took several value claims of the AG and CDC (e.g. scope of the solution, eligible importers and exporters, remuneration, economies of scale and regional free trade areas), and also integrated the EC’s and to a lesser degree the US’s value claims (e.g. legal foundation for the solution, moratorium-plus-amendment solution, trade diversion prevention measures, and process of assessing manufacturing capacity). Nevertheless, the US unilaterally imposed a strict distributive strategy by rejecting the Motta text. By August 2003, WTO members agreed on the Decision based on the Motta text and reading of the Chair’s Statement reflecting the understanding of the US, EC, and their pharmaceutical companies of the solution to paragraph 6. The content of the Chair’s Statement therefore tilted further the balance towards the commercial claims of the major powers even though they thought it is not a legally binding document. Negotiations on paragraph 6 resembled bargaining through rhetorical actions between normative and instrumental frames in which each side attempted to maximise their value claims. The outcome reflected the lowest common denominator that was achieved through exchange of concessions among elements within the Decision (integrating the value claims of the AG, CDC, and EC) and then reinforced with a concession to accommodate the value claims of the US, EC, and their supporters with the Chair’s Statement.
In the following negotiations for a permanent solution, the AG with the support of a number of developing countries tried to modify the Decision by streamlining some of the strict conditions, while the US tried to elevate the status of the Chair’s Statement by inserting the entirety of the Decision and Chair’s Statement as a footnote. In the end, the US and EC were able to engage in hard bargaining and pressured the AG to accept the entirety of the Decision without any modification and re-reading of the Chair’s Statement without making any textual reference in the amendment. The AG moved to a strict integrative strategy by accepting the demands of the US and EC to take the entirety of the Decision and Chair’s Statement. The Protocol to amend the TRIPS Agreement therefore reflected a status quo that elevated the temporary solution to a permanent solution.

The Nexus between the Liberal Trade and Developmental Principles

The negotiations on TRIPS and public health is an important case in relation to the nexus between the liberal trade and developmental principles in the trade regime. The combination of the knowledge-based leadership of the CTPH together with NGOs and the wider international community was able to scrutinise the US and its supporters in relation to their behaviour on the HIV/AIDS crisis in particular and public health in general. The US and its supporters were eventually willing to negotiate on option one advocating that TRIPS flexibilities could be used for public health problems in general. The DTPH therefore reflected that for the first time a developmental objective was placed a degree higher (or at least equal) to the commercial interests of pharmaceutical patent holders. The political statement was a breakthrough in the history of the trade regime. The DTPH provided an example of a favourable interpretation of TRIPS flexibilities for the broader developmental objectives. The DTPH provided a precedent that future negotiations could be designed to provide a favourable outcome for non-trade and broader developmental objectives.

However, the negotiations on temporary and permanent solutions to paragraph 6 to some extent overturned or at least derailed the DTPH. The Decision itself was a compromise between the AG, CDC, and EC. The broad interpretation of TRIPS flexibilities needed to be accompanied with complex conditions, such as compliance to Article 31 except Article 31(f), and trade diversion prevention measures. Furthermore,
the AG and CDC had to accommodate the value claims of the US by accepting the reading of the Chair’s Statement reflecting the position of the US and its pharmaceutical companies. The Decision together with the Chair’s Statement placed the commercial interests of pharmaceutical companies higher than health problems in many developing countries. Hard bargaining through rhetorical actions among key negotiators had therefore significantly overturned the DTPH balance.
Chapter 6. Conclusion

The Doha ‘Development’ Round is one episode in a much longer history of the GATT/WTO trade regime. The political decision to re-emphasise the development dimension during the Doha Round spurred new activism in collective behaviour among developing countries in agenda-setting, modalities-setting, rule-making, and near deal-making processes in several issue areas. This thesis demonstrates the different nature and role of negotiating coalitions involving developing countries in pursuing a variety of development-oriented agendas in the context of the nexus between the liberal trade and developmental principles under the trade regime.

Previous literatures do not provide sufficiently detailed analysis of the variety of coalitions and their dynamics during the Doha Round. Studies on coalitions largely focussed on a particular theoretical approach and tend to focus on one coalition or on a very limited number of coalitions. Using a power-based approach, for instance, one study argued that the changing power distribution provided ample opportunities for developing countries to form coalitions, while another study examined the role of South Africa in the G-20 as a middle power during the 2003 Cancún Ministerial Conference. Studies based on an interest-based approach provide richer elements of analysis, such as highlighting the range of interests among members; the appropriate size of a coalition; and the type of leadership within a coalition. Other interest-based studies provide suggestions of hypothetical coalitions that build on members’ interests and positions on the agriculture negotiations. Moreover, studies from a constructivist or cognitive-based approach tend to lack an examination of coalition dynamics. In this regard, several agent-centred constructivist researches could provide important contributions to the development of coalition studies.

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843 International Centre for Trade and Sustainable Development, "TRIPS Council: Debate over Effectiveness of System for Access to Medicine."
846 See Birkbeck and Harbourd, "Developing Countries in the WTO: Strategies for Improving the Influence of the WTO's Weakest and Poorest Members," 8-11.
A single approach might be useful to explain one coalition or a small number of coalitions within a particular time frame or short period of time, but a single approach seems to be less helpful in evaluating the variety of coalitions over a long period of time. Although there are a few studies that used a combination of approaches, the available conceptual framework does not provide a rounded comprehension of the variety of the nature and roles of coalitions during the Doha Round.

In a departure from most of the existing literature, this thesis develops a conceptual framework that used both rationalist and constructivist approaches in a complementary way in order to understand negotiating coalitions in a more rounded and comprehensive manner. This thesis assumes that the nature and role of negotiating coalitions are a product of and endogenous to social interactions and negotiation processes. The case study analysis examines closely the internal coalition dynamics concentrating on the nature of the arguments used (instrumental and normative frames) and the character of the leadership role of a negotiating coalition (structural-based, strategic-based, and normative-based leaderships). It also focuses on the external coalition dynamics, in particular on the strategies employed by a negotiating coalition and its negotiating counterparts (distributive and integrative strategies), as well as the overall mode of negotiation (rhetorical action, communicative action, and rhetorical entrapment) in a given issue area.

The case study analysis, however, should be viewed within the context of coalitions’ particular instrumental and normative frameworks under the trade regime. Only a few literatures recognise the significance of the institutional context in looking at coalitions’ dynamics. This thesis goes a step further by identifying more specifically the GATT/WTO institutional frameworks, namely the instrumental framework that relates to the decision-making procedures (informal, Single Undertaking) and negotiation environment at different stages of negotiation (agenda-setting, modalities-setting, rule-making, and deal-making processes), and the normative framework that relates to the principles and norms under the trade regime (liberal trade and development principles). With regard to the trade regime’s normative framework, the

850 See Narlikar, International Trade and Developing Countries: Bargaining and Coalitions in the GATT and WTO; Narlikar and Tussie, "The G20 at the Cancún Ministerial: Developing Countries and Their Evolving Coalitions in the WTO."
push and pull between the liberal trade and developmental principles was often central to the negotiation discourses.

This thesis applies the conceptual framework to examine negotiating coalitions in three different clusters (agriculture, new ‘Singapore’ issues, and TRIPS and public health) between 2000 and 2010 in order to understand the characteristics and roles of developing country coalitions. In contrast to most studies that examine coalitions at a particular moment in time, the investigation of coalition dynamics in a longer period of time enables the thesis to provide an explanation of the lifecycle and evolution of coalitions, including the rise and demise of coalitions, at different stages of negotiation.

The case studies also give detailed empirical information, particularly of the different arguments, strategies, and mode of negotiation. The overall analysis also shows the extent to which a development-oriented agenda had an impact on the push and pull between the liberal trade and developmental objectives in the trade regime.

The first case study (Chapter 3) critically evaluated the G-20 and G-33 which were both active in agriculture negotiations and could be considered as ‘two sides of a coin’. Each coalition pursued different but to some extent complementary development-oriented agendas. Starting with the G-20, the coalition used four principles as the basis of its proposals: progressivity, neutrality, proportionality, and flexibility. Using these principles, the G-20 developed its core arguments based on mixed instrumental-normative frames, but chiefly focussed on the instrumental frame. In accordance to the liberal trade principle, the G-20 advocated the reduction/elimination of trade distortions (market protection, domestic support, and export competition) in major developed countries because they impeded market opportunities for competitive agriculture exporters and hindered the potential development of agriculture sectors in many developing countries. In accordance with the developmental principle, the G-20 provided complementary support for market access flexibilities under SDT.

The G-20, under the auspices of Brazil, exhibited a formidable strategic-based leadership that developed innovative solutions to create mutual gains. The G-20 developed middle ground solutions to accommodate the diverse interests and preferences of G-20 members (in particular countries with less-ambitious and more-ambitious positions on market access) as well as take into account the diverse tariff and subsidy structures of WTO members. Further, the G-20 middle ground proposals were
widely accepted and often used as the basis for agriculture negotiations, such as OTDS and tiered formula. Furthermore, the G-20 maintained strong inter-coalition relations with other coalitions involving developing countries working on other specific development-oriented agendas. However, the G-20 found it harder to maintain its strategic-based leadership particularly during the near deal-making process since the diverse interests and preferences among G-20 members (concerning SSM) were too wide to bridge.

In the context of the nexus between the liberal trade and developmental principles, the G-20 engaged in the traditional liberal trade principle adhering to the norms of reciprocity through an exchange of concessions. During the rule-making and near deal-making processes, the G-20 engaged in hard bargaining through rhetorical action with its major negotiating counterparts, namely the US and EC. This is not surprising considering the G-20 was seeking greater agriculture market access in major developed countries. Negotiations focussed on the exchange of concessions among elements within agriculture, and linkages between agriculture and manufacturing. The G-20 succeeded in tightening domestic support discipline (with significant OTDS and Amber Box cuts) and tightening the export competition discipline, including an end date to export subsidies. However, the G-20 had to accept the value claims of the major powers: loose discipline on Blue and Green Boxes enabling the major powers to box shift and product shift; as well as loose discipline on Sensitive Products enabling the continuation of tariff peak and tariff escalation and the continuation of the complex TRQ system. Since 2008, hard bargaining was amplified when the US demanded its agriculture concessions be exchanged with market access concessions in a number of sectors of manufacturing by several emerging economies, notably Brazil, China, and India.

The tentative Doha agriculture agreement was a tremendous achievement compared to the level of reform during the Uruguay Round, but actual subsidies would most likely remain untouched and developed countries could still have significant policy space in shifting domestic subsidies or imposing high tariffs for their most Sensitive Products. As a result, the G-20 had to scale down its original expectation for an ambitious agriculture trade reform and a Doha agreement would most likely result in modest new agriculture market access in developed countries.
In comparison to the G-20, the G-33 used a different approach. In the context of the nexus between the liberal trade and developmental principles, the G-33 tried to expand the developmental principle to take into account sustainability issues in the process of agricultural trade liberalisation. The G-33’s main argument primarily used a normative frame based on a moral justification. The G-33’s socio-humanitarian claims highlighted the need to establish special trade provisions, namely SP and SSM, providing policy space or market access flexibilities to ensure food security for poor and vulnerable people particularly in rural areas. The G-33’s core argument, supported by technical know-how by several non-state actors and food security experts, expanded the traditional SDT norm to the broader norm of sustainable development. Sustainable development meant that the agriculture liberalisation process should not generate adverse impacts, particularly on the poorest and most vulnerable populations. The G-33’s normative frame, however, was conceptually difficult to argue because food security and trade relations have complex cause and effect relations, while the special trade provisions for food security purposes are second best policies and were relatively new concepts to the trade regime.

Initially, the G-33 under the coordination of Indonesia and the Philippines reflected a knowledge-based leadership that emphasised a normative frame to persuade the perspective of negotiating counterparts with better reasoned arguments as a moral justification to stimulate empathy/sympathy from other negotiating counterparts. The G-33 members included smaller developing countries as part of the AG, ACP Group, LDCs Group, RAMs, and SVEs. In many instances, G-33 members exhibited a form of arguing through communicative action within the coalition and developed an artificial common lifeworld that created a sense of solidarity among delegates from developing countries in response to the needs of fellow G-33 members by maintaining a lowest benchmark and accepting a certain degree of loss for the sub-groups within the G-33. During the agenda-setting and modalities-setting processes the G-33’s socio-humanitarian claims encountered relatively little resistance and WTO members were rhetoricallly entrapped into accepting SP and SSM into the July Package because: the acceptance of the socio-humanitarian claims was chiefly motivated by future incentives; key negotiators wanted to maintain their reputation as genuine or unbiased actors; and the technical negotiations—based on the broad principles and parameters of SP and SSM—could later be directed to secure the commercial interest of agriculture exporters. At this stage, the G-33 was successful in having other countries accept the broad
principles and parameters of SP and SSM as part of the 2004 July Package and thus recognised the legitimacy of the G-33’s food security concerns.

As negotiations progressed to rule-making and near deal-making processes, the G-33 adjusted into a strategic-based leadership because negotiations discussed specific rules and binding qualitative obligations. The coalition developed proposals accommodating the increasingly diverse interests and preferences among G-33 members because the specific rule-changes proposed would impact each member differently. The G-33’s socio-humanitarian claims were also strongly challenged by agriculture exporters’ commercial claims. The mode of negotiation that followed resembled hard bargaining through rhetorical action between competing socio-humanitarian claims versus commercial claims.

During the near deal-making process the G-33 came under immense pressure from its negotiating partners, particularly when agriculture exporters identified China and India as countries with substantial market access opportunities; moreover, the implementation of SSM was perceived as creating uncertainties for exporters’ commercial interests rather than as a developmental tool for China and India to address food insecurity and to achieve their socio-humanitarian objectives. A compromise was achieved by finding a lowest common denominator for the SP, but conflicting sides could not achieve a compromise on SSM even by the end of 2010. The compromise on SSM would most likely be achieved by accepting a lowest common denominator, as in the case of SP. In terms of balancing the liberal trade and developmental principles, the compromise might eventually cost disproportionately more for weaker actors if these instruments could not address food security problems. In other words, developing countries in need might be unable to make use of these special trade provisions in the future if the G-33 had to accept stringent flexibilities conditions to accommodate the commercial claims of agriculture exporters.

In the subsequent case study (Chapter 4), the Core Group and G-90 were active in negotiating new ‘Singapore’ issues related to WTO agenda expansion. The initial core argument of the Core Group and G-90 was basically an instrumental frame using a simple common platform: the uncertainty of implementation and non-compliance costs associated with Singapore Issues obligations. All of these arguments lead to the conclusion that there is a need to continue the clarification process and not to launch negotiations on the Singapore Issues. At the end of the Cancún Ministerial Conference,
the Core Group and G-90 became the focal point of an archipelagic coalition and exhibited a structural-based leadership using a veto coercive power to block the negotiations with the aim of redirecting negotiations to the coalition’s satisfaction. The mode of negotiation therefore resembled traditional hard bargaining through rhetorical action.

In the aftermath, the Core Group together with the G-90 eventually agreed to begin negotiations on trade facilitation provided that modalities reflected the interests and concerns of developing countries. The Core Group and LDCs Group developed mixed instrumental-normative frames, but the primary focus was on its normative frame. The coalition wanted to ensure all WTO members would be able to implement their obligations despite their varying implementation capacities; thus reducing the risk of non-compliance. The coalition developed a proposal that balanced: obligations, implementation capacity, and provision of TACB. Many important elements of the Core Group and LDCs Group’s proposal were eventually accepted in the trade facilitation modalities as part of the 2004 July Package.

During the rule-making process, the Core Group and LDCs Group moved into a strategic-based leadership in order to accommodate the diverse interests and preferences among its members, particularly between members with more-advanced and less-advanced trade facilitation capacities. Similar to the modalities-setting process, the Core Group and G-90 arguments were based on instrumental-normative frames and largely focussed on its normative frame. The Core Group and later together with the G-90—building upon the Colorado’s proposal—developed an innovative multi-level obligations approach, which would be matched with implementation capacity and provision of TACB. In the follow-up negotiations, traditional coalitions (the AG, ACP Group, and LDCs Group) pushed even further their socio-economic claims by requesting ‘flexibilities over flexibilities’ (e.g. an early warning system and a peace clause) and assurances for TACB commitment by potential donor countries.

The mode of negotiation during the trade facilitation rule-making process was an interesting phenomenon because negotiators would most likely move into bargaining through rhetorical action during the rule-making process as interests and preferences among negotiators became more salient and distributive implications became more concrete. However, the overall mode of negotiation during the rule-making process resembled arguing through communicative action. The Colorado Group integrated the
value claims of the tabled proposals and then the Core Group and G-90—building up on
the Colorado Group’s proposal—used an integrative, balanced, and innovative
approach. From 2009 onwards, the friends-of-the-chair played a significant role in
refining the proposals by the Core and Colorado Groups into consolidated texts. In other
words, the discussion on specific and detailed rules on trade facilitation integrated the
value claims of different coalitions through a higher level of discourse in seeking a
‘better’ SDT model. As a result, donor countries and developing countries with more-
advanced trade facilitation capacities were persuaded through negotiations to redefine
their interests and preferences and were willing to accommodate the interests and
preferences of those with less-advanced trade facilitation capacities, particularly the
AG, ACP Group, and LDCs Group; even though there were several very technical
outstanding issues to be addressed.

In the context of the nexus between the liberal trade and developmental
principles, the norm of sustainable development was fully incorporated into the trade
facilitation modalities and consolidated texts. There were some reservations by a small
number of delegates that an overemphasis on flexibilities for those with less-advanced
trade facility capabilities (normative frame) might in turn downgrade or even nullify the
commercial objectives of global trade facilitation reform (instrumental frame). It would
mean that WTO members would have absolute flexibility in determining the extent and
timing of the implementation of its obligations and discourage them from undertaking
trade facilitation reform. However, this thesis suggests that the trade facilitation
modalities and consolidated texts were able to balance between the obligations of
members under a trade facilitation agreement (the liberal trade objective), the actual
trade facilitation infrastructure of members or capacity of members to implement their
obligations, and the provision of TACB for members with a lack of capacity to
implement their obligations (the developmental principle). The balanced proposal
would enable countries to undertake their obligations according to their actual
capabilities and if needed would be assisted in developing such capabilities. It would
provide WTO members sufficient policy space to undertake their WTO obligations and
in turn reduce the direct and indirect costs associated with non-compliance. The
balanced proposal and new approach to SDT potentially served as a model, or template,
for future agreements.
In the last case study (Chapter 5), coalitions involving developing countries were active in negotiating an implementation issue related to the TRIPS Agreement and public health. The coalitions used a relatively constant normative frame. The CTPH's strong and persuasive knowledge-based leadership developed a common lifeworld that created a sense of solidarity—not only among WTO delegates, but also with the broader international community—by highlighting the need to reinterpret the TRIPS Agreement in order to address the ongoing HIV/AIDS crisis and other major public health issues. The moral justification was designed to transcend national borders and world cultures based on basic human rights and protection for the most vulnerable people. The argument associates closely to the norm of sustainable development, in which the attainment of the liberal trade objectives should not compromise the essential needs of the world's poorest and most vulnerable.

The CTPH normative frame was appealing and persuasive because: there is a simple and direct relation between HIV/AIDS victims and available HIV/AIDS medicines; the argument pointed to a failure in the TRIPS Agreement; HIV/AIDS is a global phenomenon that makes it is relatively easy to communicate to sympathetic audiences around the world and relate to its victims; and the crisis helped bring public awareness and in turn made it into a priority agenda.

Similar to the CTPH, the AG and CDC used a normative frame which advocated that new rules should allow countries with no or insufficient manufacturing capacity to make use of TRIPS flexibilities. The negotiations, however, needed a strategic-based leadership to develop innovative solutions to accommodate the diverse interests and preferences among members, such as: patent holders, potential exporting countries, and potential importing countries. During the negotiations, the AG and CDC were unable to maintain a strong cohesion among them due to: lack of a strategic-based leadership and coordination, as well as negotiation fatigue and overstretch. These factors consequently affected the role of the AG and CDC in the rule-making process for a solution to paragraph 6 of the DTPH.

The normative frame by the CTPH, as well as the AG and CDC in pushing forward their humanitarian claims was constantly challenged by the US and its supporters, who developed a strong instrumental frame by stressing commercial claims related to IPR protection and rights of patent owners. The compromise on the DTPH
reflected rhetorical entrapment, in which the US and its supporters eventually accepted the humanitarian claims of the CTPH. There were several explanations to the rhetorical entrapment, such as there was limited evidence that the US and its supporters argued against the humanitarian claims of the CTPH, as well as that the major powers needed to maintain their reputation as genuine actors in the face of international public opinion, and to launch the new Doha Round to gain future benefits.

In the context of the nexus between the liberal trade and developmental principles, the DTPH reflected that for the first time developmental objectives were placed a degree higher (or at least equal) to the commercial interests of pharmaceutical patent holders. The DTPH provided an example for a favourable interpretation of TRIPS flexibilities for broader developmental objectives. However, negotiations on temporary and permanent solutions to paragraph 6 overturned or derailed the DTPH. The Decision together with the Chair’s Statement placed the commercial interests of pharmaceutical companies higher than the health problems in many developing countries. An integrative solution to the lowest common denominator would likely cost disproportionately more for weaker actors compared to stronger actors. In this case, emphasis on commercial claims by creating stringent conditions for TRIPS flexibilities or solution to paragraph 6 might in turn scale down or even nullify the original developmental objective of the DTPH and paragraph 6. In such a situation, countries in need of the TRIPS flexibilities might be unable to use them and in turn bear the cost of the negotiations outcome.

After outlining the negotiations undertaken by each individual coalition, there were at least three major findings I discovered. First, the case studies demonstrate that negotiating coalitions used different development-oriented agendas (normative, instrumental, or mixed frames) reflecting the behaviour of negotiating coalitions and the expected social behaviour of their negotiating counterparts. A coalition using an instrumental frame—a rationalist approach—would employ material incentives-based arguments, which related to the non-discrimination and reciprocity norms under the liberal trade principle. For instance, the G-20 concentrated on developing specific modalities and rules to reduce/eliminate trade distortions in agriculture taking into account the issues of progressivity (higher distortions taking higher responsibility) and proportionality (full reciprocity for developed countries, less than full reciprocity for
developing countries, and non-reciprocity for LDCs) adhering to the liberal trade principle. Further, a coalition using a normative frame—a constructivist approach—would employ normative values-based arguments, which relates to flexibilities, SDT, and sustainable development norms under the developmental principle. As an example, the G-33 perceived SP as a developmental tool rather than a commercial tool. For this reason, the G-33 rejected the argument that SP should be treated comparably to Sensitive Products, where the intent was to protect commercially unproductive sectors in agriculture. Similarly, the CTPH perceived that public health under the developmental principle is more important than the commercial interests of patent holders, and for this reason, argued that nothing in the TRIPS Agreement should prevent WTO members from implementing public policies for public health purposes.

Additionally, the core argument of negotiating coalitions is not static and could evolve throughout the negotiation process because members within negotiating coalitions must constantly interpret the situation and redevelop consensual understanding in the course of the negotiation process. The Core Group/G-90, for instance, used a predominantly instrumental frame in negotiating against the inclusion of the new issues during the agenda-setting process, but the Core Group/G-90 had to adapt and developed mixed instrumental-normative frames during the modalities-setting and rule-making processes.

One of the most interesting findings of this thesis related to the types of arguments being used by negotiating coalitions, in which the mixed instrumental-normative frames—pursued by the G-20 and Core Group/G-90—were widely accepted by WTO members despite initial or minor reservations. The G-20 focussed its effort on developing an instrumental frame since it had a strong commercial-oriented objective, but also recognised the principles of SP and SSM as a legitimate instrument for food security purposes. The Core Group/G-90 chiefly concentrated their efforts on developing a normative frame since they were seriously concerned with the diverse trade facilitation capacities of their members, but also recognised the need for WTO members to undertake trade facilitation reform. In developing mixed frames, the G-20 and Core Group/G-90 served as a ‘laboratory’ to seek mutually acceptable solutions taking into account the heterogeneity of the coalitions’ members. In the G-20, consensual understanding was established between countries with less-ambitious and more-ambitious positions on market access, while in the Core Group/G-90, consensual
understanding was developed between countries with less-advanced and more-advanced trade facilitation capacities.

The main reason for this broad acceptance is that mixed frames would most likely balance between the liberal trade and developmental objectives. A broadly accepted solution was definitely more difficult to achieve, but once a compromise was achieved, it would most likely be acceptable to the broader members because the solution already took into account the diverse interests and preferences of the heterogeneous members. In contrast to relatively acceptable mixed frames, the use of an instrumental frame with a purely distributive strategy without taking into account the value claims of negotiating counterparts would most likely receive strong resistance. For instance, the US on many occasions begin with a one sided approach using its own ‘selfish’ instrumental frame and would almost always encounter reservations and even strong resistance from developing countries and sometimes even from several developed countries. This was seen in the US’s position on TRIPS and public health, as well as the US’s position on agriculture in the near deal-making moment and post-2008 agriculture negotiations.

Second, the types of leadership largely followed the initial formation of a coalition including the coalition’s core argument and later adapted to the negotiation process itself. Negotiating coalitions could adopt: a structural-based leadership relying on its material resources as bargaining leverage that used a predominantly instrumental frame; a strategic-based leadership relying on its ability to develop an innovative solution for mutual gains that often used mixed instrumental-normative frames; and a knowledge-based leadership relying on its persuasive ability to search for better reasoned arguments to stimulate empathy/sympathy that used a normative frame. As illustrated in the case studies, during the initial formation of the coalitions the Core Group/G-90 exhibited a structural-based leadership using a predominantly instrumental frame; the G-20 exerted a strategic-based leadership using mixed instrumental-normative frames; and the G-33 and CTPH demonstrated a knowledge-based leadership using a predominantly normative frame.

As negotiations progressed, and in particular after the rule-making process, the types of leadership often had to adapt to the negotiation process in order to maintain the
validity of the coalition and to enable the coalition to contribute substantively to the negotiations. Negotiating coalitions frequently have to evolve into a strategic-based leadership to seek innovative solutions for mutual gains because the diversity of interests and preferences among members became more salient as negotiations involved discussions on specific rules and binding commitments with clearer distributive implications. For instance, the G-33's knowledge-based leadership had to evolve to a strategic-based leadership because the diverse interests and preferences among G-33 members and sub-groups within the G-33 became more salient as negotiations discussed specific and binding rules with clearer distributive implications. Another example is the Core Group/G-90 began with a structural-based leadership, but later adapted to a more strategic-based leadership as negotiations moved to modalities-setting and rule-making processes, in which the coalitions had to take into account the diverse interests and preferences between members with less-advanced and more-advanced trade facilitation capacities. Another case was the CTPH was formed using a knowledge-based leadership with strong and persuasive normative claims in negotiating for the DTPH. In negotiating for specific rules to paragraph 6 of the DTPH, the CTPH could not be maintained and the AG or CDC failed to develop into a strategic-based leadership accommodating the interests and preferences of potential exporters and importers that led to declining cohesion among developing countries. In the case of the Core Group and G-90, the coalition maintained cohesion through a long period of time, before in the end, members moved towards more traditional coalitions, such as the AG and LDCs Group, since many members of the AG and LDCs possessed relatively similar trade facilitation capacities.

Third, many negotiating coalitions attempted to influence the mode of trade negotiation particularly to incorporate socio-humanitarian or socio-economic objectives—thus expanding the traditional trade negotiations that used reciprocal concessions and primarily concentrated on liberal trade objectives—but were predominantly drawn into traditional bargaining particularly during the rule-making and near deal-making processes.

As discussed in Chapter 2 and confirmed in the case studies, negotiators initially began with a strict distributive strategy and gradually moved to an integrative strategy. This thesis is fortunate to cover a decade of the Doha negotiations and therefore is able to analyse an integrative movement among WTO members that often took several years.
to evolve. In most cases, WTO members could only achieve a partial compromise or increasing convergence among negotiators on some of the issues under negotiation.

Looking closely at the mode of trade negotiation during critical moments, such as a compromise, an increasing convergence, or a deadlock, we can also understand the push and pull between the liberal trade and developmental nexus at different stages of negotiation in a given issue area. The G-33 and CTPH was successful in achieving a compromise in favour of their socio-humanitarian claims adhering to the developmental principle during the agenda-setting and modalities-setting processes. The G-33 and CTPH expanded the traditional reciprocal way of negotiations that simply concentrated on liberal trade objectives to take the broader perspective of sustainable development in order to mitigate the costs associated with the liberalisation process and to incorporate socio-humanitarian objectives into the negotiations. The success of the G-33 during the modalities-setting process and the CTPH in negotiating for the DTPH illustrated a particular mode of negotiation, namely rhetorical entrapment. The mode of negotiation resembled negotiations between a communicative actor promoting socio-humanitarian claims versus a rhetorical actor promoting commercial claims. The evidence indicates that negotiating counterparts and the broader WTO members (outside the G-33 and CTPH) accepted and were rhetorically entrapped into the socio-humanitarian claims of the G-33 and CTPH. The change of behaviour or acceptance of the socio-humanitarian claims was undertaken to maintain their reputation as morally motivated or unbiased actors with the potential of acquiring future gains rather than because they internalised the socio-humanitarian claims.

However, the case studies illustrate that negotiating coalitions were predominantly drawn into bargaining through rhetorical action, through which compromises or increasing convergences were achieved by finding a lowest common denominator. The trade regime served its traditional purpose as a forum of exchanging market access concessions based on the liberal trade principle. In five years, the G-20 achieved a relatively mature agriculture text concerning tariff and subsidy cut-formula and obligations through exchanging concessions among elements in agriculture, and between agriculture and manufacturing. As a result, a tentative agriculture agreement would likely generate a modest agriculture reform and in turn create modest new agriculture market access in the major developed countries. Further, the success of
introducing the agenda and developing modalities on the socio-humanitarian claims by the G-33 and CTPH was somewhat overturned in favour of the commercial claims of their negotiating counterparts. During the rule-making process, the G-33 negotiating for specific rules on SP and SSM, and the AG/CDC negotiating for specific rules related to paragraph 6 of the DTPH achieved a compromise by lowering their original position for absolute flexibilities and accommodated the commercial claims of negotiating counterparts by accepting stringent conditions for flexibilities. There was a fear that the cost of such a compromise would fall disproportionately on weaker actors that needed those flexibilities. The costs for developing countries would be evident should these flexibilities prove difficult or impractical to implement when a country faces food insecurity or public health problems.

Additionally, there were several instances of arguing through communicative action during the Doha Round. In these instances, members engaged in open and honest discussions on a relatively symmetrical relation, and interests and preferences tended to be determined by the direction of the discussion based on the better reasoned arguments, often based on socio-humanitarian or socio-economic arguments. In some cases, members would exhibit self-restraint, seen in their relaxing demands or giving up reservations. Most of the communicative action was conducted among members within negotiating coalitions, but to some degree was extended to inter-coalition relations. Despite divergence among members of negotiating coalitions, members were often able to develop an artificial sense of solidarity among delegates from developing countries prescribing to the moral authority of humanitarian claims or exhibited sympathetic attitudes towards fellow coalition members. The G-20 for the most part maintained cohesion in the coalition between members with less-ambitious and more-ambitious positions on market access flexibilities by agreeing on the principles of SP and SSM, although they could not agree on specific rules concerning these special trade provisions. In the seven years of its existence, the G-33 members largely maintained strong cohesion and took into account the interests and preferences among members and sub-groups within the G-33. At times, this meant that the G-33 had fewer concessions to give and had to face constant pressure by agriculture exporters. Further, the Core Group and G-90 maintained reasonably strong cohesion despite having a looser coordination mechanism, in which members with more-advanced trade facilitation capacity would
also go along with the interests and preferences of those members with less-advanced trade facilitation capacity.

In contrast to conventional wisdom in which negotiators would most likely engage in bargaining in the rule-making process onward, the amicable negotiation atmosphere during the trade facilitation rule-making process and the way an increasing convergence was achieved among key negotiators resembled ‘genuine’ arguing through communicative action. The Core Group’s contribution to the balanced trade facilitation modalities (Annex D) changed the negotiation atmosphere during the rule-making process. After WTO members laid out their proposals on specific SDT rules in trade facilitation, the Colorado Group integrated various elements of the tabled proposals. Subsequently, the Core Group—building upon the Colorado Group’s proposal—integrated its own value claims. The consolidated texts, which were developed by the friends-of-the-chair, reflected the integration of the ideas based on the Core and Colorado Groups’ proposals even though the Core and Colorado Groups became less involved in negotiations after 2008. The consolidated texts refined the Core and Colorado Groups into technical specifications that balanced: multi-level obligation; implementation capacity; provision of TACB; and additional flexibilities. The discussion on specific and detailed rules on trade facilitation integrated the value claims of different coalitions through a higher level of discourse in seeking a ‘better’ SDT model. The fact that competing sides could eventually accept a consolidated text that integrated their value claims meant that WTO members were willing to redefine their interests and preferences by taking sustainability issues seriously and accommodating the interests and preferences of the weakest link among WTO members. The development of balanced rules between liberal trade and development objectives could become a model or template for future negotiations.

In addition to the above outcomes, there are several best practices and lessons learned that could be drawn and are worth noting in relation to a coalition’s effectiveness and constraints. First, a coalition would likely be more effective and influential when it develops arguments/proposals based on mixed instrumental-normative frames. The case studies show that mixed instrumental-normative frames tend to be more acceptable to the wider audience rather than a purely instrumental or normative frame. The main reason behind this argument is that mixed frames suggest
the possibility not only of greater trade opportunities, but also provide assurances that liberalisation process would not create economic or social adjustment costs, particularly for the poorest and most vulnerable people, that might exceed the benefits of liberalisation itself. The G-20 and Core Group cases provide evidence for this finding.

Second, and in relation to the first point, a coalition with heterogeneous rather than homogeneous membership would likely produce arguments/proposals with mixed instrumental-normative frames. A coalition consisting of members of opposite positions would potentially produce arguments/proposals with mixed instrumental-normative frames, although a consensus would be harder to achieve. For example, the G-20 consisted of some members that favoured a more liberalised market access, and some members that preferred a more cautious approach to market opening, and as a result, the G-20 was able to develop proposals with mixed instrumental-normative frames at the agenda-setting and modalities-setting processes. A coalition consisting of homogeneous membership might be less useful in seeking an overarching solution because the coalition would probably produce one sided arguments/proposals, or at least would not take the opposition’s claims as seriously as it would have to within a coalition.

Third, the level of a coalition’s representation of its membership could be indicated by the unity or disunity of the coalition. Membership in coalitions is purely on a voluntary basis and decisions within a coalition are largely taken unanimously. If a coalition produces a proposal or achieves a common position, the coalition could be considered to represent the aggregate interests and preferences of its members even though there might be degrees of differences among members. A splinter or fraction within a coalition would indicate that interests and preferences of a member or several members could not be accommodated by the other members or the degree of differences among them becomes too wide to reach a consensus. As a result, a member or members might initiate their own position on the same issue advocated by the coalition. The difficulty of maintaining cohesion and representativeness in a coalition tends to increase as negotiation proceeds to the rule-making and deal-making processes. Members of a coalition would not only acquire greater understanding of the distributive implications of a proposal, but also must negotiate an effective cost-benefit sharing arrangement among themselves.
Fourth, the effectiveness of coordination within a coalition (and among coalitions) would likely be determined by the coalition’s ability to adapt at different stages of negotiation. As negotiation stage proceeds to rule-making and deal-making processes, for instance, a coalition would likely require a ‘strategic-based leadership’ as negotiation discourse focusses on binding and quantitative commitments with clearer distributive implications. For this reason, a strategic-based leadership could seek innovative political and technical solutions to accommodate diverse interests and preferences among its members. Although a change in leadership, or in this case change in coordinators, might change the way a coalition is managed, the thesis argues that the effectiveness or ineffectiveness of a coalition is more likely determined by the ability or inability to change the type of leadership in accordance with the changing negotiation characteristics. The thesis, for instance, found that during rule-making and deal-making processes, a coalition would most likely remain relevant and be effective in negotiations provided the leadership within a coalition could be a strategic-based leadership. This particular type of leadership could find innovative solutions to take into account the diverse interests and preferences not only of its members, but of the wider countries involved in negotiations.

And fifth, developing country coalitions pursuing development-oriented agendas would likely have to scale-back their original development objectives as the negotiation evolve particularly during rule-making and deal-making processes. In line with global efforts to mainstream the development content in the international arena at the beginning of the millennium, promotion of development-oriented agendas relating to flexibilities and SDT received wider acceptance during the agenda-setting and modalities-setting processes, such as the inclusion of SP and SSM in the 2004 July Package, and the acceptance of the DTPH. At this stage, negotiations tended to revolve around shared commitment to the long-term objectives of the regime as well as the development of policy options. However, discourses in the rule-making and deal-making processes often involve the development of specific rules and binding commitments with quantitative obligations by WTO members—and these carried with them distributional implications. The empirical evidence shows that the G-33 negotiating for specific rules on SP and SSM, and the AG/CDC negotiating for specific rules related to paragraph 6 of the DTPH, had to scale-down their original expectations
for absolute flexibilities and accept more stringent rules for flexibilities to accommodate the commercial interests of their negotiating counterparts. After a decade of Doha Round negotiations, there is a real concern among developing country actors that the costs of such compromise would fall disproportionately on weaker actors, particularly when the flexibilities proved difficult or impractical to implement or when developing countries are required to provide disproportionate concessions compared to their developed countries counterparts. The final Doha package therefore might lessen the original development-objectives of the Doha negotiations.

With the above best practices and lesson learned on the effectiveness and constraints of coalitions in the Doha Round, the final outcome of many of the coalitions’ activities could not be determined at the current time, since a Doha agreement remains to be achieved. The final outcome will only be able to be assessed once the whole Doha agreement is achieved and tested through an implementation period. We are now moving to a new period in which the easy decisions on multilateral trade negotiations have been made, and hard political decisions to conclude the Doha Round must be taken. It is timely, even long-overdue, to conclude the Doha Round and end the standstill considering that WTO members should be moving to address new global trade challenges, such as governing export restrictions in addressing food insecurity in the case of heightening food prices.

Looking at ways to achieve a Doha agreement, the Doha Declaration allows an ‘early harvest’ of some agreements that could be agreed at an early point but still be considered as part of the package or Single Undertaking. At the time of the research, there were talks for an early harvest on less contentious issues, such as trade facilitation, but during the interviews many delegates were still geared toward negotiating a single Doha agreement. If a deadlock remains, it is possible WTO members must achieve an early harvest to give the Doha Round a new boost or new momentum. Once an early harvest is achieved, the outcome would most unlikely be used as leverage for future trade-offs/concessions even though it would be part of the Single Undertaking. This would leave the most difficult issues, such as agriculture domestic support reduction rules, for future negotiations. The major developed countries would likely maintain their position and demand further concessions by larger developing countries. The main issue would be the extent or degree of concessions demanded by the major developed countries. Here, the leadership of the major developed countries would be tested,
whether they would accept average concessions for the conclusion of the Doha Round or will they demand huge concessions which developing countries cannot afford and, therefore, continue the standoff. In parallel, developing countries might have to accept a less ambitious (agriculture) reform by the major developed countries, such as a lower level of reduction commitments, or developing countries might have to provide new concessions, either within the existing package (e.g. services and NAMA), or even by giving promised concessions for the next round of global talks (e.g. new issues). It is imperative, however, that the decade of hard work and tentative results should not be rolled-back or scaled down even further at the expense of the developmental-relevant agendas. In order to maintain Doha’s development content, developing countries or their coalitions would prefer to give concessions on issues whose negotiation has no chance of competition at the global level in the medium or long-run.

The prolonged Doha Round poses another crucial challenge given the increasing trend within the global trade system towards bilateralism and regionalism (minilateralism, inter-regionalism, trans-regionalism). Starting in 2001, the WTO recorded more than 160 regional trade agreements coming into force, in which the US accounts for 12 agreements and the EC 19 agreements. The main challenge of bilateralism/regionalism between the US and EC with a developing country or a group of developing countries is the asymmetrical relations between them, such as disproportionate trade share, gap in their economic capacities, gap in the technical know-how, and different economic characteristics. More importantly, the US and EC will likely impose all of the new issues (competition, investment, and government procurement), TRIPS plus provisions, as well as labour and environmental standards, in the bilateral/regional agreements, which are not always in the best interests of developing countries. In addition, there is also a trend of increasing South-South trade cooperation with over 60 agreements coming into force since 2001. Several countries have been active promoting South-South trade agreements, such as several Central American countries, India, China, and Singapore. Nonetheless, other regions seem to be lagging behind. The main concern with this trend is whether developing countries that

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852 Ibid.
are lagging behind would be subject to discrimination or less-favourable treatment compared with those countries that are involved in bilateral/regional agreements.

This thesis can also identify where future studies would be useful. These include areas of continuing negotiations on a Doha agreement and other negotiations with high levels of coalition activities, such as trade in services. I believe that the conceptual framework developed in this thesis would also be appropriate for analysing coalitions outside the trade regime. The high level of coalition activities in the environmental regime, such as the G-77 and China, Alliance of Small Island States (AOSIS), the Organization of Petroleum Exporting Countries (OPEC), and LDCs Group, would be an interesting case to investigate. The application of the conceptual framework, however, would need to be adjusted to the institutional context in which those coalitions operate. For instance, the internal and external coalition dynamics could be useful analytical tools to understand the nature and role of the coalitions in the environmental regime provided such an application would be adjusted to their institutional context.

All in all, this thesis unpacks the different natures and roles of negotiating coalitions in the Doha Round in the context of the liberal trade and developmental nexus. Rather than simply differentiating negotiating coalitions as power/interest-based coalitions or normative-based coalitions, the thesis unpacks the nature of each coalition by examining their core arguments and types of leadership, which could evolve over the course of the negotiations. Coalitions used particular frames reflecting the behaviour of the negotiating coalitions and expected social behaviour of their negotiating counterparts. Some coalitions stressed commercial claims related to an instrumental frame adhering to the liberal trade principle; emphasised socio-humanitarian or socio-economic claims related to a normative frame adhering to the developmental principle; and developed mixed instrumental-normative frames related to balanced commercial and socio-humanitarian/socio-economic claims. In addition, the types of leadership often reflected the core argument of the coalitions during their initial formation, but tend to evolve to a strategic-based leadership as negotiations reached the rule-making process and onwards. The G-20 used mixed instrumental-normative frames and exhibited a formidable strategic-based leadership throughout the different stages of

853 See for example, Patel, "New Faces in the Green Room: Developing Country Coalitions and Decision-Making in the WTO."; Yu III, "Unity in Diversity: Governance Adaptation in Multilateral Trade Institutions through South-South Coalition-Building."
negotiation. The G-33 used a normative frame and initially exerted a knowledge-based leadership that evolved into a strategic-based leadership in the later stages of negotiation. The Core Group/G-90 used a predominantly instrumental frame and showed a structural-based leadership but adapted into a strategic-based leadership during the modalities-setting and rule-making processes. The CTPH used a predominantly normative frame and exhibited a strong and persuasive knowledge-based leadership in negotiating for the DTPH. The AG and CDC used a similar normative frame similar to the CTPH, but could neither emulate the CTPH nor develop into a strategic-based leadership in the follow-up negotiations for rules on paragraph 6 of the DTPH.

This thesis also demonstrates the role of negotiating coalitions in rule-development processes. In most of the cases, negotiating coalitions involving developing countries tried to impact the overall mode of negotiation, particularly by expanding the traditional way of conducting trade negotiations. These negotiations were typically conducted through reciprocal concessions and achieving primarily liberal trade objectives to take into account other socio-humanitarian or socio-economic objectives. Many of these efforts, however, resulted in modest changes in the balance between the liberal trade and development principles. The G-20 was successful in maintaining the agenda to reduce/eliminate trade distortions in the major developed countries, but had to exchange with concessions for lenient rules on several elements of domestic support and Sensitive Product tariffs protection as well as trade-offs concessions between agriculture and manufacturing. The G-33 succeeded in inserting special trade provisions for food security purposes into the agriculture modalities, but had to accommodate the commercial interests of agriculture exporters by accepting more stringent flexibilities rules. The CTPH was effective in negotiating for the DTPH favouring the developmental principle, but the AG and CDC was less effective in negotiating specific rules on TRIPS flexibilities in order to accommodate the commercial interests of pharmaceutical patent holders. The Core Group and G-90 were effective in opposing the inclusion of three new issues, and in contrast to the other coalitions under investigation, were able to influence the development of trade facilitation modalities and rules that reflected a balance between liberal trade and developmental objectives. In the context of the Doha Round ‘episode’ within the long trade regime history, this thesis suggests that
many negotiating coalitions were relatively successful in re-emphasising the developmental principle during the agenda-setting and modalities-setting processes. However, most of the negotiating coalitions were drawn into traditional bargaining through exchange of concessions and had to downgrade their original developmental-oriented objectives during the rule-making and near deal-making processes.
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