

THE HONG KONG MINISTERIAL TEXT: a failure for development

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CONTENTS

- I. MANIPULATING DEVELOPMENT
- II. MEASURING THE IMBALANCES
- III. AGRICULTURE: how to fix it
- IV. SERVICES: changing the architecture
- V. COMMODITIES
- VI. FROM NOW UNTIL HONG KONG
- VII. IMPORTANT DATES TO REMEMBER
- VIII. DOCUMENTS

I. MANIPULATING DEVELOPMENT

On 1st December 2005, WTO Director-General, Pascal Lamy, distributed a second draft Hong Kong Ministerial text (the draft text) to WTO Members (see link below). The draft text reflects the failure of governments at the WTO to create multilateral trade rules that promote development. It is full of empty rhetoric. None of the proposed commitments addresses the bottom line: the urgent need for trade rules that promote an equitable and sustainable global economy. This deal will leave the world's poorest countries worse off.

Pascal Lamy attempts to mask this reality by proposing a number of technical and financial assistance programs, particularly for least-developed countries (LDCs), including an enhanced Integrated Framework and Aid for Trade. The proposals are beside the point. Developing country demands are not centered on increasing aid. Rather, developing countries want meaningful reforms to trade rules to address the profound inequities in the existing global trade system. Aid is not without merit but it is not a substitute for strong multilateral trade rules that prevent dumping (the sale of products at below the cost of production prices) and protect countries' right to design domestic policies according to their people's needs, whilst ensuring they do not harm other countries. In any case, aid to support the implementation of bad rules is in no one's interests: the money would be better spent making more realistic assessments of how trade liberalization scenarios play out, taking into account the urgent need to create jobs,

foster industrial and agricultural development, to end dumping, and to redistribute wealth from developed to developing countries.

When the Doha Round was launched, developing countries demanded the imbalances in the existing WTO agreements be redressed. Their demand focused on the so-called "implementation issues." Developing countries also asked for stronger special and differential treatment (SDT) measures and for the Agreement on Agriculture (AoA) to be reformed to address structural inequities in agricultural trade. Five years on, implementation issues have all but disappeared from the negotiating agenda, the proposals on SDT have been reduced to just five proposals for LDCs (see Annex F, Draft Ministerial Text), and the current proposals to reform the AoA are set to deepen the inequities.

Worse, in exchange for this failed development agenda, and mostly away from the public eye, negotiations have proceeded and intensified on trade in industrial products and services. These negotiations demand far-reaching liberalization commitments from developing countries, commitments that are incommensurate with their development needs. Once again, a chance to reform trade rules to meet the public interest has been hijacked to serve the interests of exporters, particularly transnationals and those based in developed countries. If the current proposals prevail they will perpetuate the failures of the existing WTO agreements. Developing countries will lose significant flexibility to use different policy measures in their manufacturing and service sectors. Their ability to regulate will also be severely curtailed.

Pascal Lamy and the European Commission (E.C.) are determined to sell the Ministerial as a development package for the poor. Their strategy is an insult. Developing countries have the right response: on 28th November, Argentina, Brazil, India, Indonesia, Namibia, Pakistan, Philippines, South Africa and Venezuela launched a campaign to reclaim development in the Doha Round. They reaffirmed the Doha Declaration and highlighted some measures needed to redress imbalances in existing WTO agreements (see link to their statement below). In addition, at a recent Africa, Caribbean and Pacific (ACP) Ministerial meeting in Brussels, several ACP Ministers spoke out strongly against the attempts by Pascal Lamy and the E.C. to sell the current deal with a development package. The ACP Ministers said the offers were full of contradictions and conditionalities and that the E.C. commitment to the ACP countries was so far illusory. In particular, they spoke out against the conditionalities attached to Aid for Trade and the possible trade-offs developing countries might have to make in other areas of the WTO negotiations.

II. MEASURING THE IMBALANCES

The mood in Geneva is somber. On the one hand, many developing country negotiators say there are no surprises in the draft text and therefore outrage is not warranted. On the other hand, many developing country negotiators say there are significant imbalances in the three main negotiating areas: agriculture, non-agricultural market access (NAMA) and services. Many of the demands from developed countries in NAMA and services are clearly in the text, while the demands from developing countries are presented as much more contested in the annexes or have been left out altogether.

In the main body of the draft text, for example, there is an imbalance between agriculture and NAMA in the most controversial area of all WTO negotiations: the formula for reducing tariffs. In the agriculture section there is no reference to the type of formula to be used for cutting tariffs. In the NAMA section however, there is explicit reference to the use of a Swiss formula (a type of formula that makes steeper cuts on higher tariffs and that is commonly known as the most aggressive formula to cut tariffs). Tariffs are the most controversial area because they determine the degree to which a country can control the price, speed and volume at which imports enter their domestic markets and therefore the extent to which a country can protect its local producers.

There are imbalances in the annexes on the draft text. Annexes on agriculture and NAMA are in the form of reports from the Chairs while the annex on services is more akin to draft modalities (detailed commitments). The annex on special and differential treatment (SDT) is in brackets (which means it may or may not be adopted) and it is limited to five proposals for LDCs, ignoring the broader range of proposals by developing countries for strengthening SDT for developing countries as a whole.

There are also imbalances between the agriculture and NAMA reports. Many developing country members feel that the chair of the NAMA negotiations, Ambassador Johannesson from Iceland, has inadequately reflected the positions of developing countries. Further, Ambassador Johannesson instructs Ministers to obtain agreement on the structure of a formula for tariff cuts and the numbers for the tiers that would be used, to resolve their differences on flexibilities and to clarify the treatment of unbound tariffs. The chair of the agriculture negotiations, Ambassador Falconer of New Zealand, provides no such instruction and instead leaves it to Members to decide how to proceed.

Yet, it is in agriculture that more developing countries want to see reform to the existing agreement, and it is in agriculture that some movement, from developed countries, is urgently needed. The uneven treatment of issues reflects the power imbalances in the multilateral trading system and highlights an urgent need for clear rules for official WTO negotiations that guarantee transparency and effective participation of all 148 members.

III. AGRICULTURE: how to fix it

The draft text on agriculture reflects the areas of convergence described in the annex on agriculture, which is a report from the Chair, Ambassador Falconer, on the current status of the negotiations. The majority of proposals in the report reflect the domestic politics of WTO Members, especially developed country members and the export interests of multinational agribusinesses that trade in commodities and processed foods. A minority of proposals offer some hope: the elimination of export subsidies, disciplines on the sale of food aid, reductions to domestic support spending, exemptions for Special Products for developing countries to protect crops that contribute to food and livelihood security and rural development, and the provision for a Special Safeguard Mechanism to protect against import surges. However, overall the negotiations present serious contradictions and dilemmas and highlight the need for a radical restructuring of the Agreement on Agriculture (AoA). Before WTO Members commit to another bad trade deal, they should consider the following proposals as a new basis for the agricultural trading system:

1. A BAN ON AGRICULTURAL DUMPING: WTO rules to address agricultural export dumping are inadequate. The WTO should require timely reporting of complete cost of

production numbers for all crops that a country wants to export. WTO rules against dumping should be strengthened and simplified.

2. ALLOW BORDER MEASURES: The 1947 General Agreement on Tariffs and Trade (GATT) allowed countries to use agricultural tariffs if they managed their production, but they were prohibited from exporting any surpluses that might result. This approach should be revived. No firm or country should have a legal right to export or a legal obligation to import. Countries should have the policy space to determine how to structure and support their basic level of national agricultural production, so long as their national policies do not damage other countries' ability to do likewise.

3. NEW CRITERIA FOR SUBSIDIES: Many agricultural subsidies are problematic, but not all subsidies result in unfairly traded exports. The subsidy classification system in the WTO is too politicized. Developed country negotiators have manipulated the different colored boxes to suit their domestic needs. Negotiators need better guidelines for disciplining agricultural subsidies. If support payments are used, for example, they must be accompanied by strictly enforced production limitations and controls on exports (an export tax might address the implicit export subsidy such products receive). Export subsidies should be eliminated immediately. WTO members should conduct a frank assessment of the boxes to re-assess how best to limit trade distortions while respecting countries' policy space to set and implement national agriculture and food security objectives.

4. ALLOW STATE TRADING ENTERPRISES. The WTO should not prohibit State-Trading Enterprises (STEs) either explicitly, or de facto, by outlawing policies necessary to the establishment and operation of a single desk seller. Export state-trading enterprises offer a competitive counterweight to concentrated export markets. STEs have real costs and have sometimes proved a strong temptation for corruption. Nonetheless, properly overseen and with provision for farmer control under public oversight, STEs offer important benefits, particularly in countries where the private sector is weak or under-capitalized or where it is highly concentrated. The question of monopoly and oligopoly power should be addressed and monitored whether the companies in question are publicly or privately owned.

5. PUT FOOD SECURITY FIRST: Developing countries have made proposals to allow the protection of their agriculture through the designation of special products (crops strongly related to the country's food security) and the creation of a special safeguard mechanism that would create a responsive and effective system to protect agricultural markets from import surges. These proposals alone cannot ensure food security, but they offer important protections against imports, whether dumped or not, that undermine national productive capacities. The proposals from both the G-20 and G-33 to allow border measures to control imports of any product that has been subsidized through domestic or export support should be adopted.

6. REFORM FOOD AID. The WTO should agree criteria for food aid that is unquestionably vital for humanitarian purposes and effectively non-trade distorting. Other food aid programs should be subject to more careful review. U.S. food aid practices demand particular scrutiny because they fail to meet appropriate standards of flexibility and targeting that help ensure the recipients of food aid get the right food at the right time. The U.S. test to assess potential displacement of commercial sales (the Bellmon Analysis) is not adequate. The WTO should ban all food aid not in grant form.

The WTO should support international efforts to strengthen and expand the Food Aid Convention to establish a forum where recipient countries have a voice and humanitarian and development concerns are given clear priority over domestic donor needs.

7. MANAGE GLOBAL PRODUCTION: Chronic over-production of many commodities depresses prices and exacerbates dumping. Proper regulation and management of commodity markets is vital to ensure supply is balanced with demand and to prevent sharp fluctuations in prices. WTO rules must allow governments to reopen discussions on international commodity agreements to curtail global oversupply and ensure fair prices.

IV. SERVICES: changing the architecture

Since the beginning, the General Agreement on Trade in Services (GATS) has been controversial. As a matter of fact, developing countries strongly opposed the establishment of the GATS in the Uruguay Round. Yet, developed countries managed to get their way. Immense energy and significant tradeoffs also went into the GATS negotiating guidelines of March 2001. It is in these guidelines [document S/L/93] that developing country members rightly fought for paragraph 14 and 15, requiring an assessment and review of the GATS. Until now the WTO and its members have failed to implement any adequate procedures or output for such an assessment and review - something that is also consistently demanded by a large number of civil society groups.

The current draft text has the potential to limit the flexibilities developing countries won in the GATS during the Uruguay Round. The GATS has thus far been known for its "bottom-up approach" meaning that countries can pick and choose which sectors to liberalize and at the pace of their liking through a bilateral request and offer process. Countries can also choose what limitations they want to place on market access for foreign service providers into their domestic markets. Proposals leading up to the current draft, especially those tabled by the E.C. have sought a more aggressive approach towards liberalization under the GATS. They have asked for numerical targets for liberalizing services sectors and "qualitative objectives" where countries would remove restrictions in certain modes of services (such as mode 1, which is cross border trade in services) and grant additional market access. The E.C. has also asked members to consider sectoral negotiations, similar to those already completed on financial services and telecommunications during the Uruguay Round. These were plurilateral negotiations that demanded extensive liberalization from the members that were party to the negotiations. Some sectors of interest are environmental services, education and energy. Moreover, the E.C. has insisted on language in the draft text that would introduce plurilateral requests and offers as a way to negotiate the GATS. The proposed language could force countries to negotiate, a radical departure from the current GATS structure which allows countries to ignore requests if they wish to do so. Many developing country governments have spoken out against numerical targets and benchmarks, as well as on plurilateral approaches and qualitative parameters. In Annex C of the draft text, the language on numerical benchmarks has been taken out, however, qualitative parameters and requests for plurilateral negotiations remain dominant. If accepted, they will increase the complexities of an already controversial agreement.

On 24th November, African Ministers in their Arusha Declaration entitled Development Benchmarks for the WTO Sixth Ministerial Conference in Hong Kong, China rejected the complementary approaches proposed in Annex C ("complementary approaches include qualitative parameters, numerical benchmarks, sectoral and modal negotiations and the plurilateral approach). The African Ministers said, "...the establishment of any qualitative individual or collective targets would undermine the flexibilities provided for developing countries in the GATS provisions and the existing negotiating guidelines and procedures. We are therefore opposed to qualitative and quantitative targets, modal targets as well as sectoral negotiations, or any language on the plurilateral request/offer approach that goes beyond the negotiating guidelines."

As a response to the existing draft text on services, five members of the Association of South East Asian Nations (ASEAN), Brunei Darussalam, Indonesia, Malaysia, the Philippines and Thailand, tabled an alternative proposal, reflecting the concerns of developing countries that do not want to reduce the level of flexibility now accorded under the GATS. It is rumored that the Africa Group does not even want to submit an alternative text on services because they are so unhappy with the language in the current draft.

The current text is unacceptable as a basis for moving the services talks, particularly, since most developing countries have defensive interest in services. The current language pushes the door open for developing countries to liberalize faster with little attention to development concerns.

Developing countries' requests for a comprehensive assessment of the developmental, environmental, social and gender impacts of services liberalization before continuing with the GATS negotiations, are repeatedly ignored. This is despite the fact that an increasing number of studies, including from the UN Conference on Trade and Development (UNCTAD), question the benefits of services liberalization. These studies demonstrate how developing countries will lose flexibility in public policymaking under the GATS. Also the recent WTO Panel rulings on services, such as the Telmex Case and the U.S. Gambling Case, highlight the dangers of making commitments to open-up service sectors without knowing the full implications.

V. COMMODITIES

In June 2005, Côte d'Ivoire, Kenya, Rwanda, Tanzania, Uganda and Zimbabwe resubmitted a long-standing proposal calling for action to address the commodity crisis arising from the decline in prices of primary commodities (see link below). The proposal has achieved scarce attention in the negotiations but reference to the commodity crisis is included in the draft text.

Solving the problems that contribute to a nearly 40-year decline in agricultural commodity prices is beyond the capacity of any one multilateral organization. Still, WTO members could try harder. Instruments to reverse the price decline and attenuate price volatility are not on the negotiating agenda either in the agriculture talks or the NAMA talks. The Committee on Trade and Development has no mandate to propose binding disciplines in this area. The general nature of the language in the paragraph on commodities in the draft text and the way the proposal on commodity issues continues to be sidelined, underlines the gap between proposals that could really promote

development and the "development package" now on the table. Resolving the crisis in commodity prices is extremely urgent and would be far more supportive of development than any amount of Aid For Trade funding.

VII. FROM NOW UNTIL HONG KONG

The General Council meeting will take place 1-2 December and is expected to approve the draft text, before it is sent back to capitals for final examination before the Ministerial Conference. The new Quad (U.S., E.C., Brazil and India) plus Japan will meet 2-3 December to try thrash out further areas of convergence and to lay out a post-Hong Kong roadmap.

The WTO Director-General and many WTO members are determined to get as many commitments as possible at the Hong Kong Ministerial. The second draft Ministerial text reflects this ambition and contains more detailed language on agriculture and NAMA than the previous draft text. Pascal Lamy told WTO members that the Hong Kong Ministerial will be a "negotiating ministerial" and not simply a stock-taking exercise. He has requested members to pay extra attention to agriculture, NAMA and SDT for LDCs. The negotiating is far from over and the Hong Kong Ministerial could turn out to be a lot more than many are anticipating.

VIII. IMPORTANT DATES TO REMEMBER

General Council, 1-2 December
U.S., E.C., Brazil, India and Japan Ministerial Meeting, 2-3 December
Hong Kong Ministerial Conference, 13-18 December

IX. DOCUMENTS

Second Draft Hong Kong Ministerial Text, 1st December 2005:
<http://www.tradeobservatory.org/library.cfm?refid=77703>

Draft Hong Kong Ministerial Text, 26th November 2005:
<http://www.tradeobservatory.org/library.cfm?refid=77635>

Reclaiming Development in the WTO Doha Development Round:
<http://www.tradeobservatory.org/library.cfm?refid=77656>

EU Proposal for a development package in Hong Kong:
<http://www.tradeobservatory.org/library.cfm?refid=77671>

Questions on Agriculture for Ministerial:
<http://www.tradeobservatory.org/library.cfm?refid=77665>

Questions on NAMA for Ministerial:
<http://www.tradeobservatory.org/library.cfm?refid=77666>

Questions on Services for Ministerial:

<http://www.tradeobservatory.org/library.cfm?refid=77667>

Commodity Proposal by a Group of African Countries:

<http://www.tradeobservatory.org/library.cfm?refid=73146>