

# **Assessing the 6<sup>th</sup> WTO Ministerial Meeting in Hong Kong**

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## **Introduction**

1. Let's begin by trying to sketch the context in which the WTO operates using the metaphor of a card game. The WTO's negotiation process looks like an enormous and complicated game of cards. From one minute to the next, strategies change, bets are placed, teams formed and re-formed, and the rules of the game shift according to the interests of the major players. The cards shuffled by the WTO are, in reality, very complex economic prescriptions that have repercussions not only on trade but also on the national development strategies and prospects of each country. These cards are not dealt evenly or at random, but rather they are fixed by the dealer: in this case the world's wealthiest nations, the United States, the European Union and their developed country allies.
2. Once the rules of the game have been accepted, players cannot trade in any of the cards they have been dealt. The sanctions for breaking the rules are severe and here poor countries such as those of Africa face great limitations in developing independent strategies in this game. The objective of the game is free trade not development. Despite the fact that the current round of negotiations is called the 'Doha Development Round', in practice, development and its main pillars, industrialization, food security, social welfare and equity have been discarded. Instead, market access, international commerce and investment, and privatization have now become the guiding principles.
3. One of the most deceitful rules is that of reciprocity. Generally considered a basic concept of equity and equilibrium, in the context of international trade, reciprocity becomes a way of institutionalizing permanent inequality. The reason for this is simple: different countries and their productive sectors and capacities enter the game with profound asymmetries between them. These asymmetries have become embedded and are deeply entrenched in the agreements and rules of the WTO. This is because developed countries have, since the inception of the GATT and subsequent rounds, dominated the game with developing countries only joining in greater numbers after the nature of the game had already been determined and all the rules had more or been decided. Against this background, my presentation will take into account three sets of considerations: firstly, the general principles which inform the African common position; secondly, the background and balance of forces leading up to the 6<sup>th</sup> WTO Ministerial Conference in Hong Kong; and thirdly, an audit of the outcomes of the Hong Kong Ministerial.

## **Africa's Common Position**

4. Africa's negotiating approach and what countries wanted to advance the development dimensions of the Doha programme were formulated at a meeting of Africa trade ministers in Arusha, Tanzania where they met from 21-24 November 2005. Ministers agreed that Hong Kong must decisively address the fundamental imbalances and asymmetries in trade and promote the integration of developing countries into the global trading system. This must be done through meaningful expansion of their exports. In this respect developing and African countries should not be expected to pay for the removal of trade distorting and anti-development subsidies on agricultural products with over-ambitious and costly market access concessions on industrial products and services. Developing country market access concessions must be commensurate with their level of economic development, embodying the principle of special and differential treatment and developed countries who are responsible for the major anti-developmental distortions in agriculture, must be expected to make the biggest adjustments.
5. On the basis of these considerations, African countries addressed a number of issues that would underpin their framework for negotiations at Hong Kong:
  - The negotiations should fast-track the elimination of tariff peaks and escalation in developed country markets and products of export interest to African countries. Similarly, fast-tracking the elimination of export subsidies and trade-distorting domestic support on agricultural products would deliver early benefits. An early harvest on cotton—essential to a number of African economies—was seen as essential.
  - All developed countries should provide non-reciprocal duty free and quota free access for all products from LDCs. This together with targeted assistance to realize the opportunities created by enhanced market access will go a long way to ensuring that poorer countries benefit from the Doha round.
  - Operationalising the principle of special and differential treatment, and targeted capacity building should assist African countries in meeting their obligations.
  - It will be important to review and revise WTO agreements from a development perspective. A review of Article 24 of the GATT is of direct relevance and great importance to Africa. Article 24 requires signatories to Free Trade Agreements to eliminate trade barriers on substantially all their bilateral trade flows. This is not in the interest of Africa as it will cause trade diversion and transfer tariff revenues. This is anti-developmental and an example of policy incoherence.
  - More effective financial and technical cooperation will need to address the erosion of preferences that will occur as a result of the Doha round and regional trade arrangements such as the Cotonou Agreement. Such

compensation should be designed to encourage sustainable diversification and should cushion any negative socio-economic effects of the reform process. Moreover, preferences need to be improved to make them meaningful. This could include deepening preferences, where feasible, to retain the margin over Most Favoured Nation rates.

- Expanded trade capacity is necessary for African countries to address supply-side constraints. The ‘aid-for-trade’ programme must include trade capacity-building, enhancing competitiveness as well as action in importing countries that assists African exports to penetrate markets and raise returns accruing to Africa. It should extend to establishing appropriate regulations, enhancing industrial and technological capacity, product and export diversification and infrastructure development.
- New mechanisms for generating the necessary, secure and long-term finance for Technical Assistance and Capacity Building will also be required. Further integration of African countries into the trading system needs to be complemented by a binding, credible commitment to expanded financial assistance for trade capacity.

### **The Background to Hong Kong**

6. A consensus emerged in the first months of 2005 that Hong Kong should aim to achieve agreed “modalities” in the key areas of agriculture and industrial tariffs. Modalities establish targets and shape the final agreement. They would, for example, specify the overall percentage tariff cuts over an agreed period. Achieving modalities by the 6<sup>th</sup> Ministerial in Hong Kong would place the WTO in a position to conclude negotiations by the end of 2006, when the US Trade Promotion Authority expires. Despite considerable technical work and Ministerial engagement in 2005, it was clear by early November that expectations for Hong Kong would have to be scaled back or “recalibrated”.
7. A development round requires removing distortions in international trade rules that inhibit export growth in developing countries. While the Doha agenda is wide, agriculture remains key as trade distortions (export subsidies, domestic support and tariffs) are most pronounced and combine to stifle the developmental prospects in the sector where developing countries have the greatest potential for export growth.<sup>1</sup> Removing these anti-development measures remains a core objective of the round and progress on other aspects of the Doha agenda rests on progress in agriculture.
8. The positions of the US, EU and G20 are central to the agricultural negotiations. The US said that it can only reduce domestic farm support if it secures reductions in global agricultural tariffs. Reform of the Common Agriculture Policy (CAP)

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<sup>1</sup> The negotiations cover: industrial tariffs (non-agricultural market access or NAMA), agriculture, services, intellectual property, trade facilitation, environment, implementation issues, special and differential treatment. Studies indicate agriculture reform offers two-thirds of all benefits from merchandise trade liberalisation with greater proportional income growth accruing to developing countries.

frames the EU mandate for the DDA.<sup>2</sup> In terms of its CAP reform programme, the EU can make significant reductions in domestic support and eliminate export subsidies. However the CAP provides no guidance for tariff reduction. The G20 seeks an elimination of export subsidies and substantial reductions in domestic support. The G20 seeks substantial tariff reductions in developed country markets and is prepared to offer access to its markets to the extent that global distortions are removed and its markets and production are not opened to - and threatened by - subsidized exports.

9. On 12 October 2005, the G20 submitted its proposal on a range of global targets for agriculture. The proposal represents a genuine middle ground consistent with the ambition agreed in Doha. The G20 proposed elimination of export subsidies by 2010 and substantial, real reductions in trade distorting domestic farm support provided by industrial countries. Global tariff reductions in agriculture offer over 90% of the overall benefits of agricultural reform. In this regard, the G20 proposal set a middle ground by proposing that developed countries reduce their agricultural tariffs by 54%. The G20 also offered to cut developing country agricultural tariffs by 36% on the basis of the principles of special and differential treatment and less than full reciprocity.
10. The EU was then requested to submit proposal. The European Commission (EC) improved its offer to reduce domestic support (from a 65% to a 70% reduction) without going beyond reductions envisaged in the CAP reform. However, the EC came under severe pressure from some EU Members to remain within the CAP reform mandate. On 28 October, the EC submitted its proposal that has precipitated the current impasse in two ways. Defensively, the EU offered a 45% tariff cut along with a series of caveats to exclude its sensitive products. In effect, the EU thus made no meaningful offer in the most important aspect of the agricultural negotiations.
11. Offensively, the EU made a series of demands that imply enormous adjustment pressure and burden on so-called “advanced” developing countries in industrial tariffs and services. The EU is not alone on this: Other developed OECD countries have expressed similar ambition that go beyond mandates agreed in Doha and in the July 2004 Package. The EU demanded industrial tariff reductions from applied rates of protection whereas the legal basis for negotiations is from bound rates. Further, the demand for targets in developing country commitments in services would undermine built-in flexibilities in both the negotiating format and process. Both sets of demands are insensitive to developing country development needs and regulatory realities, and imply serious economic and

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<sup>2</sup> The CAP reform process, agreed by EU members in June 2003, sets out a timetable for the elimination of all export subsidies by 2013 (most occurring by 2010), and de-coupling support to EU farmers from production decisions. Support would shift to help farmers to meet more stringent standards for environment, health, animal welfare, and “food quality”. In terms of the DDA, the CAP would deliver significant reductions in domestic support and an elimination of export subsidies.

institutional adjustments. Moreover, the EU offered minimal adjustment of its own in these areas.

12. The EU proposal further called for differentiation among developing countries (between “advanced” and “vulnerable” developing countries) and re-introduced the issue of Geographic Indications. Both issues profoundly polarize WTO Members. Finally, contrary to spirit of any negotiation at this stage, the EU indicated this was its final offer for Hong Kong. In retrospect, the EU proposal and subsequent engagement appeared designed to cause impasse due to a limited negotiating mandate in agriculture. These basic parameters will continue to define both the agricultural and the broader negotiating agenda beyond Hong Kong.
13. As modalities could not be agreed, a conscious effort was required to avoid both a complete breakdown (as in Cancun) and further delays in the negotiating process beyond Hong Kong. The key objective was to consolidate the work undertaken since July 2004, ensuring negotiations continue without compromising the developmental ambition.

### **Key Outcomes of the Hong Kong Ministerial**

14. An important, historic, development involved a meeting of all developing country groupings on one platform (G20, G33, ACP, Africa Union, LDCs, the Caribbean Community). This meeting (the G110) signalled the possibility for collaboration to harmonise positions of - and counter efforts to divide - developing countries.
15. Nevertheless, fissures among developing countries remain and will need to be approached carefully. Developing country interests are not identical and it is necessary to anticipate and manage these fissures to ensure they are not used to undermine the broad thrust of the Doha’s developmental objectives.

### ***On Agriculture***

16. Before Hong Kong, the EU came under pressure to offer a credible date for the elimination of agricultural export subsidies. The G20, Cairns, AU, ACP, LDCs and the US all demanded that subsidies be eliminated by 2010. In the final hours of negotiations, the EU reluctantly offered to eliminate its export subsidies by 2013. After a difficult exchange, the G20 agreed to the date provided “the substantial part is realized by the end of the first half of the implementation period”. Nonetheless, the outcome did not move the EU off its CAP timetable. There were no further advances in agriculture and, aside from re-stating decisions already reached in the July Framework, the Hong Kong Declaration recorded progress in technical work, and convergence on using three bands for cuts in domestic support, and four bands for tariff cuts.

### ***On Non-Agricultural Market Access***

17. In the context of the EU (and OECD) demands in NAMA, a developing country alliance emerged in the NAMA negotiations. The group - “the NAMA-11” -

effectively rebalanced the negotiations. While the Hong Kong Declaration adopts a Swiss Formula, the type of Swiss Formula remains open. Moreover, the Declaration reasserts existing flexibilities in the approach that were under threat in the months leading to MC6. The major advance for the NAMA-11 was establishing a link between NAMA and tariffs negotiations in agriculture in a manner that is “balanced and proportionate”.

### *On Services*

18. The major challenge in the services negotiations was the attempt by OECD countries to introduce benchmarks and numerical targets for commitments in the service sector that would raise the ambition of the negotiations and increase pressure on less competitive developing countries. These proposals threatened the accepted “development friendly” negotiating modality for services negotiations. The AU, the ACP and several ASEAN countries opposed these efforts. In the final text, the prescriptive language that threatened to alter the negotiating format and reduce existing flexibilities was removed. The text reasserts flexibility in services negotiations but developing countries remain wary of the plurilateral, sectoral and modal approaches proposed and will have to guard against fast-tracking liberalisation of services sectors which are strategic to national development goals.

### *On The Development Package*

19. DCs have long demanded that developed countries provide legally bound, duty and quota free market access for all their exports. The US has argued it could not offer full product coverage to such countries in textiles and clothing, for example, as these were sensitive sectors and that such access would displace African countries’ exports provided under AGOA. In the end, LDCs rejected the US offer to guarantee access for LDCs for 97% of tariff lines, arguing that the 3% exemption would allow the US to exclude almost all products of export interest to them. The final decision at MC6 foresees ongoing negotiations on these issues.
20. The four West African cotton-producing countries (C-4: Benin, Burkina Faso, Chad and Mali) had insisted on an early harvest in the cotton negotiations in the form of an early removal of domestic support to OECD cotton farmers. The US reiterated that cotton be addressed only as part of the overall agriculture negotiations. While the US offered to eliminate its cotton export subsidies in 2006, Brazil pointed out this was called for anyway by the recent WTO Appellate decision on the case brought by Brazil against the US trade distorting cotton subsidies. The US agreed to provide duty and quota free market access for cotton exports from LDCs on conclusion of the Doha round. Aside from these incremental advances, the US and C-4 agreed to continue negotiations in Geneva after Hong Kong, with the C-4 maintaining their demand for an early harvest not linked to the agriculture negotiations.
21. On preference erosion and the special needs of small, vulnerable economies, the ACP group managed to gain further recognition of these concerns in the NAMA

negotiations and a commitment to address these in the ongoing negotiations. On Aid-for-Trade, the final text called on the WTO Director General, Pascal Lamy, to establish a Task Force to make recommendations to the General Council by July 2006. In sum, incremental gains were made on the development package, but greater political will is required to advance these issues post-Hong Kong.

## **Conclusion**

22. For African countries, what is particularly disappointing is that they came prepared to Hong Kong and played the game to the best of their ability but only managed to walk away with small change in their pockets. Their disappointment relates in particular to four areas: lack of progress on market access for agricultural goods and the associated removal of domestic support and export subsidies by rich developed countries; no serious review of the special and differential provisions to advance their development goals; ambiguity around what exactly the Aid-for-Trade package will contain and the extent to which it assist with addressing the technical and financial imperatives that continue to hamper their trade capacity; and failure to provide adequate compensatory mechanisms for the erosion of preferences.
  
23. The late flurry to prevent failure meant that Ministers were unable to consider the post-Hong Kong work programme. The final text sets out that the round will be concluded by December 2006; that members achieve full modalities in agriculture and NAMA by 30 April 2006; and that a new schedule of commitments will be concluded by 31 July 2006. There was no discussion of how to generate the necessary political will to meet these dates. This remains the key challenge which if not met will undermine the ambition of the Doha agenda. Without serious political intervention, the parameters and limitations noted are likely to continue plague the process. Advancing the Doha negotiations in the post-Hong Kong period will require renewed political commitment by the major developed and developing countries, without which the WTO is set to miss its deadlines and will be unable to conclude the round by the end of 2006, thus further crippling the WTO as the institutional custodian of global trade and undermining the hopes and confidence of developing and poor countries.

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**COMMITTEE ON TRADE POLICY CIRCULAR NO. 09B/06.**

**6<sup>TH</sup> WTO MINISTERIAL CONFERENCE**

**SERVICES REPORT**

**Introduction**

Services negotiations at the Ministerial Conference were conducted in terms of the draft Ministerial texts of 1 and 7 December 2005. These texts were based on the Services Special Session Chair's Report of 28 November 2005. This Report was based on inputs and proposals by Members during the Special Sessions.

**Background**

The Report was prepared by the Chair under his own responsibility and does not prejudice the position of any Member, a fact that was made explicit in the Report itself as well as a cover letter in the 1 December text. This clarification is very important as it highlights the understanding that the Report and its Annexes are not to be interpreted as agreed text. However, in the 1 December text this cover letter had been removed. For developing countries, this omission was of serious concern as it implied that the Services aspects of the draft were now agreed text. There were 3 fairly general paragraphs on Services in the main body of the draft, and the more contentious provisions are contained in Annex C.

Despite repeated requests from most developing countries for an explanation for this fundamental violation of accepted WTO negotiating practice, there was none forthcoming from both the Chair or the WTO Secretariat. Developed countries argued that the text was a fair balance of both developed and developing countries and could therefore be viewed as agreed text. The draft text was, however, clearly biased towards the interests of the developed countries, as it reflected predominantly their proposals. These proposals were essentially driven by their offensive market-access interests in developing countries. Indeed, on 15 December 2005, the Trade Ministers of 4 countries (Indonesia, Philippines, South Africa, Venezuela) sent a letter to the Chair of the Ministerial Conference formally challenging the status of Annex C, and reiterating their understanding that it is neither an agreed text nor a consensus document.

Also, on the same day, the G90 submitted an alternative Annex C that was much more reflective of their concerns and interests. However, the developed countries refused to even consider, let alone deliberate on, this alternative text. Consequently, developing countries were forced to negotiate Annex C.

**1 Substantive Text**

The following were the key areas of disagreement on the text. In the general Services text, which consisted of 3 paragraphs, para 21 was strongly opposed by developing countries.

*Para 21.*

*We are determined to intensify the negotiations in accordance with the above principles [and the Objectives, Approaches and Timelines set out in Annex C to this document] with a view to expanding the sectoral and modal coverage of commitments and improving their quality. In this regard, particular attention will be given to sectors and modes of supply of export interest to developing countries.*

Developing countries were strongly opposed to this paragraph which seeks to intensify the negotiations in accordance with the Objectives, Approaches and Timelines set out in Annex C. These countries could not accept this direct link to Annex C as it would impose an obligation on them to substantially liberalise their Services sectors. The scope and depth of the commitments required by these Objectives, Approaches and Timelines would undermine the GATS flexibilities currently accorded to developing countries in scheduling commitments.

Annex C

Objectives

Para 1

*In order to achieve a progressively higher level of liberalization of trade in services, with appropriate flexibility for individual developing country Members, we agree that Members should strive to ensure that their new and improved commitments adhere to the following objectives:*

Developing countries were of the view that the words “*should strive to ensure*” denoted a binding obligation, and were successful in getting it changed to a best endeavour language.

Para 2

*In order to provide guidance for the request-offer negotiations, the sectoral and modal objectives as identified by Members may be considered<sup>3</sup>.*

Developing countries were opposed to the footnote as it confers a legal status to the Chairman’s Report, and the words “*as well as any future revisions thereof*” are too open ended with regard to its implications for future negotiations. Developing countries were successful in inserting language in the footnote that confirms that the relevant attachment has no legal standing.

Para 4 (b)

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<sup>3</sup> As attached to the Report by the Chairman to the Trade Negotiations Committee on 28 November 2005, contained in document TN/S/23, as well as any future revisions thereof.

*On government procurement, Members should engage in more focused discussions and in this context put greater emphasis on proposals by Members, including on proposals for a possible framework for government procurement.*

The objection here was to a possible framework on government procurement. There is still no consensus amongst the membership as to whether services negotiations on government procurement are mandated by the GATS. Consequently the language here was changed to simply reflect the provisions of Article XIII, and the reference to a possible framework was deleted.

Approaches

Para 7 (b)

*Any Member or group of Members who have made such requests in a specific sector or mode of supply, together with Members to whom such requests have been made, and any other interested Member, shall enter into plurilateral negotiations to consider such requests.*

This text makes plurilateral negotiations compulsory and is a marked deviation from existing GATS practice which allows members to engage in plurilateral negotiations purely at their own discretion. The text was therefore strongly opposed by developing countries who eventually succeeded in changing the language to reflect that members who receive such plurilateral requests shall consider them but not be obliged to enter into negotiations on them.

Para 10

*Targeted technical assistance should be provided through, inter alia, the WTO Secretariat, with a view to enabling developing and least-developed countries to participate effectively in the negotiations. In particular and in accordance with paragraph [...] on Technical Assistance in the Hong Kong Ministerial Declaration, targeted technical assistance should be given to all developing countries allowing them to fully engage in the final phase of the negotiation. In addition, such assistance should be provided on, inter alia, compiling and analyzing statistical data on trade in services, assessing interests in and gains from services trade, building regulatory capacity, particularly on those services sectors where liberalization is being undertaken by developing countries.*

In the second sentence, developing countries were able to eliminate the words “*the final phase*”, thereby increasing the scope of the technical assistance to be provided to them.

### **Assessment of Hong Kong Services Negotiations**

In terms of procedure, the manner in which the Chair’s Report translated directly into the negotiating text, is highly questionable if not unethical. Developing countries will have ensure that this is not repeated at future Ministerials. In order to do this, they will have to be much more proactive in making substantive proposals on the negotiating issues, as well as being more effective in ensuring that their proposals are reflected in the Chair’s Report. In future, if the Report is biased against them, as was the case for Hong Kong, they have to ensure that they act as a collective in exerting the appropriate political pressure in Geneva to correct it well before a Ministerial.

Although the substantive aspects of the negotiations will continue to be our main priority, developing countries will have to focus greater attention to the Geneva political process whereby

the Chairs of the various Councils and Committees are elected. In the Services negotiations in Hong Kong, it was very evident that these individuals are able to exert a great deal of influence on the actual negotiating outcomes. Developing countries must exploit their numerical dominance in the WTO to ensure that candidates for such posts are, at best, supportive of their interests, and at worst, truly impartial in performing their tasks.

In Hong Kong, the effectiveness of the Africa Group was clearly undermined by the role of Egypt as its Coordinator. In Services, Egypt blatantly undermined the positions adopted by the G90 that resulted in serious tensions between the Africa Group and the Caribbean countries. Also, the election of Malawi as Services Facilitator in the G90 was not ideal as they did not have the technical expertise to articulate the case of the developing countries. South Africa and its African partners will need to make a collective effort in seeking to prevent these mistakes from recurring.