Hong Kong Ministerial Conference of the WTO:

A Leap Forward to the DDA

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I. BACKDROP OF THE SIXTH MINISTERIAL CONFERENCE

The Sixth Ministerial Conference of the World Trade Organization in Hong Kong (13–18 December 2005) took place against the backdrop of the failures of some of the previous Ministerial Conferences, especially of the Cancun Ministerial in 2003¹⁾ to conduct a mid-term review of the Doha Development Agenda (DDA).²⁾ After the failure of the Third Ministerial Conference in Seattle in 1999, the Doha Ministerial resolved to carry out trade negotiations coupled with developmental perspective and for that purpose had roughly identified twenty-one agenda items. But the negotiating process in the DDA remained stagnant, resulting in the failure of the Fifth Ministerial Conference of WTO in Cancun. As a fallback measure, the July Package 2004³⁾ was devised to save the DDA.⁴⁾ In general, the July Package extended the deadline for completion of the DDA (originally set as the end of 2005), aimed at the Sixth Ministerial Conference in Hong Kong to do the job that the Cancun Ministerial failed to achieve. However, none of the items were completed by Hong Kong, which could have caused failure of the Ministerial Conference.

Nonetheless, at the Trade Negotiation Committee and other Committees of the WTO, enormous amount of efforts were expended to build consensus among the Members on the DDA.⁵⁾ But because of the diverse views and positioning of the Member countries consensus could not be achieved till the Hong Kong Ministerial.⁶⁾ The stark differences of the Members were specially figured out on the issues of agriculture, non-agriculture market access (NAMA) and services. Nonetheless, there were some progresses.

On agriculture, where negotiation is mandated in the Uruguay Round agreement, Members had shown their willingness to have cut on domestic support, export subsidies and improving market access. But there was a lack of convergence on specific modality for operationalizing the cuts and improved market access. However, a working hypothesis was developed. For example, on domestic support the cuts were divided into three bands based on the threshold of domestic support and higher levels of cuts were proposed for higher thresholds.⁷⁾ For developing countries, there was a view that either developing countries were assigned to the relevant integrated band (the bottom) or a separate band for them. On *de minimis* product specific and non-product specific cuts there were proposals for 50–80 percent cuts. However, developing countries had different proposals.⁸⁾ On “blue box” issue⁹⁾ there was significant convergence, however, the specific techniques had to be determined. There were different proposals. One of them had proposed to shrink the current 5% ceiling to 2.5%. Another proposal rejected this in favour of additional criteria disciplining the so-called “new” blue box only. Other proposals favour

a combination of both, including additional disciplines on the "old" blue box. On AMS there was a working hypothesis of three bands. Also, there was significant convergence on cuts of AMS from 37-83 percent.¹⁰⁾

On agricultural export subsidy a range of issues were involved including end date,¹¹⁾ export credit,¹²⁾ state trading enterprise,¹³⁾ food aid,¹⁴⁾ special and differential treatment¹⁵⁾ and special circumstances.¹⁶⁾ Some progresses were achieved, yet there were a number of issues far from convergence.

On market access of agricultural products a number of issues were involved. For example, tiered formula,¹⁷⁾ sensitive products,¹⁸⁾ special and differential treatment,¹⁹⁾ special products,²⁰⁾ special safeguard mechanism²¹⁾ and other issues²²⁾ were major ones. Convergence was developed on some of them but critical divergences were still there.

Regarding services, another area of mandated negotiation in the DDA, the number and quality of the offers for further liberalization submitted so far was deeply disappointing for many Members. Initially, 69 offers had been tabled (representing 93 Members), a total that had remained unchanged since July 2005. Not including least-developed country Members, 23 initial offers had remained outstanding. Thirty revised offers (representing 54 Members) had been circulated. Services negotiations were relied heavily on a resource-intensive and time-consuming request-offer process. The slow pace at which initial and revised offers were submitted had represented a serious concern to many Members.²³⁾

On NAMA, some progresses had been made since the adoption of the NAMA framework. However, full modalities were not developed given the lack of agreement on a number of elements in the NAMA framework including the formula, paragraph 8 flexibilities and unbound tariffs between the Members.²⁴⁾

Against these backgrounds, the Sixth Ministerial Conference of the WTO was held in Hong Kong and concluded with partial success. The success is partial, because, neither it could complete the DDA nor could it develop any concrete modalities for further negotiations. Nonetheless, it has streamlined the DDA process by reaffirming Members' commitments to complete the negotiations in 2006.

It seems a Herculean task. Members were not able to complete the DDA in four years (as had been envisaged in the Doha declaration). Still, it has now been aimed to complete in one year. However, a high optimism is flitted between the negotiators. Pascal Lamy says that nothing would be gained if nothing was ventured therefore to catch a cub the negotiators need going into the cave of a tiger.²⁵⁾ For the negotiators, 2006 is going to be a decisive year. They must complete DDA employing an incredible skill of trading off and deal making. Otherwise, the negotiations will lose momentum not least because of the expiry of the fast-track ("trade promotion") authority of the US President. In the sections below, we examine the result of the Hong Kong Ministerial in detail, but before going into that, we need to take a look at another issue that aggravated the problems facing the negotiators.

II. FANNING THE FLAMES OF RESISTANCE

Besides the diverse positioning of the Members within the organization, strong oppositions were scaled up externally coupled with wide ranging pressures from the civil society groups demanding "no deal than a bad deal".²⁶⁾

Some NGOs and anti-corporate globalization campaigners had a strong mistrust in the WTO and the Hong Kong Ministerial Conference as well. Since long back the Ministerial Conference was held in Hong Kong, they were planning for massive opposition to the Ministerial Conference. They gathered in Hong Kong before the WTO Ministerial had started.²⁷⁾

On 11 December 2005, amid Hong Kong's biggest-ever security operation, anti-globalisation and other

protesters took to the streets in a rally against the WTO. Thousands of protesters from all over the world joined together to call for the end of the world trading body. “Sink the WTO” and “Keep WTO out of agriculture” read many of the banners.²⁸⁾

Several thousand protesters gathered in Hong Kong Park a few miles from the site of the talks for a rally before setting off on the march. Several thousand police officers were also deployed. Police and the protestors clashed, police used tear gas, fire hoses and pepper spray in an attempt to subdue demonstrators trying to edge past police barricades and get closer to the exhibition centre. Most of those arrested were South Korean farmers, who opposed liberalization of the country’s rice market.²⁹⁾

It is said that Hong Kong was hit by its most violent street clashes in more than thirty years as riot police fought running battles with protesters on the penultimate day of World Trade Organisation talks. While negotiators inside the conference hall struggled to agree to a watered-down compromise on the future of global commerce, demonstrators outside ratcheted up their attempt to derail a deal that they believe sells poor countries short. The result was the fiercest fighting that normally sedated commercial city since the 1960s.³⁰⁾

When the Hong Kong Ministerial was completed on 18 December 2005, they remarked that the deal hampered the development of poor nations, and threatened hundreds of millions of their workers and farmers.³¹⁾ Some of them dealing with development, environment or labour rights were extremely critical. Their judgments of the outcome of the Hong Kong Ministerial ranged from it being “appalling” and a “development disaster” to “betrayal.”³²⁾

The Africa Trade Network said that rather than being a milestone in the “development round”, Hong Kong ended as a platform for anti-development outcomes. The Hong Kong declaration was a loss of developing countries. They had been forced to concede on most of the positions with which they came to Hong Kong. And whatever comfort existed in the other areas was ambiguous at best, illusory at worst.³³⁾ The major objections to the Hong Kong conclusion follow:³⁴⁾

- i. The conclusion on services undermined the rights of developing countries to choose which service sectors to open and to what extent. Further the Annex C opened up for plurilateral and sectoral negotiations by increasing foreign ownership in investment in service sectors. Moreover, it did pressure to open up sensitive service sectors to powerful corporations from the North. Despite massive opposition from a very large number of developing countries, including the G90, for five days, the developed countries eventually had got what they wanted.³⁵⁾
- ii. The Swiss formula on NAMA would force to undertake drastic cuts in the industrial tariffs. This also required sectoral elimination of industrial tariffs. As a result local industries would collapse; industrial destabilization could occur and push to massive job losses.³⁶⁾
- iii. The end date of 2013 for the elimination of export subsidies was merely symbolic as the domestic support measures in the rich countries were untouched. The rich countries had been given themselves an escape route through a formulation that the end date would be confirmed only upon the completion of the modalities.³⁷⁾
- iv. The quota-free and duty-free market access to the goods of LDCs in the market of developed countries was watered down to 97% with best endeavour language of “on a lasting basis”.
- v. Aid for trade was basically an empty proposal at best, because it was used as a tool to force further liberalization.
- vi. On cotton, the main threat to African cotton producers—the domestic support in the industrialized countries, which destroys the market for millions of African farmers—had not been removed.³⁸⁾

In short, in their opinion the Hong Kong Ministerial Conference of the WTO made too many broken promises to the least developed countries (LDCs). Further, the hopes that the Doha had set for a Development Round have glaringly remained proverbial as the rich countries pitched the playing field against the poor.³⁹⁾

A question arises as to whether a failure of the Hong Kong Ministerial would have been actually in the interest of the poor countries, especially to the least-developed countries. Of course, it would not. Rather it was clear that no deal in Hong Kong would simply have meant an irreparable void to the DDA. On the one hand, the void would open door for protectionism and on the other, at least it could cause a serious blow to, if not demise of, the rules-based trading system of the WTO.

In trade negotiations no one should expect full pie in his or her plate because tradeoffs are the desirable courses of any tangible outcomes. Therefore, blaming tradeoffs may hardly bring any positive results. Nonetheless, strong criticism by civil society organizations is useful in the sense that the negotiators (and the Secretariat) will have to respond to such criticism in some way or other in order to maintain the legitimacy of the multilateral trading system. In the process, the discussion will become more sophisticated and nuanced. At least, it will prevent from the negotiators acting in a self-righteous manner toward further liberalization of trade in goods and services. Still, these voices from outside the conference rooms added difficulties to the task of the negotiators who were, as we have seen in Section I, already facing the challenges of getting compromise.

III. CHALLENGES OF GETTING COMPROMISE

Multilateral trade negotiations are different in their nature, character and impact from a bilateral trade negotiation where a powerful country can often impose certain changes in the trade policy of a weaker country. In multilateral, rules-based negotiations, each Member possesses equal voting right and no Member can impose any terms or conditions to other Members, unless there is a consensus for doing so. Compromise is obtained when "national particularism"⁴⁰⁾ is given up for "grand universalism,"⁴¹⁾ which is like building Rome—a task that cannot be accomplished in one day.

Reminding the difficulties of compromise, based on the experiences of past negotiations Pascal Lamy said that, "Let me tell you a little secret I learnt since I took office as Director-General: there is an apocryphal and funny Secretariat guide to the language of trade negotiators in the old GATT. This guide tells you that, in those years, when negotiators said 'Mr Chairman, we seek a balanced agreement', what they really meant was 'this agreement had better contain everything we demand'; when the negotiators said 'we have demonstrated flexibility', they really meant 'we have successfully concealed our intransigence'; and when the negotiators announced 'we are prepared to make our contribution to an ambitious outcome', they really meant 'we will only support agreements where others make all the concessions - and we make none' ! This attitude, as we all know, is part of our past."⁴²⁾

The WTO may have to be guided by this past.⁴³⁾ After all, the ethos of trade diplomats dies hard. But how is it viewed by other international organizations? UN Secretary General Kofi Annan⁴⁴⁾ remarked that trade could galvanize the UN Members' efforts to achieve the Millennium Development Goals, if the rich countries had rejected not just protectionism, but populism, too. They would have to speak honestly to their people about the changing economies of the 21st century, and about global interdependence and the fact that prosperity elsewhere meant prosperity and jobs at home. They had to help the vulnerable people in their societies with training and other support. And they had to recognize that a complex network of bilateral and regional trade agreements could not be a substitute for an effective multilateral framework.

The past negotiations in the GATT remind that the major players often come up with flurry of things and

optimize the hopes of poor and marginalized countries⁴⁶⁾ but in real terms they continue blocking market access, especially through domestic support and subsidy in agriculture, which is another persistent challenge to trade liberalization. Kofi Annan has rightly remarked that, "While the European Union and G8 countries agreed on significant increases in aid and debt relief, they did not set a clear, unambiguous date for ending trade-distorting subsidies and giving market access, especially in agriculture. Such subsidies significantly reduce the prices that farmers in developing countries receive for their crops, in a sector that is crucial for their sustenance and livelihoods."⁴⁶⁾

For instance, France had opposed to the reform to the European Common Agricultural Policy (CAP) that was at the bottom of the difficulties on agricultural negotiations in Hong Kong. Despite several reforms of CAP, French farmers continued receiving about a fifth of more than US\$52 billion in subsidies the European Union pays out every year. These subsidies add up to about 40 percent of the EU budget.⁴⁷⁾

Nevertheless, a positive sense was gradually growing at the dawn of Hong Kong Ministerial. For example, Tony Blair had remarked that DDA were the opportunities that could help "...to create the conditions in which millions of people will have a chance to escape poverty."⁴⁸⁾

In this context, the Hong Kong Ministerial was a real opportunity to outface charges and prove WTO as an institution committed for the development. However, it was not posited in an armchair. Issues like cutting subsidies by the developed countries had significantly improved as the United States⁴⁹⁾ had agreed to cut of 55-90% and also the EU⁵⁰⁾ had proposed for cutting trade distorting agriculture subsidies by 70%. Moreover, within the EU, France⁵¹⁾ was not ready to this cut, whereas the US, India, Brazil and other countries were asking the EU to reciprocate the US proposal. On the other hand, EU's proposal was a conditional package subject to improvement in the front of non-agricultural market access (NAMA).

The EU's message was that emphasizing in one pillar alone could not help the Hong Kong to achieve a success. The European trade commissioner had clearly said, "We will not succeed in Hong Kong or after, if we continue to focus on only one part of the Round."⁵²⁾ The German representative said, "We holdfast to the DDA ... We know that agriculture is the key to success ... However, the DDA cannot be reduced only to agriculture."⁵³⁾ On the other hand, India had said, "In the name of completion, if the content of this Round only perpetuates the inequities of global trade, then it will be no Round..."⁵⁴⁾ Chairperson of the Ministerial Conference had said in the heads of delegations meeting that "...there were signs of progress here and there, particularly on issues concerning LDCs. But Members remain far from agreeing on outcomes in a number of difficult issues."⁵⁵⁾

In short, bringing Members into convergence and compromise was a full-size task for the Hong Kong Ministerial. Over 450 meetings, six major gatherings and 200 consultations were carried out to agree the final text of the Ministerial Declaration.⁵⁶⁾ These evidence the most important feature of the Hong Kong Ministerial—bottom up approach in negotiating the agenda.

Thus, it is important to note that despite these enormous challenges, the negotiators were already showing the signs of flexibility in the lead-up to the Hong Kong Conference. Some cynical observer may say that this was merely part of an exercise to lower the expectations about what might be achieved at Hong Kong.⁵⁷⁾ Compromise seemed easy because the negotiators of major participants lowered their levels of ambition.

Another important aspect of the pre-Hong Kong preparatory work was the focus on the poorest countries. Again, according to a cynic, "the focus on the poorest members is a prerequisite for moving forward in other areas. The WTO works by consensus, so the poorest countries in effect have a veto, even though their share of world trade is tiny. A cynical view might be that the promises made in Hong Kong are an effort to buy them off now so that they will not block a bigger deal later".

However, it must be noted that some genuine efforts were made to respond positively to the concerns expressed by the world's poorest countries (and NGOs who speak for them) about the effect of further trade liberalization. For instance, in the controversial area of TRIPS and public health, Members went further than the General Council decision reached prior to the Cancun Ministerial. On 6 December 2005, the General Council adopted a decision to amend the TRIPS Agreement by adding Article 31 *bis* to clarify the conditions of compulsory licensing for pharmaceutical products in the event of epidemics.⁵⁸⁾ This was a historic achievement in the sense that the WTO acted to amend the provisions of the WTO Agreement formally for the first time.

Some Members announced increased assistance to developing countries for their efforts to gain positively from the multilateral trading system. In an announcement made early December, Prime Minister Koizumi of Japan stated as follows: "Japan has decided to announce a comprehensive "development initiative" on the occasion of the Hong Kong Ministerial Conference with a view to promoting the empowerment of developing countries through the Doha Round and help them reap the benefits of the multilateral trading system. In this initiative, Japan expresses its commitment to provide duty-free and quota-free market access for essentially all products originating from all LDCs. This initiative also includes a package of extensive development assistance, which is composed of four methods of support, 'Knowledge and Technology', 'Financial Assistance', 'People' and 'System' to be employed at three different phases of trading by developing countries; 'Produce' 'Sell' and 'Buy'. As part of the Japanese ODA Initiative announced at the G8 Gleneagles Summit, ten billion US dollars in financial assistance in trade, production, and distribution infrastructure will be provided over the next three years. There will be an exchange of a total of ten thousand trainees and experts in these fields during the same period".⁵⁹⁾

Again, the cynic might say this is merely a goodwill gesture devoid of substance, but there is no denying that these preparatory works paved the way for the positive outcome of the negotiations in Hong Kong.

IV. THE WAY THE ISSUES WERE NEGOTIATED

At the Ministerial Conference, almost twenty seven issues were discussed and negotiated.⁶⁰⁾ However, they were broadly discussed and negotiated more or less in five major headings: agriculture, non-agriculture market access, services, development issues and cotton.

A. AGRICULTURE

The first consultation and negotiation on agriculture issues had begun on the second day of the Conference (14 December 2005). Kenyan Trade and Industry Minister Mukhisa Kituyi, who facilitated the agriculture discussions, had reported that no great advance was made so far.⁶¹⁾

Three major issues were involved in the agriculture regime. First, flexibilities in market access particularly for developing countries; second, setting deadline for ending export subsidies; and third, disciplining domestic support. All the Members did not speak, so the facilitator had requested other Members to speak next day and had ended the consultation stating that the Members did not want "attempted compromise imposed on them", therefore the compromises had to come from the Members.⁶²⁾

At the second consultation session (15 December 2005), facilitator Mr. Kituyi had provided a text prepared by him with a view to converge and develop an agreeable outcome and had also urged the delegations in submitting inputs.⁶³⁾

At the third consultation (16 December 2005), the chairperson of the Ministerial Conference, minister Tsang remarked that, "There have been no breakthroughs. But on the other hand, there have been no breakdowns

either”.⁶⁴⁾ The differences had remained on the difficult issue of tariff preference erosion. Considerable efforts were expended on the question of an end date for all forms of export subsidies, but it could not be settled unless in parallel progress would have been made on the issue of treating all forms of export competition.

On 17 December, the revised text of the Ministerial Declaration was circulated that had made a number of changes while maintaining the basic objectives. The text proposed to develop detailed modalities for agricultural negotiation in the coming months. This was a better way engaging Members for building convergence on the agriculture issue. If something had been imposed that would have certainly lead the Hong Kong Ministerial Conference to another debacle.

The Ministerial Declaration has reaffirmed commitments on all the three key areas of agriculture—domestic support, export subsidies and market access. On the issue of reduction of trade-distorting domestic support, it has adopted three bands approach classifying Members in three bands—highest, middle and the bottom, in accordance with Members’ level of domestic support. Developing countries are placed in the lowest band. Disciplines regarding reduction of trade-distorting domestic support are going to be developed by April 2006 to achieve effective cuts.⁶⁵⁾

The Ministers have agreed to eliminate all forms of export subsidies by the end of 2013. Substantial part of this elimination is to be realized by the end of 2009.⁶⁶⁾ In addition to the already existing three boxes—blue, green and amber boxes; one more box, named as “safe box” will be introduced to deal with emergency food situations.⁶⁷⁾

On market access, the Ministers have agreed on structuring the tariff cuts adopting four bands, for which the thresholds need to be agreed.⁶⁸⁾ The Doha Ministerial Declaration does not refer to the concept of “sensitive products”, the July 2004 Package⁶⁹⁾ introduced the concept of “sensitive products” that has now been part of market access negotiation on agricultural issues.⁷⁰⁾

However, on all these three issues, much remains to be done. The modalities, which are at the centre for moving ahead, must be established by 30 April 2006. Based on these modalities, Members are required to submit comprehensive draft Schedules no later than 31 July 2006.

The nature and importance of agriculture issue in the WTO is unique. During the GATT period the developed countries had declined to enforce strict trade disciplines in the agricultural sector and therefore agriculture was exempted from rigorous application of GATT rules especially since 1955, at the insistence of the United States. As a result, agriculture became different in two major respects from those on trade in manufactures: neither quantitative restrictions nor export subsidies were prohibited.⁷¹⁾

The Uruguay Round in this context was the first serious action to reduce, if not eliminate, protectionism in agriculture and brought this sector under the rules and disciplines of the WTO. Despite the marginal share in GDP⁷²⁾ the developed countries remained reluctant to open the agriculture sector. As a result, the commitments on market access and reduction of domestic support and export subsidies were hardly fulfilled by the developed countries. The frustrations over this lack of progress in agriculture were one of the major causes of the failure of Seattle and Cancun Ministerial Conferences of the WTO. Against these backgrounds, the Hong Kong Ministerial Conference has categorically agreed to eliminate export subsidies and to cut domestic support and open market access at significant level. Eventually, these are far-reaching achievements. No doubt, the Hong Kong Ministerial was a serious attempt to discipline the agriculture sector in a manner that is closer to trade in manufactures. Whether the ministers were successful in achieving this is yet to be seen because, as noted above, all the substantive decisions are to be made in the Geneva process with the deadline of April 2006.

B. NAMA

Commerce Minister Mr. Humayun Khan of Pakistan was facilitator of the non-agriculture market access (NAMA) issues. The first consultation and negotiation meeting was held on the first day of the Conference, immediately after the opening session. The first meeting was short because at the meeting no member spoke, except the facilitator. Members knew that they were not expected to express their positions at this juncture, but the unknown was the point of compromise, which was supposed to come from the delegations. It was also clear from the statement of the facilitator, when he said, "It may not be the one you would have sought or desired but that is what compromises are made of. This is where the challenge lies and of course this challenge is yours to meet."⁷³⁾

On the second day (14 December 2005) after informal consultations, the facilitator said that the Members' main differences were about how ambitious the market opening had to be and how that had to be related to flexibility. According to him the delegates had indicated a willingness to find middle ground but continued to adhere to the maximalist position,⁷⁴⁾ which was a threat for convergence.

On the third day of consultation (15 December 2005), facilitator Mr. Khan gave a very disappointing picture. He said, "...delegations have remained increasingly entrenched in the positions they had adopted in Geneva. They are not flexible enough to turn this Ministerial Conference into a success story".⁷⁵⁾ In short, he did not see much progress on the amendments to the ministerial draft. The major differences were on the question of unbound tariffs, the erosion of tariff preferences and a sectoral component to NAMA—such as having totally free trade for some sectors.

On 16 December 2005, facilitator Mr. Khan said that he had nothing new to report. He requested and cautioned Members to continue negotiating and narrowing the differences to start moving.⁷⁶⁾

The revised version of the Draft Ministerial Declaration of 17 December had tried to accommodate the interests and positioning of the different groups and clearly mentioned about non-reciprocal preferences to the developing countries on tariffs reduction.⁷⁷⁾

The Ministerial Declaration reaffirmed a number of issues, such as the Swiss formula, "less than full reciprocity" concept, non-linear mark-up approach, conversion of *non ad valorem* duties into *ad valorem*, and balance between agriculture and NAMA.⁷⁸⁾

The Swiss formula⁷⁹⁾ has been adopted for the reduction or as appropriate elimination of tariffs including tariff peaks, high tariffs and tariff escalation, in particular on products of export interest to developing countries. Adoption of the Swiss formula (i.e. higher tariffs are submitted to deeper cuts) is one of the tangible achievements, because until the end of July 2005 there was an impasse on the issue of adopting formula in the Trade Negotiating Committee.⁸⁰⁾

Further it has been agreed to take into account the special needs and interests of developing countries, including through less than full reciprocity in reduction commitments. The concept of "less than full reciprocity" is not clear yet. It qualifies the concept of "reciprocity" but what exactly it means needs to be clarified. The concept "less than full reciprocity" was introduced in Doha Declaration⁸¹⁾ followed by the July 2004 Package,⁸²⁾ has now been further emphasized by the Hong Kong Ministerial Declaration.⁸³⁾

One of the major problems of NAMA negotiation is that almost all the Members have a wider binding overhang. Generally, the bound tariffs are higher than the applied one. If applied tariffs, especially relating to tariff peaks are not significantly reduced, only by reducing the bound tariffs market access will not be improved at all. Therefore unless tariff peaks and escalations are significantly reduced both in developed and developing countries the LDCs will hardly get any opportunity of market access.⁸⁴⁾

With respect to developed country markets the key issue is how to tackle the residual protection arising from low overall levels of protection, especially relating to a number of products at the 4-digit level of the HS system where issues of peaks and escalation need to be addressed. For developing countries there are two issues – their high levels of tariffs and the limited coverage of bindings for some Members. These, however, do not preclude problems of peaks and escalation such as those in developed country. For LDCs the issues are the degree of effective non-reciprocal market access granted by developed countries, and the very high levels of protection they face in developing country markets.⁸⁵⁾ These issues need to be taken into consideration while negotiating NAMA issues.

Many LDCs are having their major portions of trade with neighbouring developing countries. For example, Nepal has about sixty percent of its foreign trade with India alone. Duty free and quota free market access in developed countries is very important but in the case of Nepal, it is more important to have market in developing countries in better terms of trade. For instance, the applied tariffs in the developing countries are high and heavily affecting market access to the LDCs goods. Therefore, for LDCs, it is important lowering down the bound tariff rates but more urgent is for non-reciprocal reduction of the applied tariffs and end of tariffs escalation in the developing countries. The Hong Kong Ministerial could have prioritized these issues. Now the remaining work rests on the negotiators who will have to be engaged in intensive negotiations on modalities and Schedules.

C. SERVICES

Consultation on services started on the third day of the Ministerial Conference (15 December 2005), where the starting point of the consultation was the part on services in the draft ministerial text. Many Members had considered that that had offered a sound basis for the way forward, others wanted the text strengthened, a third group had felt that the text was too prescriptive and not in line with the General Agreement on Trade in Services (GATS) and the Doha negotiation mandate.⁸⁶⁾

On the consultation of 16 December 2005, different views had expressed on the draft text. Some favoured to keep the original draft, others viewed that it needed modifications both in its objectives and sections dealing with its operation. A third group felt that the text was too prescriptive. It reminded that the first and second consultations on services were fraught with same issues. The G-90 Group had transmitted to the Conference Chairperson its written input emphasizing on the need to delete the possibility of negotiation on plurilateral agreements.⁸⁷⁾

The revised Ministerial text of 17 December reflected the concerns that some Members had expressed about December 7, 2005 Draft. The changes had reaffirmed that the Annex C was not a sort of prescriptive for action in the negotiations.⁸⁸⁾ Kamal Nath, the Commerce Minister of India, which was a demander of the services text, persuaded other Ministers that Annex C on services was harmless and participation in plurilateral talks was voluntary.⁸⁹⁾

Under paragraph 7(b) of annex C of the Hong Kong Ministerial Declaration, when a Member of the WTO requests to another Member for negotiation either on bilateral or plurilatera basis the requested Member is required to honour the request and enter into negotiation.⁹⁰⁾

Ministers have agreed in Hong Kong to achieve a progressively higher level of liberalization of trade in services, with appropriate flexibility for individual developing country Members. Annex C of the Ministerial Declaration has set objectives on how to negotiate on liberalizing the different modes of services supply.

On Mode I—*cross border supply*: Ministers have agreed to negotiate on commitments at existing levels of market access on a non-discriminatory basis across sectors of interest to Members and removal of existing

requirements of commercial presence.

On Mode II—*consumption abroad*: Ministers have agreed to negotiate on commitments at existing levels of market access on a non-discriminatory basis across sectors of interest to Members and commitments on mode 2 where commitments on mode 1 exist.

On Mode III—*commercial presence*: Ministers have agreed to negotiate on commitments on enhanced levels of foreign equity participation; removal of substantial reduction of economic needs tests, and commitments allowing greater flexibility on the types of legal entity permitted.

On Mode IV—*presence of natural person*: Ministers have agreed to negotiate on new or improved commitments on the categories of contractual services suppliers, independent professionals and others, delinked from commercial presence; removal or substantial reduction of economic needs tests; indication of prescribed duration of stay and possibility of renewal; new or improved commitments on the categories of intra-corporate transferees and business visitors; and indication of prescribed duration of stay and possibility of renewal.

At Cancun, GATS was not an area of disagreement. Ministers had recognized the progress made in the negotiations and urged participants to intensify efforts to reach a successful conclusion. In the Hong Kong Ministerial, services became one of the hottest issues. By the Hong Kong Ministerial sixty WTO Members including many developing countries had made offers that were reportedly disappointing because they were sceptic in opening services in their domestic markets but enthusiast in opening services only in the markets of other Members.

Against this background, for the successful completion of the DDA on services, it seems urgent to build a confidence of the Members. They should realize that opening services would be in their advantage because it could be catalytic in promoting trade in goods as well. There are studies that show increase in real income from a cut in services protection by half would be five times larger than that generated from comparable goods trade liberalization.⁹¹⁾

D. DEVELOPMENT ISSUES

First consultation on development issues started on the second day (14 December 2005). The facilitator, Foreign Trade and International Cooperation Minister, Clement Rohee of Guyana said that all the development issues were important but he started consultation on quota free and duty free market access to the LDCs and most of these issues were related to agriculture and NAMA to which he had no mandate to negotiate.⁹²⁾

On second consultation (15 December 2005) on LDCs' issue some countries expressed the view that they could not accept duty-free, quota free market access for all products of the LDCs. Whereas, Members generally felt that a "binding" commitment in classical sense was not practical. Instead, they were considering other options, including using the phrase "on a lasting basis", which had gained broad convergence.⁹³⁾

On the other hand, Bangladesh in the plenary session had claimed that, "We strongly urge that the negotiated texts, particularly those relating to LDCs, not be opened up at Hong Kong."⁹⁴⁾

On the third consultation (16 December 2005) some progress were achieved on the duty-free and quota free market access to the LDCs product in the developed countries market as there was a general agreement to cover all the products of the LDCs. Minister Rohee had drafted a compromise text and circulated.⁹⁵⁾ The revised text of 17 December had significantly reflected further progress on proposals for LDCs, to do with special treatment.⁹⁶⁾

The Ministerial Declaration made compromise between different approaches however overall it hailed the concerns of LDCs, providing them duty-free and quota-free market access. Some qualifications are still there, such as "lasting basis,"⁹⁷⁾ which indicates that the concession is not for ever but for a limited period. It is still not

known that how to judge and who has to decide the “lasting basis”. Further, there are two recipes. First, duty-free and quota-free market access should provide by 2008 for all products originating from all LDCs; second, Members facing difficulties at this time to provide such market access are permitted to provide market access for 97 per cent of products originating from LDCs.⁹⁸⁾ Who decides “facing difficulty” and what are the indicators of “facing difficulty” are still not clear. Moreover, the rationale of excluding three percent goods from duty-free and quota-free market access is unclear.

E. COTTON

The issue of cotton surfaced in the lead-up to the Cancun Ministerial in 2003 at the strong insistence from the West African cotton producing countries, assisted by effective advocacy efforts by Oxfam and other groups. The July 2004 package had mandated the Ministers to address cotton ambitiously, expeditiously and specifically.⁹⁹⁾ In Hong Kong, the first consultation on cotton issue started on the second day (14 December 2005). When the EU and the United States had shown positive responses that tailored a satisfactory hope. EU said that it had opened its markets and reduced subsidies.¹⁰⁰⁾ The United States acknowledged that it was the major subsidizer therefore it had a responsibility to deal with the problem, which it would not shirk.¹⁰¹⁾

On the consultation of 16 December 2005 progress were achieved on the issue of cotton, as the level of understanding and dialogue had increased in a way that was supposed to bring a solution closer to hand.

The Ministerial Declaration reaffirmed the commitment to eliminate all forms of export subsidies for cotton in 2006 and directed the developed countries to provide duty and quota free market access for cotton exports from LDCs from the commencement of implementation period, for which decision will be taken by the Sub-Committee on Cotton.¹⁰²⁾

V. CONCLUSION

The Hong Kong Ministerial Declaration is the embodiment of the Members’ commitment to conclude the negotiations on DDA by the end of 2006,¹⁰³⁾ which is one of the most significant achievements of the Ministerial Conference, as it has brought the almost-derailed DDA back on track.

Nonetheless, we need to recall the Herculean nature of consensus building task. Before agreeing on the final Declaration on 18 December 2005 almost five Drafts were circulated. The first draft was prepared and circulated on 26 November 2005,¹⁰⁴⁾ the second on 1 December 2005,¹⁰⁵⁾ the third on 7 December 2005¹⁰⁶⁾ and the fourth on 17 December 200¹⁰⁷⁾ supplemented to a corrigendum.¹⁰⁸⁾

After the conclusion of the Hong Kong Ministerial, EU trade commissioner Peter Mandelson said that the Hong Kong Ministerial was enough to save the talks from failure but it was not a true success.¹⁰⁹⁾ Alan Johnson, the trade and industry secretary of United Kingdom describing Hong Kong Ministerial said that “low expectation barely exceeded” and told campaigners for the world’s poor to “keep up the pressure”. Only half-joking, he added “and maybe take-up French nationality”.¹¹⁰⁾ This statement reminds France’s position on agriculture issue and its impact on agricultural negotiation.

India’s Commerce and Industry Minister Kamal Nath said that “India welcomes this final revised draft. From going round and round about we now seem to be setting course to a development agenda.”¹¹¹⁾ On the other hand the Communist Party of India said that government had given up India’s sovereignty at the WTO.¹¹²⁾

These remarks evidence that how difficult it was in achieving the reaffirmation to the DDA. In fact, unless untiring efforts were expended by the Chairperson of the Conference and the WTO Director General, it would have been very difficult for any tangible outcome in Hong Kong. In the early afternoon of 17 December the

Chairperson of the Conference, Mr. Tasang and Mr. Lamy, Director General of the WTO had jointly circulated the revised text of the Ministerial Declaration to the Members. Over sixty Members, directly or indirectly representing all the Members had welcomed the new draft text highlighting that it had maintained bottom-up approach. However, some Members had also expressed disappointment with the various sections of the draft but in overall they had also accepted it. Cuba and Venezuela had put forward their reservation¹¹³⁾ on the Ministerial Declaration that was acknowledged, which is first time in the WTO history.

Overall, the Hong Kong Ministerial evidences a leap forward to the DDA. However, this leap forward is associated with process rather than the contents or substances. There are enormous challenges ahead in achieving the contents. It is a known fact that in the past many deadlines were passed mostly because of the Members unwillingness for coming out of limited national positioning and interests embedded in national particularism, which is still in a high swing. Proposals already submitted by the Members evidence extremely diverse positions of the Members on contents that can impact the structure of future proposals, unless Members become ready to acknowledge the merits of multilateralism instead of national or regional particularism. Against these backgrounds, the task for developing modalities on agriculture and NAMA by April 2006 seems a very ambitious one. Review of the outstanding proposals on special and differential treatment should be completed by December 2006 when the deadline for the completion of the DDA comes to an end, which appears somehow incongruent. These points flag a serious caution on the accomplishment of the DDA by 2006.

Oxfam says that the WTO Hong Kong ministerial was a lost opportunity to make trade fairer for poor people around the world. Rich countries put their commercial interests before those of developing countries. Most of the difficult decisions were put off to a further meeting in early 2006, but it was far from clear why rich countries that were unable to show the necessary leadership in Hong Kong would behave any differently in a few months' time.¹¹⁴⁾

Oxfam's concern is a serious one. However, there are also other perspectives that look Hong Kong as an opportunity for giving the DDA a tangible shape by the end of 2006. But this can be easily belied when the DDA is not completed in 2006.

Further, the Hong Kong Ministerial Conference has derived some tangible achievements, particularly through the developed countries efforts to address the concerns of developing countries, particularly the LDCs. Here, we do not need to recall the cynical comments of *the Economist* again.¹¹⁵⁾ Whatever the ulterior motive, it is a fact that major developed country Members pledged increased trade-related assistance to developing country Members. EU has promised to give more trade-related assistance than the rest of the world combined.¹¹⁶⁾ Japan has made three important commitments¹¹⁷⁾ —to contribute US \$ 10.0 billion for infrastructure building, especially in the LDCs; to conduct exchange of experts and trainees, amounting to 10,000 people; and to introduce duty-free and quota-free market access for essentially all products from LDCs. The United States has also announced to double its contribution for aid for trade from 1.3 billion in 2005 to 2.7 billion annually by 2010.¹¹⁸⁾

The amendments on the TRIPS Agreement¹¹⁹⁾ and the deal on duty-free quota-free market access for LDCs goods in the market of developed countries are indeed laudable achievements of the Hong Kong Ministerial Conference. These achievements can be specifically credited to the rules-based trading system under the WTO.

In essence, these achievements are not final but only step forward for realizing DDA, which depend on the readiness and scale of the efforts that the Members expend in this discourse. In this backdrop, all the Members of the WTO, irrespective of the developed, developing and least-developed bear a shared responsibility to bring the leap forward into a real success. Equally, a sense of responsibility needs to be internalized and scaled up by all other stakeholders including the civil society organizations to support the efforts of the WTO Members for

bringing the DDA into a success story, where the future of all, especially the LDCs withstands. Moreover, only the successful completion of the DDA will prove the WTO as an institution for fair and equitable trade amongst all the Members.

In October 2005, six ministers of the Japanese government jointly announced as follows: "The success of the DDA negotiations is one of Japan's important priorities in terms of supporting and expanding this country's economic profits as well as for maintaining and strengthening the credibility of the multilateral trading system. It is inseparably linked with strengthening competitiveness through domestic structural reform. It is also important that more developing countries enjoy the benefits of trade".¹²⁰⁾ So, the Japanese government (along with other governments who stated similar positions in their speeches at the Hong Kong Ministerial) understands what is at stake. Indeed, they have delivered some tangible results at Hong Kong and in the lead-up to it. However, much more work needs to be done.

When talks recommence in early 2006, negotiators cannot simply turn up and carry on where they left off in Hong Kong. They need to examine their consciences. They cannot simply be content that they have bought off the LDCs. In order for the world's poor to gain benefit from the multilateral trading system, the developed countries' markets as well as the markets of the emerging developing economies must be opened significantly. In other words, market access negotiations on agriculture, NAMA and services must be conducted at an expedited pace and they must deliver tangible results. Only by achieving this, the DDA can truly be turned into a development round for the world's poor. The matter is urgent and there is no room for complacency.

Notes

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- 1) The Fifth Session of the Ministerial Conference was held from 10-14 September 2003 in Cancun, Mexico, therefore it is known as the Cancun Ministerial.
- 2) WTO, Ministerial Conference Fourth Session 9-14 November 2001—Ministerial Declaration adopted on 14 November 2001, WT/MIN(01)/DEC/1, (20 November 2001).
- 3) WTO, Doha Work Programme, Decision Adopted by the General Council on 1 August 2004, WT/L/579 (2 August 2004).
- 4) See Alexandra Strickner & Carin Smaller, *Doha is Not Dead Just Yet, But What Exactly Has Been Saved?* (October 2004), available at < <http://www.globalpolicy.org/soecon/bwi-wto/wto/2004/1026julypackage.htm> >. The authors say that "...In July, WTO members achieved their main goal: saving the Doha Development Round and the multilateral trading system. The run up to the July Package presented a picture of a bruised and damaged multilateral trading system with all hopes pinned to a successful outcome from the July General Council. The heavy hitters came in for the meeting, including EU Trade Commissioner Pascal Lamy and US Trade Representative, Robert Zoellick. In fact, the July Package was really more about achieving some kind of agreement-on anything-than a concrete step forward on the Doha commitments. Not a single one of the timelines for decisions laid out in Doha had been met, and desperation permeated the negotiating atmosphere."
- 5) See WTO, Trade Negotiation Committee Report by the Chairman of the Trade Negotiations Committee to the General Council, TN/C/5 (28 July 2005). Supachai, as a Chairman of the TNC reported that "Indeed, a vast amount of work has taken place over the last six months. The negotiating groups have met formally with increasing frequency as we

have neared this mid-year marker. The TNC has maintained its oversight role, meeting formally on four occasions... In the early part of this year, we set ourselves targets looking forward to Hong Kong and beyond. As I had announced at the TNC meeting in December 2004, I undertook a process of collective reflection in January and February of this year, which involved consultations covering the broad spectrum of the membership. From this process and from a gathering of some Ministers in Davos, it quickly became apparent that there was a strong desire to keep ambitions for Hong Kong high, so that the results from that Conference would take us into the end-game of the Round. I sensed the commitment on all sides, and I still sense it, to work towards an ambitious outcome so that the Round could conclude in 2006."

- 6) See WTO, Doha Work Programme: Preparations for the Sixth Session of the Ministerial Conference—Draft Ministerial Text, (26 November 2005). The WTO Director-General Pascal Lamy said before the General Council that "... consultations have in many cases produced inputs for the present draft which are either fully agreed by Members or reflect a high level of convergence. In other areas, the text reflects a lower level of convergence. In some areas where important substantive differences persist, this draft attaches a report by the relevant Chair, on his own responsibility, setting out the present situation as he sees it."; see also WTO, Trade Negotiations Committee We Need to Act Now, (19 October 2005). Lamy as Chairperson of the TNC reported to General Council that "It is clearly essential that we keep up the pressure in Agriculture, and this week's meetings are important in that respect. But we also need solid progress in the other key areas of the negotiations and I clearly identified urgent progress needed on NAMA and services as well as on rules. As far as development is concerned I explained that the greatest gains will stem from each negotiating area and reported on the development paper prepared by the Secretariat and intended to outline how development is mainstreamed along the entire Doha Agenda."; see also WTO, Farm Talks: Chairperson Reports to Trade Negotiation Committee, (28 July 2005), available at <http://www.wto.org/english/news_e/news05_e/agric_28july05_e.htm>. Tim Groser, Chairperson of the Farm Talks had reported that "The agriculture negotiations are stalled, but they have also clarified some of the key political trade offs that members will have sort out in the coming months..."
- 7) See WTO, Committee on Agriculture Special Session Negotiations on Agriculture Report by the Chairperson H. E. Crawford Falconer to the TNC, TN/AG/21 (25 November 2005). There were three Bands: 0-10, 10-60 and > 60 billion US dollars. The proposed cuts were: 31-70%, 53-75% and 70-80% respectively.
- 8) *Ibid.*, the Chairperson had reported that "As regards developing countries, there are still divergences to be bridged. In addition to the exemption specifically provided for in the Framework, there is a view that, for all developing countries, there should be no cut in *de minimis* at all. Alternatively, at least for those with no AMS, there should be no cut and, in any case, any cut for those with an AMS should be less than two-thirds of the cut for developed countries."
- 9) The blue box is a controversial category of domestic support, which is not subject to the normal reduction commitment. This category was devised as the result of the "Blair House" Agreement between the United States and the European Union in 1993. See Article 6.5 of the Agreement on Agriculture.
- 10) WTO, at note 7 above. There was no full convergence on the thresholds for those bands. There appeared to be convergence that the top tier should be US\$25 billion and above. There were some remaining divergences over the ceiling for the bottom band: between US\$12 billion and 15 billion.
- 11) *Ibid.*, some had proposed 2010 as year to end export subsidies, with accelerated elimination for "specific" products. Another group of Members had proposed a period "no longer than five years" for all forms of export subsidies, with "direct" export subsidies subject to front-loading within that period.
- 12) *Ibid.*, convergence had been achieved on a number of elements of disciplines with respect to export credits, export credit guarantee or insurance programmes with repayment periods of 180 days and below. However, a number of critical issues had remained yet to be solved.
- 13) *Ibid.*, there was material convergence on rules to address trade-distorting practices, although there were major differences regarding the scope of practices to be covered by the new disciplines. Fundamentally opposing positions remained, however, on the issue of the future use of monopoly powers.
- 14) *Ibid.*, there was consensus among Members that the WTO should not stand in the way of the provision of genuine food aid. There was also consensus that what was to be eliminated was commercial displacement. There were proposals that in the disciplines a distinction should be made between at least two types of food aid: emergency food aid and food aid to address other situations. However, there was not yet a common understanding where emergency

food aid would end and other food aid begin.

- 15) *Ibid.*, framework provisions for special and differential treatment, including with respect to the monopoly status of state trading enterprises in developing countries and an extended lifetime for Article 9.4, had been uncontroversial.
- 16) *Ibid.*, work on the criteria and consultation procedures to govern any ad hoc temporary financing arrangements relating to exports to developing countries in exceptional circumstances was not much developed.
- 17) *Ibid.*, progressed on ad valorem equivalents had created a basis for allocating items into bands for the tiered formula with working hypothesis of four bands for structuring tariff cuts. There had been considerable convergence on adopting a linear-based approach for cuts within those bands. Members had, of course, by no means formally abandoned positions that were even more divergent. However, Members had made strong efforts to promote convergence on the size of actual cuts to be undertaken within those bands. But, even though genuine efforts had been made to move from formal positions (which of course remained), major gaps were yet to be bridged. Somewhat greater convergence had been achieved as regards the thresholds for the bands. Some Members including Japan continued to reject completely the concept of a tariff cap. Others had proposed a cap between 75-100%.
- 18) *Ibid.*, there was no convergence on the coverage of sensitive products. Members' proposals extend from as little as 1% to as much as 15% of tariff lines.
- 19) *Ibid.*, as for developed countries, there was a working hypothesis of four bands for developing countries. There was no disagreement on lesser cuts within the bands. A certain body of opinion was open to considering cuts of two-thirds of the amount of the cuts for developed countries as a plausible zone in which to search more intensively for convergence. But significant disagreement on that remained, and divergence was, if anything, somewhat more marked on the connected issue of higher thresholds for developing countries. Some Members continued to reject completely the concept of a tariff cap for developing countries. Others have proposed a cap at 150%.
- 20) *Ibid.*, regarding designation of special products, there had been a clear divergence between those Members which considered that, prior to establishment of schedules, a list of non-exhaustive and illustrative criteria-based indicators had to be established and those Members which were looking for a list which could act as a filter or screen for the selection of such products. Latterly, it had been proposed (but was not discussed with Members as a whole) that a developing country Member could have the right to designate at least 20 per cent of its agricultural tariff lines as Special Products.
- 21) *Ibid.*, there was an agreement that there could be a special safeguard mechanism and that it had to be tailored to the particular circumstances and needs of developing countries. There was no material disagreement with the view that it had a quantity trigger. Nor was there disagreement with the view that it could at least be capable of addressing effectively what might be described as import "surges". Divergence remained over whether, or if so how, situations that were lesser than "surge" were to be dealt with. There was, however, agreement that any remedy had to be of a temporary nature. There remained strong divergence however on whether, or if so how, a special safeguard could be "price-based" to deal specifically with price effects.
- 22) *Ibid.*, there had been no material convergence on the matters covered by paragraphs 35 and 37 of the July 2004 Package. The same could be said for paragraph 36 on tariff escalation, albeit that there was full agreement on the need for this to be done, and a genuine recognition of the particular importance of this for commodities exporters.
- 23) See WTO, Special Session of the Council for Trade in Services Report by the Chairman to the Trade Negotiations Committee, TN/S/23 (28 November 2005).
- 24) See WTO, Negotiating Group on Market Access Progress Report by the Chairman Ambassador S. H. Johannesson to the Trade Negotiations Committee, TN/MA/16 (24 November 2005).
- 25) See Pascal Lamy, Statement in the Opening Ceremony of the Sixth Ministerial Conference of the WTO, on 13 December 2005, available at < <http://www.wto.org> >. Lamy says "The reality is that the true magic of these negotiations is to achieve results where all participants are winners, all will be able to declare victory. But for that, some risks must be taken. A popular Chinese proverb says "If you don't go into the cave of the tiger, how will you get its cub?"—in other words: nothing ventured, nothing gained. Repeating long known positions, using negotiators' language, refusing to understand the reasons of counterparts and avoiding any risks—including political risks—will get us nowhere."
- 26) See Sanjay Suri, *No Deal Better Than a Bad Deal*, (12 December 2005), available at <<http://www.ipsnews.net/news.asp?idnews=31382>>; see also Ramesh Jaura, *Do Not Sacrifice Development*, (17 December 2005), available at

<<http://www.ipsnews.net/news.asp?idnews=31465>>. The author says ninety Civil Society Organizations including the Third World Network (TWN), Global Call for Action Against Poverty (GCAP), Oxfam International, ActionAid International, Focus on the Global South, Friends of the Earth and the World Alliance for Citizen Participation (CIVICUS) asked developing countries not to sacrifice their development by accepting the inadequate offers and extreme demands of developed countries; see also Joint Civil Society Statement on Hong Kong Ministerial, (16 December 2005), available at <http://www.choike.org/nuevo_eng/informes/3764.html>. The Joint Statement states that "... We are outraged by how the developed countries, particularly the United States and the European Union, are trying to use the Ministerial to aggressively push forward their agenda to open the markets in developing countries. At the same time the major developed countries are not making meaningful concessions to stop the dumping of their agricultural products in developing countries. This would be a very bad deal for development, and no deal in Hong Kong is better than a bad deal."

- 27) See GCAP, *Background Briefing on the WTO*, (October 18, 2005), available at <<http://www.whiteband.org/specialIssues/WTO/wto3/gcapnews.2005-11-15.7507155078/en>>. The background briefing provides that "... GCAP's third and final White Band Day of action in 2005 will take place on 10th December, four days before the opening of WTO Ministerial in Hong Kong. On this date GCAP campaigners across five continents will be mobilizing to demand that the WTO Ministerial delivers trade justice for the world's poor. GCAP is calling on the WTO, international financial institutions and national governments to ... Stop pushing developing countries to liberalise at the WTO and allow them the policy space to determine their own trade policies in accordance with their development priorities."
- 28) See *The First Day of Resistance against the WTO Summit*, (12 December 2005), available at <<http://blog.jinbo.net/CINA/?cid=4&pid=3781>>.
- 29) CNN, *Hundreds Arrested, Injured at WTO*, (18 December 2005), available at <<http://edition.cnn.com/2005/BUSINESS/12/18/wto.protests/index.html>>.
- 30) See *The Global Trade Riot Rock Hong Kong*, The Observer (18 December 2005), available at <<http://observer.guardian.co.uk/international/story/0,6903,1669943,00.html>>.
- 31) Mekay Emad, *Subsidies Concession Largely Symbolic*, Groups Say, (December 18, 2005) available at <<http://www.ipsnews.net/news.asp?idnews=31478>>.
- 32) Hira Jhamtani, *NGOs Criticize WTO's Hong Kong Outcome*, (19 December 2005) available at <<http://www.twinside.org.sg/title2/twninfo337.htm>>.
- 33) *Ibid.*
- 34) *Ibid.*
- 35) Martin Khor, *WTO Ministerial Outcomes Imbalanced Against Developing Countries*, (20 December 2005), available at <<http://www.twinside.org.sg/title2/twninfo339.htm>>. Of course, the view of the Third World Network, of which Mr. Khor represents, is not necessarily representative of the views of diverse groups who gathered in Hong Kong to express their concerns about the DDA. For a more moderate view, see Oxfam's report at note 114 below.
- 36) *Ibid.*, Kohr says, "As a bonus, the developed countries also extracted important concessions from developing countries on the last day and in the last hours of Hong Kong on NAMA. Ministers have now agreed that the Swiss formula, with coefficients, would be used to cut industrial tariffs. The final language ("we adopt a Swiss formula") is much stronger than the Geneva text, which only notes that there is a working hypothesis to use a Swiss formula. ... It was also agreed that applied rates would be used as the basis for treating unbound tariffs. The 18 December final text adopts a "non-linear mark-up approach to establish base rates for commencing tariff reductions." This had not been in previous drafts, and was thus included at the last minute. The applied rates will be "marked up" to base values, which would then be cut by the formula and bound—a very drastic treatment of unbound tariffs that would result in low bound tariffs. ... These NAMA commitments extracted from developing countries are unprecedented in the history of the multilateral trading system. When implemented, they will have severe de-industrialization effects."
- 37) *Ibid.*, Kohr says, "As for the 2013 end-date for elimination of agricultural export subsidies, the most publicized claim of benefit from Hong Kong, it was no victory. This greatest-distorting subsidy of all should have been eliminated many years ago, and no price should have been asked for it. It should have come with apologies. The date, 2013, was the furthest possible, and it was a shame that the EU would not agree to 2010 (a date acceptable to everyone else) which would have been barely credible."
- 38) *Ibid.*, Khor says "The African Ministers had demanded that 80% of domestic subsidies for cotton be eliminated by the

end of 2006, and the rest within a few years. The Hong Kong decision is miserly; it only endorsed the objective that, “as an outcome of negotiations, trade distorting domestic subsidies for cotton production should be reduced”. The African Cotton Producers Association’s response is that there has not been any concrete proposal on the most essential request.”

- 39) See Unnayan Onneshan & Third World Media Network, *The Tsang Text—Another Broken Promise*, 1 LDC Trade and Development Perspective 6, (18 December 2005).
- 40) See Amartya Sen, *Global Justice: Beyond International Equity*, available at < http://them.polyog.org/3/fsa_en.htm >. Sen says that national particularism is the domain of the exercise of fairness involves each nation taken separately, to which the device of the original position is correspondingly applied, and the relations between nations are governed by a supplementary exercise involving international equity.
- 41) *Ibid.*, Sen says that grand universalism is that domain of the exercise of fairness where people everywhere taken together, and the device of the original position is applied to a hypothetical exercise in the selection of rules and principles of justice for all, seen without distinction of nationality and other classifications.
- 42) See the speech at note 25 above. These jokes were circulated among the negotiators of the Uruguay Round in the early 1980s.
- 43) Article XVI:1, the Marrakesh Agreement Establishing the World Trade Organization.
- 44) See Message of the UN Secretary General Mr. Kofi Annan to the Sixth Ministerial Conference to the WTO in Hong Kong, available at < <http://www.wto.org> > visited (14 December 2005). On behalf of Kofi Annan the statement was read by Mr. Supachai Panitchpakdi, who is Secretary-General of UNCTAD and former Director General of WTO.
- 45) Emphasis on the development aspect of trade negotiations is nothing new. Part IV (“Trade and Development”) was added to the text of the GATT in 1965. The 1979 Tokyo Round agreements contained a number of “special and differential treatment” provisions.
- 46) See the Annan message at note 44 above.
- 47) Julio Godoy, *Blame it on the French*, *The Asia Times* (14 December 2005), available at < http://atimes.com/atimes/Global_Economy/GL14Dj01.html >.
- 48) *The Economist*, “Weighed in the Balance” (8 December 2005).
- 49) See USTR, *U. S. Proposal for Bold Reform in Global Agriculture Trade*, (10 October 2005), available at < http://www.ustr.gov/Document_Library/Press_Releases/2005/October/US_Offers_Bold_Plan_on_Agriculture_to_Jumpstart_Doha_Round.html >.
- 50) See EU, *EU Tables New Offer in Doha World Trade Talks; Calls for Immediate Movement on Services and Industrial Goods*, IP/05/1358 (Brussels, 28 October 2005).
- 51) See Julio Godoy, *Blame it on the French*, *Asia Times* (14 December 2005).
- 52) WTO, EC’s Statement by Rt. Honourable Peter Mandelson, Commissioner for Trade, WT/MIN(05)ST/5 (14 December 2005).
- 53) WTO, Germany’s Statement by HE Dr. Bernd Pfaffenbach, State Secretary, Federal Ministry of Economics and Technology, WT/MIN(05)ST/12 (14 December 2005).
- 54) WTO, India’s Statement by HE Mr. Kamal Nath, Minister of Commerce and Industry, WT/MIN(05)ST/17 (14 December 2005).
- 55) WTO, *Summary of 15 December 2005, Day 3: Tonga all set to join, as movement seen in talks on LDCs*, available at < http://www.wto.org/english/thewto_e/minist_e/min05_e/min05_15dec_e.htm >.
- 56) WTO, *Summary of 18 December 2005: Ministers Agree on Declaration that Puts Round Back on Track*, available at < http://www.wto.org/english/thewto_e/minist_e/min05_e/min05_18dec_e.htm >.
- 57) *The Economist*, “The Doha trade round is still alive, but hardly healthy” (20 December 2005).
- 58) The Decision of the General Council on 6 December 2005 (WT/L/641).
- 59) Creating an Upward Spiral of Trade and Development (Japan’s Development Initiative for the WTO Hong Kong Ministerial Conference) 9 December 2005
- 60) WTO, Ministerial Declaration, Ministerial Conference Sixth Session, WT/MIN(05)/W/3/Rev.2 (18 December 2005), available at < http://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm >.
- 61) WTO, *Summary of 14 December 2005, Day 2: Convergence Elusive on First Full Day of Consultations*, available at < http://www.wto.org/english/thewto_e/minist_e/min05_e/min05_14dec_e.htm >.

62) *Ibid.*

63) WTO Summary, as note 55 above.

64) WTO, *Summary of 16 December 2005, Day 4: Ministers Start Preparing Revised Draft Ministerial Text*, available at <http://www.wto.org/english/thewto_e/minist_e/min05_e/min05_16dec_e.htm>.

65) WTO Ministerial Declaration adopted on 18 December 2005 (WT/MIN(05)/DEC). Para. 5 of the Ministerial Declaration provides, "On domestic support, there will be three bands for reductions in Final Bound Total AMS and in the overall cut in trade-distorting domestic support, with higher linear cuts in higher bands. In both cases, the Member with the highest level of permitted support will be in the top band, the two Members with the second and third highest levels of support will be in the middle band and all other Members, including all developing country Members, will be in the bottom band. In addition, developed country Members in the lower bands with high relative levels of Final Bound Total AMS will make an additional effort in AMS reduction. We also note that there has been some convergence concerning the reductions in Final Bound Total AMS, the overall cut in trade-distorting domestic support and in both product-specific and non product-specific *de minimis* limits. Disciplines will be developed to achieve effective cuts in trade-distorting domestic support consistent with the Framework. The overall reduction in trade-distorting domestic support will still need to be made even if the sum of the reductions in Final Bound Total AMS, *de minimis* and Blue Box payments would otherwise be less than that overall reduction. Developing country Members with no AMS commitments will be exempt from reductions in *de minimis* and the overall cut in trade-distorting domestic support. Green Box criteria will be reviewed in line with paragraph 16 of the Framework, *inter alia*, to ensure that programmes of developing country Members that cause not more than minimal trade-distortion are effectively covered."

66) *Ibid.*, para. 6.

67) *Ibid.*, para. 6 provides "... On food aid, we reconfirm our commitment to maintain an adequate level and to take into account the interests of food aid recipient countries. To this end, a "safe box" for bona fide food aid will be provided to ensure that there is no unintended impediment to dealing with emergency situations. ..."

68) *Ibid.*, para. 7.

69) Doha Work Programme, as note 3 above, paras. 29, 30, 31 & 39.

70) WTO Ministerial Declaration, as note 65 above, para. 7 provides, "... We recognize the need to agree on treatment of sensitive products, taking into account all the elements involved. We also note that there have been some recent movements on the designation and treatment of Special Products and elements of the Special Safeguard Mechanism..."

71) See Surendra Bhandari, *World Trade Organization and Developing Countries*, at 316 (New Delhi, Deep & Deep Publications 1998/2002), p. 316; see also Kushi M. Khan, *Developing Countries and the Uruguay Round*, 48 *Law and State* (1993), p. 53.

72) See Kim Anderson & William Martin, "Agriculture Trade Reform and the Doha Agenda", in Kim Anderson & William Martin, *Agriculture Trade Reform and the Doha Development Agenda*, (New York, Palgrave MacMillan & the World Bank, 2006), p. 17. The authors say that it is ironic that agricultural policy is so contentious, given its small and declining importance in the global economy. The sector's share of global gross domestic product (GDP) has fallen from around one-tenth in the 1960s to little more than one-thirtieth today. In developed countries the sector accounts for only 1.8 percent of GDP and only a little more of full-time equivalent employment. Mirroring that decline, agriculture's share of global merchandise trade has fallen by more than half since 1970, dropping from 22 percent to 9 percent. For developing countries, agriculture's importance in exports has fallen even more rapidly, from 42 to 11 percent.

73) WTO, *Summary of 13 December 2005 Day I: Conference opens formally and Ministers Consult on Industrial Goods*, available at <http://www.wto.org/english/thewto_e/minist_e/min05_e/min05_13dec_e.htm>.

74) WTO Summary, as note 61 above.

75) WTO Summary, as note 55 above.

76) WTO Summary, as note 64 above.

77) WTO, *Summary of 17 December 2005, Day 5: Revised Draft Circulated, Ministers Comment*, available at <http://www.wto.org/english/thewto_e/minist_e/min05_e/min05_17dec_e.htm>.

78) WTO Ministerial Declaration, as note 65 above, paras. 13-21.

79) The Swiss formula is known as "harmonising the tariffs" formula. It was originally proposed by Switzerland during

the Tokyo Round Negotiations (1973–1979). But Switzerland is opposed to using this method in the current agriculture negotiations (although for NAMA, it has accepted this formula); Switzerland prefers the Uruguay Round approach of requests and offers without a formula, while Uruguay prefers the Swiss formula in the agriculture negotiations. Such is the complexity of the GATT speak.

- 80) WTO, *Press Pack - Briefing Notes: 6th Ministerial Conference, Hong Kong*, (5 December 2005), p. 16. See note 22 above.
- 81) WTO, Ministerial Conference Fourth Session: Ministerial Declaration, WT/MIN(01)/DEC/1 (20 November 2001). Para. 17 of the Doha Declaration provides, “We agree to negotiations which shall aim, by modalities to be agreed, to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. Product coverage shall be comprehensive and without a priori exclusions. The negotiations shall take fully into account the special needs and interests of developing and least-developed country participants, including through less than full reciprocity in reduction commitments, . . .”
- 82) WTO Doha Work Programme, as note 3 above, annex B.
- 83) WTO Ministerial Declaration, as note 65 above, para. 14.
- 84) See Bernard Hoekman *et. al*, *Tariffs Peak in the Quad and Least Developed Country Export* (2001), p. 1, available at < <http://www.worldbank.org/research/trade/pdf/peak.pdf> >. The authors state that, “Although average tariffs in Quad markets are very low, tariff peaks and tariff escalation have a disproportional effect on exports by least developed countries (LDCs). Tariff peak products tend to be heavily concentrated in agriculture and food products and in labour intensive sectors such as apparel and footwear. Full duty and quota free access for LDCs in the Quad for tariff peak products would result in a 11 percent increase in their total exports—on the order of \$2.5 billion. Exports to Quad countries of tariff peak products would expand by 30 to 60 percent. . . .”
- 85) See generally Marc Bacchetta & Bijit Bora, *Industrial Tariff Liberalization and the Doha Development Agenda* (2003), available at < http://www.wto.org/english/res_e/booksp_e/discussion_papers_e.pdf >.
- 86) WTO Summary, as note 55 above.
- 87) WTO Summary, as note 64 above.
- 88) WTO Summary, as note 77 above.
- 89) Cited in Martin Khor, *WTO Ministerial Outcomes Imbalanced against Developing Countries*, (20 December 2005), available at < <http://www.twinside.org.sg/title2/twninfo339.htm> >. Khor observes that the views presented by Kamal Nath on Annex C was contrary to the view of many trade and legal experts, that the revised language in paragraph 7b of Annex C would require a developing country that is requested by a group of other countries to participate in plurilateral, sectoral or modal negotiations.
- 90) WTO Ministerial Declaration, as note 65 above, para. 7 (b) of annex C that provides, “Members to whom such requests have been made shall consider such requests in accordance with paragraphs 2 and 4 of Article XIX of the GATS and paragraph 11 of the Guidelines and Procedures for the Negotiations on Trade in Services.”
- 91) See Aaditya Mattoo, “Services in Development Round: Proposal for Overcoming Inertia”, in Richard Newfarmer, *Trade, Doha, and Development: A Window into the Issues*, (Washington, The World Bank, 2006), p. 166; see also S. Robinson, Z. Wang & W. Martin, *Capturing the Implications of Services Trade Liberalization*, paper presented at the Second Annual Conference on Global Economic Analysis, Denmark, (20–22 June 1999).
- 92) WTO Summary, as note 61 above.
- 93) WTO Summary, as note 55 above.
- 94) WTO, Bangladesh’s Statement by The Honourable Altaf Hossain Choudhary, Minister of Commerce, WT/MIN(05)/ST/38 (15 December 2005).
- 95) WTO Summary, as note 64 above.
- 96) WTO Summary, as note 77 above.
- 97) WTO Ministerial Declaration, as note 65 above, annex F.
- 98) *Ibid.*
- 99) WTO Doha Work Programme, as note 3 above, para.
- 100) WTO Summary, as note 61 above.
- 101) *Ibid.*

- 102) WTO Ministerial Declaration, as note 65 above, para. 17.
- 103) WTO Ministerial Declaration, as note above 65, which states, “We reaffirm the Declarations and Decisions we adopted at Doha and our full commitment to give effect to them. We renew our resolve to complete the Doha Work Programme fully and to conclude the negotiations launched at Doha successfully in 2006.”
- 104) See WTO, JOB(05)/298/Rev.1 (26 Nov. 2005).
- 105) See WTO, JOB(05)/298 (1 Dec. 2005).
- 106) See WTO, WT/MIN(05)/W/3 (7 Dec. 2005).
- 107) See WTO, WT/MIN(05)/W/3/Rev.1 (17 Dec. 2005).
- 108) See WTO, WT/MIN(05)/W/3/Rev.1/Corr.1 (17 Dec. 2005).
- 109) Michael White, *Johnson Admits Trade Talks Outcome Disappointing*, The Guardian (21 December 2005), available at < <http://politics.guardian.co.uk/eu/story/0,9061,1671816,00.html> >.
- 110) CNN, *WTO Seals Farm Deals Amid Protests*, (18 December 2005), available at < <http://www.cnn.com/2005/BUSINESS/12/18/wto.deal/> >.
- 111) Financial Express (21 Dec. 2005), available at < <http://www.expressindia.com/fullstory.php?newsid=60283> >.
- 112) *Ibid.*, (18 December 2005).
- 113) Martin Khor, *How the WTO's Conference Adopted Its Ministerial Declaration in Hong Kong*, (19 December 2005), available at < <http://www.twinside.org.sg/title2/twninfo336.htm> >. Khor explains that Cuba and Venezuela wanted to have reservation. The Chair, after some resistance, finally allowed them to speak. On the floor, a microphone materialized; it must have been arranged before by those who intended to make an intervention despite the conditions. A representative of Cuba said his delegation intended to make a statement of reservation at the plenary, but as it might not be the best time to do so, he would hand in the full statement to the Secretariat so that Cuba's views can be reflected in the records. The statement would contain specific reservations that Cuba had on the Declaration. The microphone was then quickly passed to a delegate from Venezuela. “We too wish to reiterate our reservations expressed at the heads of delegation meeting,” he said, mentioning the services and NAMA parts of the text as the areas in which Venezuela had reservations. “We would be grateful if they are duly reflected.” This event, unusual for the WTO, became the highlight of an otherwise quick and businesslike session. It was the first time that members had registered reservations to the text at the closing of a Ministerial.
- 114) See Oxfam, *What Happened in Hong Kong? Initial Analysis of the WTO Ministerial*, Oxfam Briefing Paper 85 (December 2005).
- 115) See note 57 above.
- 116) WTO, EC's Statement by Rt. Honourable Peter Mandelson, Commissioner for Trade, WT/MIN(05)ST/5 (14 December 2005).
- 117) WTO, Japan's Statement by HE Mr. Taro Aso, Minister of Foreign Affairs, WT/MIN(05)/ST/13 (14 December 2005). See note 59 above.
- 118) WTO, United States' Statement by HE Mr. Robert Portman, US Trade Representative, WT/MIN(05)/ST/3 (14 December 2005).
- 119) See note 58 above.
- 120) Japan's Basic Policy on WTO Doha Development Agenda Negotiation, 6 October 2005, available at < <http://www.mofa.go.jp/policy/economy/wto/dda/policy0511.html> >

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