

**A DEVELOPMENT ANALYSIS
OF THE WTO HONG KONG DECLARATION**

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This assessment offers a development analysis of the outcome of the WTO Hong Kong Ministerial Declaration; paragraph numbers refer to those in the final Ministerial Declaration.³

SUMMARY AND CONCLUSION

The trade deal agreed at the Hong Kong Ministerial has been the culmination of four years of negotiations. In those four years, ActionAid International believes that the talks have not delivered one substantive outcome in terms of poverty reduction, promoting development, or protecting health and the environment. Even the superficial attempts by rich nations to push development issues as part of a package of development measures – for example quota free access for least developed Countries (LDCs), aid-for-trade, cotton and TRIPs and public health – came to next to nothing. The fact that WTO members could not even deliver on a meaningful development package highlights how poor the final deal was.

Some progress was made around food aid, special products and a special safeguard mechanism for developing countries. Many members will also argue that a 2013 end date for the elimination of export subsidies is progress. ActionAid argues this is too little, too late. 2013 is some 13 years after developed nations should have got rid of them as part of the Uruguay Round. Furthermore, most European Union (EU) export subsidies would have gone by 2013 anyway and they will be more than off-set through the use by rich nations of trade distorting domestic subsidies. Dumping will continue. Furthermore, the end date for export subsidies remains conditional upon the completion of the modalities so the EU will continue to use it as a bargaining chip in the negotiations.

In the NAMA and services negotiations, developed countries have continued to push their offensive interests to open up markets in developing countries, denying the same countries the right to policy space to determine their own development paths. This was assisted by a flawed process which saw the Facilitator of the services negotiations in Hong Kong not only favour developed country positions but ignore developing country proposals on services, for example by the G90.

There is almost nothing in the Ministerial Declaration that will promote development and assist in the eradication of poverty in the developing world. ActionAid International believes that if the final deal is anything like that agreed in Hong Kong, developing countries should reject it.

PROCESS AT HONG KONG

The Texts

The drafting process for Hong Kong started in Geneva in October 2005 when the Chairs of the relevant negotiating groups in Geneva began producing texts and reports for the Ministerial.

- The first draft Hong Kong text was produced on 26th November 2005. Because of the lack of agreement in the agriculture and NAMA negotiations, the Chairs of these negotiating groups in Geneva produced 'progress reports' on the current status of the talks. In contrast, the Chairs on

² Comments welcome to tim.rice@actionaid.org and mustafa.talpur@actionaid.org

³ WTO, 2005. Doha Work Programme Ministerial Declaration. Adopted 18th December 2005.
http://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm.

services, rules and trade facilitation forwarded 'negotiating texts'. The one on services was particularly contentious. It was produced by the Chair, on his own initiative, without consensus and was thus undemocratic and had no legitimacy. The services Chair portrayed a much greater level of convergence where none existed. Many developing countries objected to large parts of it but the chair insisted on keeping the text for the Ministerial. Consequently, a covering letter was attached to the draft text stressing that the "*text does not purport to represent agreement overall, and it is without prejudice to any delegation's position on any issue.*"

- A second revised draft text was issued on 1st December following members' comments.
- A third revised text was issued on 7th December following a General Council meeting. However, the covering letter was not attached and had to be sent separately after complaints from members.
- A Draft Ministerial Declaration appeared on 17th December.
- A revised Draft Ministerial Declaration appeared on 18th December.
- The final Ministerial Declaration came out late on 18th December (dated 22nd December).⁴

The process in Hong Kong was, as with previous Ministerials, flawed. A series of informal meetings were held – Heads of Delegations (HoD), plenaries and green rooms – which were either exclusive or unrecorded. Apart from the opening ceremony, the closing session on 18th December was the only official meeting of the whole conference. This was choreographed to limit interventions from the floor so that nothing could go wrong. Because it was an official meeting the proceedings would be recorded; the Chair quickly moved to adopt the Ministerial Declaration before any interventions and then attempted to move onto the next item. It was only then that Venezuela and Cuba were able to intervene to voice reservations on both the services and NAMA texts. According to the Third World Network, both countries had already expressed deep reservations with the NAMA and services texts at the HoD meeting earlier in the day.⁵

It was the process around the services negotiations, and the role of the Facilitator, that enraged developing countries most (this is also given further consideration in the services section below). Many had rejected the text that came out of Geneva but became "*increasingly frustrated that their views are not being taken into account, despite having made written submissions about their concerns and proposed amendments.*"⁶ In particular, a revised services proposal by the G90 was effectively ignored by the Facilitator. He then continued to push for the Geneva text to be retained, almost in its entirety.

Similarly, a letter on 15th December from South Africa, Kenya, Indonesia, Venezuela, Cuba and the Philippines demanded that the current Annex C not be part of the final Declaration. Despite the letter and alternative proposals, only minor changes were made to the services text but these were insufficient to change the basic thrust of the negotiations; the aggressive opening-up of service sectors in developing countries (see below). Consequently, "*many developing-country delegations [became] quite outraged at how the contested and unpopular Annex C retains its position, despite repeated formal and informal appeals to have key aspects amended.*"⁷

Developing Country Groupings

Developing countries, despite different interests, showed a new level of solidarity at the Ministerial. For the first time, ministers of the G20, G33, ACP, LDCs, African Group and Small Economy nations met, at a formal press briefing, to "*develop a common approach to issues of common interest... and an outcome consistent with the development mandate of the Doha Round.*"⁸ The group was informally dubbed the 'G110', bringing together as it did the G20 and the G90. Whilst

⁴ All ministerial drafts and the final declaration (except for the draft on 18th December) can be found at http://www.wto.org/english/thewto_e/minist_e/min05_e/min05_e.htm

⁵ TWN, 2005. How the WTO's Conference Adopted Its Ministerial Declaration in Hong Kong. 19th December 2005

⁶ TWN, 2005. Services saga brought to new explosive level at Ministerial. 16th December 2005.

⁷ TWN, 2005. No light at End of HK Tunnel, but a New South Alliance is Born. Review of day 4 of Ministerial. 16th December.

⁸ G110, 2005. Joint Statement by the G20, G33, ACP, LDCs, African Group and Small Economies to the Hong Kong Ministerial.

the main focus was on agriculture, the statement from the press briefing suggested that the group embrace non-agricultural products and services, demanding “adequate policy space to ensure their [developing countries] sustainable socio-economic development”.⁹

The formation of the ‘G110’ contributes to the continuing shift in the geopolitical balance at the WTO. Some commentators have said that this collaboration was successful in resisting some of the demands from richer nations.¹⁰

Trade-offs at Hong Kong

One unacceptable face of trade negotiations surfaced again at Ministerials; that developed countries continue to offer very little and when they do, invariably it must be in exchange for market access opening by developing countries. Even the demand from LDCs to gain duty free and quota free access to developed country markets came at a price; the EU is reported to have threatened to withdraw their support for LDC free access as long as LDCs dropped their opposition to an ambitious services agreement.¹¹ The US also made aid and trade conditional on greater market opening into developing country markets.¹²

The trade-off between agriculture on the one hand and services and NAMA on the other remains despite the 2013 agreement on export subsidies. The EU has persistently said that it is ready to phase out its export subsidies but only in exchange for cuts in industrial tariffs by developing countries.¹³ And this trade-off remains because the 2013 final date is still conditional on reaching full modalities in the negotiations.

AGRICULTURE

Most of the agricultural negotiations centred on the export competition pillar and cotton (see below). Consequently, a substantial amount of work remains if members are to establish modalities no later than 30th April 2006 (paragraph 10). Whereas a 2013 end date for all forms of export subsidies is now on the table (paragraph 6), the fact remains that because the issue of domestic subsidies made little progress in Hong Kong, the dumping of agricultural products will continue.

End Date for Export Subsidies (paragraph 6 main text)

ActionAid calculates that by 2013, the EU will have got rid of most of its export subsidies anyway. Currently, expenditure runs to about €3 billion; by 2013 ActionAid estimates that the figure could be as low as €1 billion, a fact confirmed by the EU’s Agricultural Commissioner Fischer Boel. She is reported to have said that she is happy with 2013 because the EU already planned to phase out most of its export subsidies by then.¹⁴ This confession by the Commissioner reveals that developing countries achieved a very minor gain whilst trade-distorting domestic subsidies will remain largely intact.

The end date of 2013 was later than that demanded by almost all other WTO members. For example, the African group, LDC Group, Australia, China, G33, G20, G90, Malaysia, New Zealand, Thailand and the ACP all demanded the parallel elimination of all forms of export

⁹ Ibid

¹⁰ IATP, 2006. Breaking out of the Mould: Reflections on the WTO Ministerial Conference in Hong Kong. 17th January.

¹¹ CAFOD, 2005. Whose Round is it Anyway?

http://www.cafod.org.uk/news_and_events/news/cafod_reaction_2005_12_18

¹² BRIDGES, 2005. Will Members Reveal Their Cards in Time? Daily Update on the Sixth WTO Ministerial Conference. Issue 3, 15th December

¹³ Speech by Peter Mandelson at the EPC – KBF Conference entitled Trade and Development: The Road Ahead. 16th July 2004.

¹⁴ Financial Times, 2005. WTO deal fails to heal rifts. 19th December.

subsidies by 2010¹⁵ (ActionAid would contend that even this date is too late). The EU got three more years, some 13 years after it should have got rid of them as part of the Uruguay Round.

ActionAid's estimates of EU trade-distorting subsidies (both export and domestic) in 2004 and 2013 (€ billions)^{16,17,18,19}

	2004 ^b	2013 ^c
Export subsidies	3	1
Domestic subsidies	61	55
Of which		
Amber box (AMS) ^a	27	20
Blue box	29	5
Green box ^d	5	30

^a Figures of EU-15. EU-25 figures are still awaited.

^b The EU has still not notified its 2004 expenditure to the WTO so, to a large extent, these are still estimates drawn from a number of sources (see references below).

^c Assumes no further CAP reforms after the changes to the CAP in 2003 and the 2005 Sugar Regime are fully implemented. However, some reform will have to take place to eliminate export subsidies by 2013 particularly in the dairy and meat sectors. The review of the CAP in 2008/2009, agreed as part of the new 2007-2013 EU Budget, may provide the opportunity for this. To get rid of export subsidies, the EU may well decide to reduce amber box support; internal prices will have to be reduced to decrease the gap between EU and world prices. As a result, final amber box support in 2013 may well fall below €20 billion. Estimates for 2013 will also depend on €/£ exchange rates and world prices at the time.

^d In 2004, these refer only to investment aids. In 2013, this refers to both investment aids and decoupled income payments.

A substantial part of the export subsidy elimination must be completed during the first part of the implementation period (paragraph 6). Implementation will probably be 2008 to 2013 so the EU would have to eliminate most by 2010.

However, there is still one large caveat surrounding any deal on the end date; *“The date above for the elimination of all forms of export subsidies, together with the agreed progressivity and parallelism, will be confirmed only upon the completion of modalities.”* (our emphasis, paragraph 6) In effect, the EU will still be able to trade-off its commitment to end export subsidies with all other areas of the negotiations.

There is more substantial language around food aid (paragraph 6). However, the disciplines still need to be negotiated to prevent the abuse of food aid and to ensure a ‘safe box’ for exemptions of genuine emergency aid.

¹⁵ Compilation of the Suggestions for the Draft Ministerial Text – Agriculture. 15th December 2005. See also ‘G110’ statement

¹⁶ European Commission, 2003. *CAP Reform – A long-Term Perspective for sustainable Agriculture*. Annexes to Council Regulations COM (2003) 23 final. Pages 151 to 153.

http://europa.eu.int/comm/agriculture/capreform/memo_en.pdf

¹⁷ European Parliament, 2003. Report on the proposal for a Council Regulation on Establishing Common Rules for Direct Support Schemes under the CAP and Support Schemes for producers of certain Crops. May. Rapporteur, Arlindo Cunha. Page 93.

<http://www2.europarl.eu.int/omk/sipade2?PUBREF=-//EP//NONSGML+REPORT+A5-2003-0197+0+DOC+PDF+V0//EN&L=EN&LEVEL=3&NAV=S&LSTDOC=Y>

¹⁸ ActionAid International, CIDSE and Oxfam International, 2005. *Green but not Clean: Why a comprehensive Review of Green Box Subsidies is Necessary*. Joint NGO Briefing Paper November 2005.

http://www.actionaid.org.uk/doc_lib/43_1_greenbox_joint_briefing.pdf

¹⁹ AgraEurope, 2003. *A CAP reform agreement that – just about - delivers*. 27th June.

Domestic Support (paragraph 5 main text)

Whereas an end date for all forms of export subsidies is now on the table, the fact remains that because the issue of domestic subsidies made little progress in Hong Kong, the dumping of agricultural products will continue.

ActionAid believes that there is nothing in the language on domestic support in paragraph 5 that will result in real and substantial cuts to trade-distorting subsidies (see table above). Although there is some language that will make it more difficult to shift support between the amber and blue box, there is no mention on new rules for the criteria of a potentially reclassified blue box. Critically, the review of the green box will be no more than a health check that the criteria are being correctly implemented rather than whether the criteria are being met. ActionAid believes that a number of support measures being used in the green box are trade distorting and will assist in the dumping of products.²⁰

The Right of Developing Countries to Protect Farm Sectors (paragraph 7 main text)

Given minimal movement on export and domestic subsidies – and that dumping will continue – ActionAid was looking for stronger language on special products (SPs) and a special safeguard mechanism (SSM) for developing countries. Some progress was made but not nearly enough (paragraph 7). On SPs, developing countries will have the right to self designate and on the SSM both price and volume triggers will apply. Yet on the other hand, a number of important issues still need to be negotiated to make SPs and an SSM meaningful; for example, the number of products that will be eligible, commitments on tariff reductions or quotas (if any) and implementation mechanisms.

NON-AGRICULTURAL MARKET ACCESS

It appears that negotiations covered many NAMA issues in Hong Kong. On 13th December, a group of 9 developing countries (possibly 11) sent a strongly worded letter to the Chair of the Ministerial that development issues must be at the heart of the talks in order for the NAMA negotiations to move forward. However, the final outcome still portrays a very high level of ‘ambition’ to open-up developing country markets in such a way that is unheralded in the history of the multilateral trading system; it is simply anti-development and will increase poverty.

The Formula (paragraph 14 main text)

Ever since the first attempts to draft a NAMA negotiating text, the various chairs of the NAMA negotiating groups plus developed country members have pushed a Swiss formula for tariff reductions. This would reduce higher tariffs significantly more than lower ones, leading to a harmonisation of tariff levels. This formula is now commonly called a simple-Swiss and would be conducted on a line-by-line basis. More recently, developing country members have proposed Swiss-type formulae, which would respect the principle of less than full reciprocity and incorporating elements that would make it more development friendly.

The language in the Declaration – “*we adopt a Swiss formula*” (paragraph 14) – is much more problematic for developing countries when compared the 7th December Geneva text which proposed that the Swiss formula would only be used as a working hypothesis. Despite the fact that the Declaration leaves open the possibility of a number of coefficients, the US, EU, Japan, Australia, Switzerland and New Zealand are still trying to restrict it to two. In the case of the EU and the US, they are still pushing for the coefficients to be at low levels to ensure real market access.²¹

²⁰ See ActionAid International, CIDSE and Oxfam International, 2005. *Op cit.*

²¹ CCG Consultations NAMA 15th December 2005. Hong Kong Ministerial.

It may be argued that the wording – we adopt a Swiss formula – may leave open the possibility of a pro-developing country formula, ActionAid still believes that the reference to a Swiss formula will ultimately mean the use of a simple Swiss. For this reason, many developing countries – including Argentina, Brazil, India, Philippines, South Africa, Namibia, Venezuela, the African Group and the ACP group – wanted wording on a Swiss-type formula included in the text itself.²² This did not happen. Many developing countries will have to make deep cuts not only into their bound tariffs but also their applied tariffs as well.

Flexibilities (paragraph 15 main text)

A further concern surrounding the formula has been the insistence by developed countries to restrict the use of special and differential treatment for developing countries ('flexibilities') dependent on their level of ambition in the formula. A number of countries – most notably Argentina, Brazil, India, Philippines, South Africa, Namibia, Venezuela, Egypt, Indonesia, China, the African group, and the ACP group – demanded that the flexibilities are a stand-alone provision, that it should not be traded-off against the formula and that this should be reflected in the text. In contrast, Australia, Japan, EU, New Zealand, Switzerland and the US all stipulated that the negotiations on the formula and the flexibilities (and other elements) be agreed on an integrated basis, ie they are linked.²³

Developing countries may well have been successful in fending off rich nations' attempts to include text in the final Declaration that linked the formula and flexibilities but this still has to be negotiated back in Geneva. Given the importance of S&DT and that the stand-alone provision has been a long-standing demand by a substantial number of developing countries, the final Ministerial Declaration is woefully lacking in this area (paragraph 15).

The Sectoral Initiative (paragraph 16 main text)

In the final Declaration, the sectoral initiative – which aims to harmonize or even eliminate tariffs in various sectors – was 'formally' included for the first time at the Ministerial (paragraph 16); it had not been in previous Ministerial drafts although it was an important component in the 2004 July Framework. In doing so the Ministerial legitimises sectoral negotiations despite resistance by a very large number of developing countries.

The inclusion of the sectoral initiative was at the insistence of developed countries who may have perceived that the level of ambition in the rest of the NAMA text was being diluted. Over the past few years, negotiations have been taking place on such an initiative but as the Chair of the Negotiating Group in Geneva confirms (paragraphs 21-23 Annex B of the final Ministerial Declaration), this has been taking place in an informal member-driven process, ie in an untransparent way, outside the remit of the Chair. Sectors being discussed include electronics, bicycles, sporting goods, chemicals, fisheries, textiles, apparel, automobile parts, footwear, forest products, gems and jewellery, pharmaceuticals and medical equipment and raw materials. Many developing countries, but particularly the African and ACP Groups, have called for the sectoral initiative to be dropped. Not only does it have serious implications for the erosion of preferences but could add another layer of commitments to lower tariffs, even eliminate them. Some members have responded to these concerns by proposing that any sectoral approach could be voluntary. However, developing countries may well experience lobbying, or even diplomatic bullying, to join at a later stage.

Treatment of Unbound Tariff Lines (paragraph 17 main text)

Many developing countries have not bound a large number of their tariff lines. A non-linear mark-up to unbound rates was included in the final Declaration. This had not been in previous drafts. A mark-up will be added to their current applied rate and the tariff reduction would start from the new

²² Ibid.

²³ Ibid

marked-up rate; non-linear implies that the mark-up will be less for tariff lines that are currently applied at high rates and higher for tariff lines that are currently applied at low levels (paragraph 17). This is unprecedented given that in previous trade rounds, members had the right to choose which unbound lines to bind and at what rate. This will result in many unbound lines being bound at very low rates and then subjected to further reductions.

Preference Erosion and Non-tariff Barriers (paragraphs 20 and 22 main text)

These issues are of critical importance to a large number of developing countries but the declaration only calls upon members to find possible solutions or make proposals as quickly as possible (paragraphs 20 and 22). These should be an integral part of the negotiations but will not be adequately addressed before members are supposed to resolve modalities by 30th April 2006 (paragraph 23).

SERVICES

The Ministerial Declaration on services is anti-development, anti-poor and favours transnational corporations. The text will force developing countries to liberalize sectors which they don't want to, binds countries to increase foreign equity levels, focuses on commercial presence, replaces the bilateral request-offer approach with a plurilateral process, targets sectors under a sectoral approach that are of export interest to rich countries, takes away the right to regulate, and contradicts the GATS negotiating guidelines and Doha mandate. This text will increase poverty, deny people's rights to basic services, expand the role of corporations and shrink the role of the state.

Agreeing on an Un-agreed text (paragraph 27 main text and Annex C)

The 'objectives, approaches and timelines' were not agreed in a transparent and inclusive manner. The Hong Kong Ministerial draft of 17th December contained square brackets around some of the paragraph which stated: "*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]*". The brackets were removed in the draft of 18th December despite the strong opposition of several developing countries and ultimately this paragraph became paragraph 27 in main text of the final Declaration.

The paragraph establishes that Annex C will be the basis for future negotiations when talks resume in Geneva in early 2006 but this will change the future course of negotiations and obliges members to undertake new commitments. Developing countries, which have mainly defensive interests, are asked to take on most of these new and onerous obligations.

The approaches and timelines prescribed in Annex C (see sections below) will provide leverage to developed countries to exert pressure on developing countries for market liberalization in services. This is because of the way that negotiations will be conducted. The current bilateral request-offer approach, which allows developing countries to decide whether to enter into negotiations or not, is gradually being replaced. Even in Geneva, the Chair of the services negotiating group concluded that the quality of initial and revised offers was unsatisfactory in an effort to clear the way for a plurilateral approach.²⁴ Not only does the plurilateral process erode the more flexible request-offer approach, but it injects a mandatory element, and will pressurise many developing countries into sectoral negotiations designed to open markets in key services.²⁵

²⁴ WTO. July 01, 2005. Report by the chairman to TNC

²⁵ Walden Bello, December 22 2005. The Real Meaning of Hong Kong: Brazil and India Join the Big Boys' Club

Approaches (paragraph 7 Annex C)

The proponents of the plurilateral approach were also behind the benchmarking proposal. 'Benchmarking' was proposed by EU and later on backed by Korea, Japan and New Zealand. This was vehemently resisted by the majority of members in Geneva. As a result, 'numerical targets' were taken out from final Declaration but the concept of benchmarking is still alive (see below).

The text of paragraph 7b of the final Declaration refers to plurilateral requests. The wording kept changing during the drafting process in a manner to put the majority of members on the defensive. It is a traditional negotiating tactic; start by offering something that many members will object to so that delegates waste much time and political capital just to hold the line.²⁶

Paragraph 7 and 7b of Annex C changes the basic architecture of GATS, replaces the bilateral request-offer process and deviates from the negotiating guidelines accepted in 2001.²⁷ It also makes it mandatory for members to consider the plurilateral approach; many trade and legal experts take the view that the revised language of paragraph 7b in the final Declaration would require a developing country, on receipt of a request from a group of other countries, to participate in plurilateral, sectoral or modal negotiations.²⁸

There are strong concerns that the plurilateral approach will force countries to enter into sectoral negotiations which they otherwise would not be willing to open up. Pressure from global corporations on their own governments in the North is increasing; they are at the forefront of sectoral negotiations in areas such as finance, distribution, health, education and the environment.²⁹ Given the inequities in global political and economic power, it will be extremely difficult, if not impossible, for developing countries to resist these plurilateral requests in these sectors. Domestic suppliers in most developing countries are not competitive in comparison with these multinational giants. Aggressive liberalization through sectoral negotiations will have serious implications on the survival of local suppliers, employment and the economy.³⁰

Objectives (paragraphs 1 and 1c Annex C)

The language of paragraph 1 under objectives was changed. The earlier versions mention that "*Members should strive to ensure that their new and improved commitments adhere to the following objectives*". The language has been made slightly softer to ensure that: "*Members should be guided, to the maximum extent possible, by the following objectives in making their new and improved commitments*". But clearly, the objectives on which members 'should' be guided will not be equally beneficial to all, least of all to developing countries.

Annex C puts more emphasis on mode 3 or 'commercial presence'. Firms in rich economies that export services want a presence in different countries to capitalize on cheap labour and greater access to markets. The strong lobbying by service companies has resulted in an unbalanced text. Paragraph 1c (ie mode 3) refers to the commercial presence of multi-national corporations. It is the issue where developed countries want more flexibility, less regulation and reductions in domestic equity levels. All three sub-points in this paragraph basically favour the rich countries and their multinational companies:³¹

²⁶ Oxfam briefing paper 85, December 2005. What happened in Hong Kong, Initial Analysis of the WTO Ministerial.

²⁷ Please see Actionaid's policy briefing for WTO Hong Kong Ministerial. General Agreement on Trade in Services Negotiations at The WTO Hong Kong Ministerial Meeting.

²⁸ TWN, Martin Khor, SUNS #5941 Wednesday 21 December 2005. WTO Ministerial Outcome Imbalanced against developing countries

²⁹ See Eagleton, D., 2006. Exposing the Influence: Exposing Undue Corporate Influence over Policy-making at the WTO. ActionAid International.

³⁰ Scott Sinclair *et al*, 2005. Sectoral Negotiations and the pitfalls for Development: Examples of key sectors. Focus on the Global South India. <http://www.focusweb.org/india/content/view/773/29/>

³¹ Prasenjit Bose. WTO: A raw deal in Hong Kong. <http://www.flonnet.com/fl2227/stories/20060113002104400.htm>

- i. “*commitments on enhanced levels of foreign equity participation*” (paragraph 1c (i))

This requires a commitment to enhance levels of foreign equity participation (or put another way, to reduce levels of domestic equity participation). This will give a strong advantage to foreign firms that want to own higher percentages of any local company.

- ii. “*removal or substantial reduction of economic needs tests*” (paragraph 1c (ii))

This requires the removal or substantial reduction in economic needs tests (ENT). This might be helpful to developing countries if the mode 4 commitments are ambitious; if ENTs are reduced then it will bring down at least one barrier to the movement of natural persons. But looking at the current level of offers in mode 4, the requirement on ENTs will basically help the investors and corporations under mode 3 to expand their business when economic needs tests will be removed or reduced in developing countries.

- iii. “*commitments allowing greater flexibility on the types of legal entity permitted*” (paragraph 1c (iii))

This requires countries to allow a greater flexibility of types of legal entity. The entire text does not mention the words ‘greater flexibility’ for developing countries. Therefore, in this particular context the greater flexibility in types of legal entity will diminish any country’s right to regulate. Domestic laws require certain types of legal entities to be allowed to provide services in order to meet national development objectives, but pushing for a commitment to remove the legal types of entity requirement will decrease policy space.

Government Procurement (paragraph 4b Annex C)

The issue of government procurement was first brought into the WTO during the Singapore Ministerial and became part of what is known as the Singapore issues. The main *demandeur* of negotiations is the EU which has offensive market access interests in government procurement in services. The majority of developing countries are not in favour of the liberalisation of government procurement.³² However, paragraph 4b makes it obligatory for members to engage in this issue.

The most substantial proposals tabled thus far, not surprisingly, have been from the EU. The EU has submitted four proposals in the past four years. These have focused on procedural rules for government procurement and incorporating government procurement in members’ schedule of commitments for market access and national treatment.³³ Developing countries have defensive interests; during the Cancun ministerial, developing countries rejected negotiations on government procurement as a stand-alone issue, and which also demonstrates their unwillingness to negotiate on government procurement through GATS negotiations.

The main reason for this is as follows. Government procurement plays an important role in development goals and objectives for the effective and equitable provision of key services. The negotiations on these important issues must not progress on the basis of current proposals as this would violate GATS Article XIII.³⁴

Domestic Regulation (paragraph 5 Annex C)

Governments have limited tools available to them to ensure that the benefits of trade in services are targeted at the population and to achieve national policy objectives. Domestic regulation is crucial for this purpose. Rich countries want disciplines on domestic regulation relating to

³² South Centre. State of Play of the GATS Negotiations: Are Developing Countries Benefiting?

³³ Ibid

³⁴ South Centre. Briefing Note on the GATS Negotiations for the WTO Sixth Ministerial Conference in Hong Kong, 13-18 December 2005.

qualification requirements and procedures, technical standards and licensing requirements, which they think create barriers to trade. However, the majority of members do not feel that these measures are a barrier to trade in services but are essential to exercise the sovereign right of nations to regulate private businesses.

Paragraph 5 refers to GATS article VI:4, which disciplines domestic regulations. Several times during the current round of negotiations, developing countries have suggested changes to the above-mentioned article. Annex C language in paragraph 5 – “*Members shall develop disciplines on domestic regulation*” – undermines the right of developing countries to impose domestic regulations in future negotiations.

Timelines (paragraphs 11b, c and d Annex C)

A very difficult situation has been created for developing countries through tight deadlines. Paragraphs 11b, c and d give time schedules for plurilateral requests (28th February 2006), the second round of revised offers (31st July 2006) and the final draft schedule of commitments (31st October 2006). The deadline for tabling plurilateral requests is very soon and many developed countries may well have their requests ready and will table them shortly.

Serious problems will arise for poorer nations to which such requests will be made. The lack of trade-related professionals, technical capacities and finances to assess the social, economic, environmental and political implications of liberalization will put pressure on developing countries; they have to respond within five months (as in paragraph 11c). Finalizing the revised offers by 31st July will require developing countries to find extra resources and a massive effort to just meet the tight deadlines. Developing countries will not have sufficient time to properly assess the development outcomes of such decisions.

THE ‘DEVELOPMENT PACKAGE’

In an attempt to provide some gloss to a potential disaster at Hong Kong, various developed country members – but particularly the EU – came forward with a so-called development package. ActionAid believes that rich nations actively pushed the package prior to the Hong Kong Ministerial for two over-riding reasons. Firstly, to provide some impetus to a negotiating process that had largely ground to a halt – due primarily to the intransigence of rich nations – which ultimately could have derailed the talks altogether. Secondly, to act as a smokescreen behind which developed nations could hide their anti-development proposals on agriculture, NAMA and services.

The EU ‘offer’ had a number of elements including:

- Duty/quota free access for LDCs
- Preference erosion
- Implementation issues
- Aid-for-trade
- Cotton
- TRIPS and public health

Of these six issues, implementation and preference erosion were inadequately addressed at Hong Kong. The Doha 2001 Ministerial Declaration calls for an appropriate solution and an early harvest for outstanding implementation issues. But the status of these negotiations remains unresolved – and it is the EU and the US that is blocking progress on these issues.³⁵ Instead, the Ministerial Declaration (paragraph 39) merely reiterates previous instructions “*to find appropriate solutions as a priority to outstanding implementation-related issues*”.

³⁵ South Centre, 2005. Assessing the Balance of the Doha Negotiations. 18th November. Geneva.

On preference erosion, Mauritius, speaking on behalf of the ACP group at the Heads of Delegation meeting (17th December) said that preference erosion had not been dealt with sufficiently.³⁶ All that developing countries were left with was little progress and vague language, for example on NAMA: *“We instruct the Negotiating Group to intensify work on the assessment of the scope of the problem with a view to finding possible solutions”* (paragraph 20).

The four other issues were part of the Ministerial negotiations (a so-called solution to TRIPs and public health was agreed in the run-up to the Ministerial) but the outcome was so poor that any final pretence that this would be a ‘development round’ is finally buried for good.

Cotton (paragraph 11 main text)

The 2004 July Framework called upon this issue to be resolved ambitiously, specifically and expeditiously. Some 18 months later, little tangible progress has been made because the US has been putting up obstacles at every opportunity.

The final Declaration came forward with four ‘proposals’. The first was to eliminate all forms of export subsidies on cotton during 2006 (paragraph 11a). The main user of these is the US; the US was already obliged to get rid of its export credits and Step 2 export subsidy programmes under the WTO cotton dispute ruling in 2004. So this commitment amounted to nothing.

Secondly, US export subsidies and credits amount to very little (10-20%) of total trade distorting support to the US cotton sector, some \$3.8 billion in 2004. Much of this is currently spread across both the amber and green boxes - and the WTO dispute panel found that the green box subsidies used in the US were trade distorting and were incorrectly classified (they should have been in the amber box). In the December 17th draft, the wording had been more ambitious without being very specific; *“Trade distorting domestic subsidies for cotton producers will be more quickly and ambitiously reduced than the general formula to be agreed”*. The C4 group of African cotton producers (Mali, Chad, Benin and Burkina Faso) were enraged when in the 18th December draft the US changed the word ‘will’ to ‘should’ and consequently the paragraph ended up in brackets. The final Declaration, without brackets, reads that: *“trade distorting domestic subsidies for cotton production be reduced more ambitiously than under whatever general formula is agreed and that it should be implemented over a shorter period of time than generally applicable”* (paragraph 11c). This is neither ambitious nor expeditious since the African Group for example had demanded, following the outcome of the WTO cotton dispute, that trade distorting cotton subsidies should be eliminated by September 2005.³⁷

Thirdly, that the developed countries would give duty-free and quota-free access to their markets for LDC exports of cotton from the commencement of the implementation period which is likely to be 2008 (paragraph 11b). Not only has the EU already made this commitment under the EBA but as Bridges further concludes: *“African countries are unlikely to benefit from this since they do not export cotton to the US and in other markets, particularly in Asia, they have to compete against subsidised US exports.”*³⁸

Fourthly, the issue of compensation has been a long-standing demand of the C4. No progress has been made since the 2004 July Framework with the Hong Kong Declaration merely urging the Director General *“to explore the possibility of establishing through [donor] institutions a mechanism to deal with income declines in the cotton sector until the end of subsidies”* (paragraph 12).

Duty-free/Quota-free Access (DFQF) for LDCs (Annex F)

³⁶ TWN, 2005. Heads of Delegation meeting, 17th December: Developing countries Voiced Disappointment Over Revised Draft.

³⁷ Africa Group, 2005. Proposed Elements of Modalities in Connection with the Sectoral Initiative in Favour of Cotton. TN/AG/SCC/GEN/2, 22nd April 2005.

³⁸ ICTSD, 2005. Low Ambitions Met: Members Adopt Declaration. Daily Update on the Sixth WTO Ministerial Conference. Issue 7, 19/12/2005 http://www.ictsd.org/ministerial/hongkong/wto_daily/19_December/en051219.pdf

DFQF has been a longstanding demand from LDCs and has been part of the WTO negotiating agenda for many years. It should be a given; that the very poorest countries in the world should have unrestricted access for their products to the markets of the richest countries as stipulated in the Doha Mandate. Consequently, as part of the Hong Kong negotiations, LDCs demanded 99.9% product coverage to rich nations markets.

But even this proved unacceptable to the developed world. The US and Japan demanded that product coverage for LDCs be restricted to 95% and 98% respectively because both countries feared that export-competitive LDCs would undermine various sectors (initially the US tried to exclude not only products but also certain countries from the deal such as Cambodia and Bangladesh). In the end a 'negotiated compromised' was reached at 97% (Annex F, paragraph 36 (a) (ii)). At a post-conference press briefing in Hong Kong, the US confirmed it would not include textiles and sugar from the product coverage; Japan confirmed rice, fisheries, leather and dairy products would be excluded.

The Ministerial Declaration does place obligations on the EU's Everything But Arms (EBA) initiative which has been in place since 2001. The EBA has overly-restrictive rules of origin – rules that specify what percentage of a good must be made in a particular country in order to participate in the EBA scheme. The EU's various non-tariff barriers (NTBs), including stringent health and safety standards, also serve to restrict exports from LDCs. Consequently LDCs have not used the scheme to its full extent. The final Declaration calls upon members to: "*Ensure that preferential rules of origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access*" (Annex F, paragraph 36 (b))

Moreover, the Ministerial Declaration only provides for members to provide access on a 'lasting basis' rather than demanding a binding commitment at the WTO. It would not have any legal standing and could be retracted (Annex F, paragraph 36 (a) (i)).

Aid-for-Trade (paragraph 57 main text)

During Hong Kong, various WTO members made pledges for money (aid) to help "*build the supply side capacity and trade-related infrastructure that they need to assist them to implement and benefit from WTO agreements and more broadly to expand their trade*" (paragraph 57).

The following commitments were made at Hong Kong but were not reflected in the final Declaration. Question marks remain as to whether rich nations will deliver on their commitments.

- The EU would increase spending to €2 billion annually by 2010. €1 billion would come via the European Commission and a similar amount from the EU member states.
- Japan is committing \$10 billion over three years to LDCs, largely to be spent on infrastructure and customs procedures.
- The US will double spending to \$2.7 billion per annum.

Most money, however, is not new but rich WTO members are just recycling existing commitments and providing more detail as to how these commitments will be spent. The US has also made its commitment conditional on market access opening in developing countries.³⁹

TRIPs and Public Health (paragraph 40 main text)

An agreement to resolve this problem was reached on 6th December 2005 in the run up to the Ministerial (paragraph 40). The decision agreed to amend the TRIPs agreement to allow countries with insufficient manufacturing ability to import generic versions – under compulsory licence – of the patented drug. In effect, the December 6th decision translated the August 2003 waiver into a permanent solution.

³⁹ BRIDGES, 2005. Daily Update – Hong Kong Ministerial. 15th December Issue 3.

However, not a single country has used the waiver. This is often blamed on:

- the complicated eligibility requirements;
- the fact that it is burdensome and requires decision making on a drug-by-drug/country-by-country basis;
- that economies of scale, required to attract interest from generic manufacturers, is unlikely to happen on a drug-by-drug/country-by-country basis;
- the fact that some NGOs – for example Medicins Sans Frontiers – have tried to place an order but found the process long and resource intensive.⁴⁰

The fact that no developing country has successfully used the August 2003 flexibilities to import generics is not because the waiver needed to be made permanent in the TRIPS agreement in order to take effect. It would have made more sense to secure some evidence that the waiver actually works before making it permanent. At the moment this evidence does not exist.

To this end, ActionAid does not believe that the new EU regulation enshrining the August 2003 mechanism in EU law for example will allow European generic companies to manufacture and export drugs to countries in need; those same companies have challenged the usefulness of the new regulation, stating that *“procedures are complicated, the terms under which new producers must operate are very restrictive, and the various measures proposed are ambiguous”*.⁴¹

There clearly remain some major uncertainties as to whether WTO members have hit upon the correct solution to the access of affordable medicines.

⁴⁰ BRIDGES, 2005. Weekly, 7th December.

⁴¹ EGA, 2005. EGA Position Paper. March. http://www.egagenerics.com/doc/ega_compulsory-licensing_2005-03.pdf