

# Key Issues for the 5th WTO Ministerial Conference


# Key Issues

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“The Doha Development Agenda, launched by WTO Members last year in Qatar, is the most ambitious and wide ranging trade negotiations ever taken....these negotiations are first and foremost, a “Development Agenda”. For the first time, development issues lie at the heart of the Round. Ensuring that the Doha Development Agenda lives up to its name is an overriding challenge for these negotiations.”

**WTO Director General, G Supachai Panitchpakdi <sup>1</sup>**

In the eighteen months since the 4th World Trade Organisation (WTO) Ministerial in Doha, rich countries have had many opportunities to confound their critics and demonstrate their commitment to putting development at the heart of WTO rule making. Regrettably, there are few signs of change in their traditional self-interested approach to negotiations. ActionAid’s analysis of seven key areas of WTO practice and process reveals that these rich nations have failed to respond to the concerns of developing countries. Progress on the range of issues that developing countries identified as their priorities has been profoundly disappointing. There has been a similar lack of action on reform of unfair WTO processes. Instead, developed countries have continued to act in their own best interests with little consideration of the negative impact this has on development and poverty eradication.

In most of the thirty-five developing countries where ActionAid works, the majority of the population live in rural areas and have livelihoods that are directly or indirectly linked to agriculture. Since rural development is central in achieving poverty eradication and provides a firm foundation for economic development in other sectors, ActionAid’s major concerns relate to the impact of WTO agreements on farmers, rural communities, food rights and agricultural development. ActionAid’s experience in developing countries has

demonstrated that the outcomes of WTO negotiations can have far reaching detrimental consequences for the life chances and development opportunities of some of the world’s poorest people. Urgent reforms of developmentally destructive WTO agreements are needed if these people are to be given a chance to improve their lives.

Many WTO Agreements impinge on farming and food production, not only the Agreement on Agriculture and its Marrakesh Decision, but also the Trade Related Aspects of Intellectual Property Rights Agreement and the General Agreement on Trade in Services. The proposed new agreements on investment and competition also have implications for this sector. In addition, ActionAid believes that progress in achieving the radical reforms necessary will only occur when the views of developing countries are taken fully into account. Therefore, reforming WTO processes is essential to ensure that they are transparent, democratic and facilitate the full and equal participation of all WTO members in decision-making.

ActionAid is skeptical that any real progress towards making the WTO work for poor people will happen as a result of initiatives from the developed nations. During the negotiations in Cancún, it is inevitable that industrialised countries will attempt to ‘trade off’ apparent concessions in one area for what they want

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<sup>1</sup> WTO Director General G Supachai Panitchpakdi (2002) The Doha Development Agenda: Challenges Ahead, Speech to the European Parliament, Brussels, 25-26 November

in another. Developing countries will need to proceed with extreme caution. During the Uruguay Round they had to 'pay' for the inclusion of multilateral rules on agriculture by allowing Agreements on intellectual property rights and services. Since rich countries then exploited ambiguities in the Agreement on Agriculture to increase subsidies and maintain protectionism, this turned out to be a bad bargain. In Cancún, similar deals relating to agriculture may be offered in relation to the introduction of negotiations on the 'new issues'. In this context, developing countries should be aware that, whatever it claims, the EU will not be able to deliver any reduction in the overall volume of farm subsidies before 2013<sup>2</sup> and that agricultural tariff reductions may be counteracted by increases in the use of Sanitary and PhytoSanitary provisions or other Technical Barriers to Trade. The texts and modalities for negotiations on the 'new issues' are extremely ambiguous so, once again, developing countries are being asked to commit themselves to negotiations where the outcomes are uncertain but likely to benefit rich countries and their companies while having a potentially damaging impact on poor countries and their citizens.

This paper provides an overview of some key elements in ActionAid's thinking regarding the current round of WTO talks. A full analysis of existing and proposed WTO agreements and recommendations for the 5th WTO Ministerial Conference in Cancún can be found in the accompanying papers on the:

- Agreement on Agriculture
- Marrakesh Decision
- The General Agreement on Trade in Services
- Trade Related Aspects of Intellectual Property Rights
- Investment
- Competition
- WTO Reform

"No doubt agriculture is the centrepiece of the negotiations and there are wide gaps in the ambitions of governments, from those seeking rapid and fundamental reform and liberalization of trade in agriculture, to those who are advocating a much more gradual approach. If we do not succeed in closing these gaps, we will not succeed in the Round."<sup>3</sup>

## The Agreement on Agriculture

ActionAid believes that reform of the rules governing the trade in food and agriculture is essential to actively promote sustainable development and ensure food security. This should be made an explicit objective in the preamble to the Agreement on Agriculture (AoA) so that rules benefit small-scale farmers and not agri-business. The current Agreement fails to recognise the fundamental differences between agricultural systems in developed and developing countries. It ignores, for example, that agriculture is the main source of livelihood for the majority of the population in developing countries as well as being a major contributor to national income.

The current 'modalities' proposals, which provide the parameters for future negotiations, fail to address the major imbalances in the AoA and do little to deal with continued protectionism in industrialised countries. Huge subsidies in developed countries result in the 'dumping' of agricultural produce onto world markets and in developing countries. Dumping depresses world prices, displaces developing country exports in third markets and undermines domestic production in developing countries, as local producers are unable to compete with the cheap imports. Dumping can have a devastating impact on developing country farmers, depriving them of their livelihoods and forcing them to leave their land. In the process it seriously undermines food sovereignty and food security.

<sup>2</sup> See accompanying paper on The Agreement on Agriculture

<sup>3</sup> WTO Director General G Supachai Panitchpakdi (2002) The Doha Development Agenda: Challenges Ahead, Speech to the European Parliament, Brussels, 25-26 November

Alongside a prohibition on dumping, ActionAid is calling for the elimination or phasing out of nearly all these subsidies so that all that remains are low levels of support targeted at small farmers and the delivery of public goods. To complete the re-balancing required to address the inequalities created by the accumulated effects of high levels of subsidies in industrialised countries, ActionAid believes that small-scale farmers in developing countries should be protected from competition from agribusiness. Alongside allowing developing countries exemptions from tariff reductions and the ability to adjust their tariff levels as necessary in response to price volatility and import surges, WTO members should consider a more radical proposal that developing countries should be able to adjust their tariff levels in accordance with the level of subsidies in the exporting country.

## The Marrakesh Decision

To complement the proposed reductions in subsidies, ActionAid is calling for effective implementation of the Marrakesh Decision,<sup>4</sup> which committed assistance to the 48 least developed countries (28 of whom are WTO members) and the 19 net food-importing developing countries (NFDICs). In signing the Decision, the world's rich nations promised to help the poorest cope with the likely increase in food import prices arising from trade liberalisation. To date, no concrete action has been taken. As well as reforms to the food aid system, ActionAid supports recent proposals for the introduction of a 'revolving fund' to provide ex-ante support to importers in these countries during times of high world food prices.

## TRIPS and food security

The WTO's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is forcing developing countries to extend intellectual property rights to plant varieties and seeds, with consequential impacts on agriculture. Intellectual property protection, as construed under TRIPS, could

be applied very broadly to allow monopoly rights over individual plant genes and their characteristics. This would imply the removal of farmers' rights over seeds and propagating materials having such genes and characteristics, thus threatening the centuries old practice of saving, using, exchanging and selling farm-saved seed.

ActionAid believes that the use of patented seeds, plants and genetically modified animals would make small farmers dependent on the multinational corporations that own the patents. This could lead to fundamental changes in the way agriculture is practiced in developing countries by facilitating the growth of agri-business and the decline of small farms and biodiversity. If the use of patented seeds became the norm, private corporations would dominate the world's food supply. In short, the introduction of intellectual property rules on plants and seeds under TRIPS could damage the livelihoods of the 1.4 billion farmers worldwide and weaken food sovereignty and food security.

The inclusion of traditional and indigenous knowledge in the TRIPS debate is relatively new and has been prompted by the increased exploitation of traditional knowledge in the search for and use of genetic materials, whose commercial value now runs into millions of dollars. TRIPS has made it possible for companies to patent and exploit the traditional knowledge and local genetic resources (plants, medicines, etc.) of poor communities worldwide. Instead of harnessing this knowledge for the benefit of all, companies are using it for their own profit.

ActionAid is calling for WTO Members to support the African Group's proposal and clarify "that plants and animals as well as micro-organisms and all other living organisms and their parts cannot be patented, and that natural processes that produce plants, animals and other living organisms should not be patentable."<sup>5</sup> They should also confirm that the rights of small farmers to save, use, exchange and sell farm saved seed for both protected and patented varieties will be recognised and respected. Furthermore, they should ensure that the TRIPS

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<sup>4</sup> The Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least Developed and Net Food Importing Developing Countries

<sup>5</sup> Joint Communication from the African Group to the Council for Trade-Related Aspects of Intellectual Property Rights (2003) Taking Forward The Review Of Article 27.3(b) of the TRIPS Agreement, IP/C/W/404, WTO, Geneva, 26 June

Agreement is consistent with provisions of the Convention on Biological Diversity and the International Treaty on Plant Genetic Resources for Food and Agriculture, particularly in relation to the conservation and sustainable use of genetic resources and the need for prior informed consent and benefit sharing for indigenous knowledge and technologies.

## TRIPS and public health

The impact of TRIPS on public health and in particular on epidemics such as HIV/AIDS continues to cause concern and controversy. Under current WTO rules, after 2005 manufacturers of generic copies of patented drugs will not be allowed to export, leaving the least developed countries (LDCs) which lack manufacturing capacity at the mercy of patented medicines. At the Doha Ministerial

Conference, the TRIPS Council was tasked to find a solution to help countries without manufacturing capacity to make use of the flexibility allowed in the Doha Declaration; a solution is yet to be adopted.

The proposals from developed countries do not focus on strengthening the capacity of the LDCs to manufacture generic drugs. Instead, the proposals focus on charity and are confined to specific diseases and countries. ActionAid believes that developing countries should resist any compromise deal that does not assure their right to use the TRIPS flexibilities to protect their public health. The WTO and WIPO need to support the realisation of these rights by assisting LDCs with technical and legal support to set up local manufacturing capacity. Alternatively, the importation route must be kept open by extending the TRIPS enforcement deadline for developing countries 2016.

The failure to reach consensus on strengthening of Special and Differential Treatment provisions, that cut across all WTO Agreements and give developing and least developed countries special rights is one symbol of this lack of commitment to the development agenda. In Doha, ministers agreed “that all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational”.<sup>6</sup> Yet, despite developing countries presenting more than 80 proposals that would achieve this end, “developed countries appear to have been resistant to proposals that deliver tangible benefits to developing countries, especially if they result in costs to themselves.”<sup>7</sup> Indeed, in the few cases where it has been possible for developed and developing countries to reach agreement, generally this has resulted in developed countries ‘softening’ proposals to such an extent that they will no longer result in meaningful change.

## The General Agreement on Trade in Services

The General Agreement on Trade in Services (GATS) has been a cause of growing concern because of its potentially negative impact on development and the lives of poor communities. Ensuring affordable access to basic services like education, health, water and sanitation is key in poverty reduction strategies, and services such as power supplies, telecommunications and reliable banking systems are all necessary foundations for successful development.

Less well-known areas of the GATS cover the international trade in “services incidental to agriculture” and “services incidental to fishing”. These services cover all arable and livestock farming and fishing on a commercial basis.<sup>8</sup> Retail and wholesale services, covering food products, agricultural raw materials and agro-chemicals are covered under the GATS Distribution Sector classification.<sup>9</sup>

<sup>6</sup> Joint Communication from the African Group to the Council for Trade-Related Aspects of Intellectual Property Rights (2003) Taking Forward The Review Of Article 27.3(b) of the TRIPS Agreement, IP/C/W/404, WTO, Geneva, 26 June

<sup>7</sup> Ministerial Declaration, Doha WTO Ministerial (2001) WT/MIN(01)/DEC/1, WTO, Geneva, November

<sup>8</sup> Melamed, C. (2003) What is on the table? An analysis of proposals for changes to Special and Differential Treatment at the WTO, Christian Aid, London

<sup>9</sup> WTO (1991) Service Sectoral Classification List, 10 July 1991 (WTO Document Code: MTN.GNS/W/120).

<sup>9</sup> For a comprehensive list please see the UN ProvCPC listings

Since GATS restricts governments' ability to manage foreign investment for the benefit of their citizens and since it locks in liberalisation in perpetuity, there is a real danger that highly developed, subsidised service providers from industrialised countries will crowd out service providers in developing countries in both domestic and foreign markets. Therefore, ActionAid recommends that developing nations proceed with extreme caution in making further commitments under the Agreement. More specifically, given the high degree of concentration and market dominance by a very limited number of companies of the seed, agro-chemical, agro-processing and food retailing sectors, ActionAid believes developing countries should resist all liberalisation in these areas.

## 'New Issues'

Developing countries have stressed that rather than expanding the WTO's work programme to take on a set of complex 'new issues'<sup>10</sup> the WTO's first priority should be to achieve satisfactory resolution of outstanding issues identified at the Doha Ministerial.

An investment agreement at the WTO would put developing country governments under pressure to open up more sectors of their economy to multinational corporations. Not all forms of foreign investment bring benefits and the consequences of such liberalisation could cause irreparable damage to local communities because the inclusion of the 'non-discrimination' principle in the agreement will undermine developing countries ability to manage foreign investment for the maximum benefit of their economies and citizens.

There is no evidence that the proposed investment agreement will increase foreign **investment** flows, particularly flows to the poorest countries. However, it will increase the rights of investors without increasing their responsibilities. Furthermore, a WTO agreement on investment might result in new sectors, including agriculture, being opened and this could threaten the food and land rights of poor people. Thus, ActionAid calls on developing countries to continue their rejection of industrialised country demands for negotiations on a WTO

investment agreement to begin after the Cancún Ministerial Conference.

ActionAid shares the fears of many developing countries that the inclusion of a non-discrimination principle in the proposed **competition** agreement is yet another strategy for opening up developing countries agricultural and industrial sectors to foreign competition.

Moreover, competition policy and competition law are highly technical, specialist fields and many developing and least developed countries are yet to build up their expertise in this area. Without a sound understanding and the confidence to challenge developed country positions during negotiations, developing countries will find themselves at a significant disadvantage in shaping the proposed competition agreement so that it meets their development needs.

ActionAid is concerned about the impacts of the increasing market domination by a small number of corporations of agricultural inputs, agricultural processing and retail food distribution. As well as making farmers dependent on foreign companies for seeds and other inputs and reducing their bargaining power, giant food processors and retailers are likely to 'crowd out' existing domestic agro-food enterprises. Inevitably, this will deepen poverty in rural areas. Moreover, the proposed agreement would do nothing to address the issue of market domination.

ActionAid believes that the WTO is the wrong forum for dealing with the anti-competitive practices of international business. Even if the current proposals were accepted, the WTO would have no powers to intervene directly. If there is a genuine wish to assist developing countries advance their expertise in competition policy and law and to regulate multinational companies to prevent anti-competitive behaviour, a preferable option would be the establishment of an independent international competition body. This could build technical capacity in developing countries, foster cooperation between established and inexperienced national competition agencies, and deal directly with anti-competitive behaviour from companies.

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<sup>10</sup> The so-called, Singapore Issues: investment, competition, government procurement and trade facilitation

## WTO Democracy

While there will always be an imbalance in power relations within international institutions, it is possible to offset this imbalance by respecting the needs of less powerful members and building democracy through more inclusive and transparent rules. The WTO has resisted calls from its members and from civil society to do this and instead has perpetuated a system which favours a few rich and powerful nations over the majority of its members.

ActionAid is particularly critical of the WTO system of decision-making by passive consensus. This allows powerful countries to use an armoury of threats and pressures in order to win over opposing delegates, since those delegates only need to remain silent or be absent for a 'consensus' to be achieved. If the WTO is to have any legitimacy it must reform the negotiating procedures at WTO ministerial conferences, starting with the Cancún Ministerial, in line with the proposals submitted by developing country representatives in April 2002.

## ActionAid's recommendations

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It is widely acknowledged that many of the WTO's current agreements and procedures are the direct result of unequal negotiations in previous rounds and ministerial conferences. Unless the people of developing countries are to pay in perpetuity for the consequences of this unfair process, the agreements and procedures must be revised so that they operate in favour of people's rights and sustainable development.

ActionAid recognises that developing countries will require considerable determination and fortitude to resist pressures from the industrialised world to agree to their proposals. Given the lack of reforms to WTO processes, they risk being excluded from key

discussions in Cancún and finding that none of their own proposals or objections to agreements are taken into account. ActionAid believes that the failure of developed countries to honour their commitment to a 'development round' calls into question the credibility and legitimacy of the WTO. It calls on developed countries to re-consider their positions and commit themselves to reforms of WTO rules that will ensure that poor countries and poor people are given the opportunity to develop their economies and eradicate poverty. At the same time, ActionAid supports the firm stand being taken by developing countries and encourages them to reject any agreements that could disadvantage their citizens.

ActionAid and Azione Aiuto are members of the ActionAid Alliance, a network of non-governmental development organisations working together to promote structural changes to eradicate injustice and poverty in the world. ActionAid Alliance members are ActionAid (UK), ActionAid Hellas (Greece), ActionAid Ireland (Ireland), Aide et Action (France), Ayuda en Accion (Spain) and Azione Aiuto (Italy). ActionAid Alliance's members have the regular and active support of more than 600,000 EU citizens, and its programmes reach over 9 million people in more than 40 countries in Africa, Asia, Latin America and the Caribbean.

The Food Rights Campaign is an ActionAid initiative that works with women and men to secure their right to food at local, national, regional and international levels. The campaign works in sixteen countries across Asia, Africa, Latin America and Europe.

**ActionAid is a unique partnership of people who are fighting for a better world – a world without poverty.**

**ActionAid Brazil**

Rua Corcovado 252  
Jardim Botânico  
Rio de Janeiro  
CEP 22490-050  
Brazil

**T** +55 212 540 5707

**F** +55 212 540 5841

**E-mail**

[actionaid@actionaid.org.br](mailto:actionaid@actionaid.org.br)

**ActionAid UK**

Hamlyn House  
MacDonald Road  
London  
N19 5PG

**T** +44 20 7561 7561

**F** +44 20 7561 7676

**E-mail**

[mail@actionaid.org.uk](mailto:mail@actionaid.org.uk)

**Website**

[www.actionaid.org](http://www.actionaid.org)

**Azione Aiuto**

Via Broggi 19/A  
20129 Milano  
Italia

**T** +39 02 742001

**F** +39 02 29533683

**E-mail**

[info@azioneaiuto.it](mailto:info@azioneaiuto.it)

**Website**

[www.azioneaiuto.it](http://www.azioneaiuto.it)

**ActionAid Alliance**

10 rue de la Science  
B-1040 Brussels  
Belgium

**T** +32 02 503 2422

**F** +32 02 502 6203

**Website**

[www.actionaidalliance.org](http://www.actionaidalliance.org)

**ActionAid USA**

1112 16th Street NW, Suite 540  
Washington DC  
20036-4023  
United States

**T** +1 202 835 1240

**F** +1 202 835 1244

**E-mail**

[rickr@actionaidusa.org](mailto:rickr@actionaidusa.org)  
[atilar@actionaidusa.org](mailto:atilar@actionaidusa.org)

**ActionAid The Gambia**

CBI Senegal  
Cite Belvedere Lot  
122 Dakar

**T** +221 832 1113

**F** +221 832 1139

**E-mail**

[aasenegal@arc.sn](mailto:aasenegal@arc.sn)

**ActionAid Uganda**

PO Box 676  
Kampala  
Uganda

**T** +256 41 510016

**F** +256 41 510363

**E-mail**

[admin@actionaiduganda.org](mailto:admin@actionaiduganda.org)

**ActionAid Kenya**

PO Box 42814  
00 100 Nairobi  
Kenya

**T** +254 2 4440 449

**F** +254 2 4445 843

**E-mail**

[admin@actionaidkenya.org](mailto:admin@actionaidkenya.org)

**ActionAid Malawi**

PO Box 30735  
Capital City, Lilongwe 3  
Malawi

**T** +265 1 757 500/504

**F** +265 1 757 330

**E-mail**

[admin@actionaidmalawi.org](mailto:admin@actionaidmalawi.org)

**ActionAid Ghana**

PO Box 19083  
Accra North  
Ghana

**T** +233 21 764 931/2

**F** +233 21 764 930

**E-mail**

[aaghana@actionaid-ghana.org](mailto:aaghana@actionaid-ghana.org)

**ActionAid Ethiopia**

PO Box 1261  
Addis Ababa  
Ethiopia

**T** +251 1 654 671

**F** +251 1 653 420

**E-mail**

[admin@actionaidethiopia.org](mailto:admin@actionaidethiopia.org)

**ActionAid Mozambique**

Preceta Moa-Tse-Tung n.22,  
Quelimane  
C.P.196  
Mozambique

**T** +258 4 212 134

**F** +258 4 213 133

**E-mail**

[aamozmp@virconn.com](mailto:aamozmp@virconn.com)

**ActionAid China**

No 8, Room No 401  
Julong Garden  
No 68 Xin Zhong Jie  
Dongcheng District Beijing  
100027 P.R. China

**T** +86 10 6552 1869/8329

**F** +86 10 6552 8327

**E-mail**

[public@actionaidchina.org](mailto:public@actionaidchina.org)

**ActionAid India**

C-88, South Extension, Part II,  
New Delhi, 110 049  
India

**T** +91 11 5164 0571

**F** +91 11 51641891

**E-mail**

[aaindia@actionaidindia.org](mailto:aaindia@actionaidindia.org)

**ActionAid Pakistan**

House No 10, St. 17, F-8/3,  
Islamabad  
Pakistan

**T** +92 51 228 2954

**F** +92 51 226 0678

**E-mail**

[mail@actionaidpakistan.org](mailto:mail@actionaidpakistan.org)

**Website**

[www.actionaidpakistan.org](http://www.actionaidpakistan.org)

**ActionAid Vietnam**

521 Kim Ma Road  
Ba Dinh  
Ha Noi, Vietnam

**T** +84 4 771 7692

**F** +84 4 771 7693

**E-mail**

[mail@actionaidvietnam.org](mailto:mail@actionaidvietnam.org)

**ActionAid Bangladesh**

House CWN (A) 32  
Road 43, Gulshan 2  
Dhaka 1212  
Bangladesh

**T** +880 2 881 5991/2

**F** +880 2 881 5087

**E-mail**

[mail@actionaid-bd.org](mailto:mail@actionaid-bd.org)

**Website**

[www.actionaidbangladesh.org](http://www.actionaidbangladesh.org)

**ActionAid Nepal**

GPO Box: 6257  
Lazimpat, Kathmandu  
Nepal

**T** +977 1 4436477

**F** +977 1 4419718

**E-mail**

[mail@actionaidnepal.org](mailto:mail@actionaidnepal.org)

**Website**

[www.actionaidnepal.org](http://www.actionaidnepal.org)

**Asia Region Office**

Bangkok

**Africa Region Office**

Harare

**Latin America**

Region Office

Guatemala

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