

## **The Doha Deception Round**

How the US and EU cheated developing countries at the WTO  
Hong Kong Ministerial

## Acronyms and abbreviations

ACP	African-Caribbean-Pacific group of countries
ASEAN	Association of South East Asian Nations
DF/QF	Duty Free Quota Free (market access)
HOD	Heads of Delegation
LDC	Least Developed Country
LMG	Like-Minded Group
MFN	Most Favoured Nation
NAMA	Non-Agricultural Market Access
S&D	Special and Differential treatment
SSM	Special Safeguard Mechanism
SP	Special Products
SVE	Small and Vulnerable Economy

The **G90** consists of the African Group, the ACP and the LDCs. Together, they represent 92 countries, around 64 of whom are WTO members. LDCs make up the largest part of the grouping.

The **African Group** has 43 WTO members, 30 of which are LDCs.

The **ACP** has 79 members, 56 of which are also WTO members. LDCs account for roughly half of the ACP's membership.

## Executive summary

As June and July deadlines approach, the pressure on WTO members to conclude the Doha Round intensifies. Members must reach agreement on controversial negotiating details, known as 'modalities', in the areas of agriculture and industrial goods, as well as finalise deals on services trade and other key issues of the trade agenda. The sense of urgency is heightened by the public relations spin that the very existence of the multilateral trading system depends on the successful conclusion of the Doha Round by the end of 2006. With elections coming up in key countries and the threat that the US's Trade Promotion Authority is likely to expire in 2007, the WTO Secretariat is insinuating that, unless it is completed soon, the Doha Round will become irrelevant and that the multilateral system will be replaced by coercive bilateral and regional agreements.

At the same time, the great deception that the Doha Round will lead to economic development in poor countries has been corroborated by recent studies. The World Bank, for instance, has downgraded the expected benefits of trade liberalisation in its latest projections. The Carnegie Endowment for International Peace<sup>1</sup> and Tufts University<sup>2</sup>, meanwhile, predict losses for most developing countries, especially those in sub-Saharan Africa; and the Independent Evaluation Group (IEG)<sup>3</sup> of the World Bank confirms that 17 years of trade liberalisation policies have not yet reaped the expected benefits for developing countries. The IEG also attests that policy makers "underestimated restraints and local complexity" of the impacts of trade liberalisation in developing countries, inadequately assessed winners and losers, and promoted trade liberalisation without understanding its impacts on communities.<sup>4</sup>

While a few large developing countries such as China stand to gain anywhere between a meagre 0.8 and 1.2% of their GDP, poor and resource-constrained regions such as sub-Saharan Africa, the Caribbean and even countries like Mexico would lose under a multilateral trade liberalisation scenario.<sup>5</sup> The total gain from Doha is expected to be no more than 0.02% of the global GDP.<sup>6</sup>

**Developing countries, who dominate in numbers at the WTO, now face the decision of whether to buy into the media spin and conclude the Doha Round this year, or to stop and re-assess what they have to gain from the existing framework.**

Thus far, power politics has dominated WTO processes and outcomes, largely obscuring rational reasoning and democratic practice. This is exemplified by the launch of the Doha Round itself, which was hammered out post-9/11 in Qatar's capital through a variety of economic threats as

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<sup>1</sup> Polaski, S., *Winners and Losers: Impact of the Doha Round on Developing Countries*, Carnegie Endowment, Washington D.C., 2006.

<sup>2</sup> Ackerman, F., *The Shrinking Gains from Trade: A Critical Assessment of Doha Round Projections*, Global Development and Environment Institute, Tufts University, 2005. (Accessed at: <http://ase.tufts.edu/gdae>)

<sup>3</sup> World Bank, *Assessing World Bank Support for Trade 1987-2004*, Independent Evaluation Group publication, 2006 (accessed at: <http://www.worldbank.org/ieg/trade>).

<sup>4</sup> 'World Bank's Independent Evaluation Group Issues Report Assessing Two Decades of Global Trade Programs: Despite Greater Openness, Full Benefits yet to be Realized', IEG press release, 2006/1/IEG

<sup>5</sup> From Polanski, S. in E. Mekay, 'Poorest Nations Hit Hardest by WTO Agenda, Study Finds', *Inter Press Service*, March 16, 2006.

<sup>6</sup> Ibid

well as promises of aid and other bilateral deals from the major powers; and by silencing the opposition of informed Geneva-based ambassadors and trade negotiators.<sup>7</sup>

In July 2004, the process took another negative turn when a handful of trade ministers pushed through a framework for negotiations, called the 'July Framework', for concluding the Round. The previous year, however, at the Cancun Ministerial, developing countries had united and rejected this framework as a basis of negotiations. The July Framework was, nevertheless, later adopted through a secretive and exclusive process by a small number of trade ministers. Although objections were raised by Geneva-based representatives of developing countries, trade ministers adopted a text agreed by only a few as the basis for the Hong Kong Ministerial.

As April 2006 approached, there was talk of finalising the Doha negotiations through a series of exclusive and low profile meetings, in much the same way that the July Framework had been agreed.. This would have meant that a few ministers would have finalised a deal that would then be conferred on the WTO's 150 members as a *fait accompli*. However, there were signs that developing countries were resisting such attempts and saying that "no deal is better than a bad deal". The WTO's Director General, Pascal Lamy, then shelved his ambitions for an end of April exclusive meeting in the hope that he could instead garner support for concluding the Round by the end of July.

Such processes thus beg an examination of the current power dynamic and procedural accountability within the WTO. Lessons from the December 2005 Hong Kong Ministerial are particularly timely since Hong Kong was labelled a success both in terms of its 'bottom-up' process and in its outcome for development. This report, however, reveals the deception perpetuated by these claims.

The report looks at the politics and the processes of the Hong Kong Ministerial. It shows how Lamy, together with powerful WTO members, has spun the WTO process, claiming that it is bottom-up while orchestrating and driving a process that is anything but. This deception has legitimised exclusive and non-transparent negotiations such as the Chairman's Consultative Group, mini-ministerials and G4 meetings. What's more, WTO members' decisions to remain publicly silent about these practices jeopardises hopes for rebalancing global economic power.

The report also shows how the EU and US have used the notion of the 'development package' to divide developing countries and further their own agendas. They have manipulated and hidden behind this package to fragment developing country groupings such as the G90, and isolate major developing countries. Finally, an analysis of the G4 and the problematic notion of the 'Single Undertaking' reveal how the US and EU can compromise bigger developing country players such as India and Brazil. Although these two countries' roles have been beneficial to developing country groupings, such as the G20 and the G33, and have created more answerability from the EU and US, their representation does not mean that other developing countries should be sidelined in the negotiations.

The report is divided into four sections. The first two illustrate, through case studies, how power politics and power processes have led to a deceptive Hong Kong outcome, while the last two

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<sup>7</sup> Jawara, F. and A. Kwa, *Behind the Scenes at the WTO: The Real World of International Trade Negotiations*, Zed Books, 2003.

look at how the EU and US have manipulated the WTO framework to intensify divisions between developing countries, and the implications of these divisions for Least Developed Countries (LDCs) and the G90 as well as for powerful countries such as India and Brazil.

In particular, Section I addresses the psychological importance of the 'blame game' which has been as a central factor in imposing self-restraint on disgruntled members and achieving consensus in Hong Kong. The power politics in the Hong Kong process is revealed through specific examples. The report shows for example:

- how country groupings such as the LDCs were pressured by Lamy and the WTO Secretariat into accepting last-minute compromises even though they had rejected the proposed LDC development package;
- how the cotton 'C4' countries were worn down into consensus by the US's meaningless concessions and faced the threat of cotton being removed from the agenda;
- how one African country was pressurised into reversing its decision to block consensus; and
- how the politics of the green room created unjust representation in Hong Kong.

Section II presents a detailed study on how the services text was accepted in Hong Kong. It examines the blatantly undemocratic means that the WTO Secretariat and liberalisers employed to marginalise, discredit and disempower a large number of WTO members who had legitimate concerns with the negotiating framework. It also shows how the major powers used politics to silence countries such as Rwanda and Malawi; and how Venezuela was prevented from blocking consensus at the last minute.

Section III examines how the EU and the US used the development package to divide poorer developing countries. It also shows how important LDCs are for pushing the interests of the G90 and why G90 unity is therefore vital.

Far from being powerless spectators in the WTO, developing countries can, when united, be potent agents for change within the multilateral trading system. In Hong Kong, for instance, developing countries were able to hold their ground on some of their key concerns in agriculture – such as stronger language on special protection for agriculture products and for a price trigger mechanism against short-term agriculture dumping. The G33, in solidarity, fought for these provisions. The power of the G20 also forced a certain amount of accountability from the EU and US. When they have stood united, developing countries have changed the WTO's processes, as the G90 and the G20 showed in Cancun. In the past, powerful developing country activism in coalitions such as the Like-Minded Group has also successfully challenged imbalances within the WTO.

The lessons from Hong Kong are, therefore, clear. They must recognise that the threat of being blamed for the demise of the multilateral trading system is a political tactic and resist such coercion. A fair system means creating a just and accountable process that allows both bigger and smaller countries to use trade rules to promote economic development, rather than trade liberalisation. It is clear that the current framework offers few or no benefits to the majority of the WTO's members when it comes to fighting poverty.

Developing countries must, therefore, in the interests of their people, strengthen their unity and proactively demand the transformation of the existing multilateral trading system into one that does not pit one developing country against another. Time and time again, they have shown that this kind of unity is indeed possible. In May of this year, for instance, 42 developing countries in the G33, together with the African Group, the African-Caribbean-Pacific (ACP) group and the LDCs, tabled a joint response on the skewed nature of the agriculture negotiations. But, if they truly want to alleviate poverty, it's time for developing countries to unite once and for all.

It is also time for developed countries to acknowledge that Doha is yet another one-sided WTO deal that should be rejected. Rich countries should stop cheating poor people by the shameful use of 'diplomatic' threats and other covert means of coercion against sovereign states. Finally, the WTO Secretariat, Pascal Lamy and powerful WTO members must stop driving the agenda in an aggressive and exclusive manner, whereby mini-ministerials and members chosen by a select group are designated to negotiate on behalf of the rest of the membership. All countries must challenge this process and bring back debates on transparency, legitimacy and accountability to address the deception involved in the current Doha Round.

For years, civil society organisations have warned WTO members that blindly pursuing trade liberalisation is contrary to a just and humane development agenda. The WTO must catch up and realise that the world has moved on from the Washington Consensus. It's time for the WTO to learn from the lessons of the past 20 years and acknowledge its impact on developing countries. What's more, recent economic studies confirm that the numbers simply won't add up. WTO members must, therefore, act now before an unethical, power-driven process once again determines the fate of developing economies. Member states owe it to their citizens to redress the 'development' deception of the Doha Round.

## Introduction

The coming months are critical for the global trading system. WTO member states have agreed to finalise the negotiating details, known as ‘modalities’, on agriculture and industrial trade, and make commitments on services’ trade to ensure that the Doha trade round is completed by the end of this year.

The WTO’s Director General, Pascal Lamy, is eager to clinch the Round during his tenure, and he has talked of the Hong Kong Ministerial, which took place from 13 to 18 December last year, as putting the Doha Round “back on track”. Since his arrival at the WTO in September 2005, there have been back-to-back meetings – known as ‘green rooms’ or ‘mini-ministerials’ – for select groups of ministers. And, lately, Lamy has been pushing to finalise details of the Round by the end of July through more of this type of non-transparent, ‘invitation only’ meeting.

This push comes at a time when studies by the World Bank, the Carnegie Endowment for International Peace and Tufts University, amongst others, are re-assessing the benefits that are to accrue to developing countries through the Doha liberalisation agenda. Virtually all of the newer studies are showing that Doha will result in losses for the majority of developing countries. The World Bank has downgraded the expected benefits of trade liberalisation in its latest projections. The Carnegie Endowment<sup>8</sup> and Tufts University<sup>9</sup> predict losses for most developing countries, especially across sub-Saharan Africa, and the Independent Evaluation Group (IEG)<sup>10</sup> of the World Bank confirms that 17 years of trade liberalisation policies have not yet reaped the expected benefits for developing countries. The IEG attests that policy makers “underestimated restraints and local complexity” of the impacts of trade liberalisation in developing countries, inadequately assessed winners and losers, and promoted trade liberalisation without understanding its impacts on communities.<sup>11</sup>

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which was hammered out post-9/11 in Qatar's capital through a variety of economic threats as well as promises of aid and other bilateral deals from the major powers; and by silencing the opposition of informed Geneva-based ambassadors and trade negotiators.<sup>14</sup>

In July 2004, the process took another negative turn when a handful of trade ministers pushed through a framework for negotiations, called the 'July Framework', for concluding the Round. The previous year, at the Cancun Ministerial, developing countries had united and rejected this framework as a basis for negotiations. The July Framework was later adopted through a secretive and exclusive process by a small number of trade ministers. Although objections were raised by Geneva-based representatives of developing countries, trade ministers adopted a text agreed by only a few as the basis for the Hong Kong Ministerial. It created, amongst other things, a skewed architecture for the industrial goods/non-agricultural market access (NAMA) negotiations that divided up developing countries based on the level of tariffs they had legally bound within the WTO. It also locked in a framework for the Doha negotiations that stressed liberalisation over development.

As April 2006 approached, there was talk of finalising the Doha negotiations through a series of exclusive meetings with no more than 30 trade ministers. Developing countries have, however, resisted such attempts, because serious questions are now being raised in policy circles about the economic benefit for many developing countries of participating in this Round.

These concerns thus beg an examination of the current power dynamic and procedural accountability within the WTO. Lessons from the December 2005 Hong Kong Ministerial are particularly timely since Hong Kong was labelled a success both in terms of its bottom-up process and in its outcome for development. At the closing press conference, Lamy said "there has been a rebalancing in favour of developing countries, whose interests have now been placed at the heart of our negotiations." This report reveals the deception of these claims.

The report is based on four weeks of fieldwork in Geneva as well as telephone interviews. Thirty-eight interviews with government officials, IGO and NGO representatives from Africa, Asia and Latin America were conducted. The report is divided into four sections: the first part examines the process and politics of Hong Kong itself; the second looks at the sabotage of the services annex; the third at the structural divisions perpetuated by the US and the EU, and the separation of the LDCs from the main agenda; while the final section addresses the new power equation in the negotiations.

An in-depth analysis of the Hong Kong Ministerial reveals that the EU and the US have manipulated differences between developing countries to undermine their coalitions and objectives. It also reveals how WTO leadership and processes, even after three WTO failures, continue to flaunt democratic practice and accountability. A close look at the Hong Kong process shows how Lamy has dangerously legitimised previously criticised practices of decision-making within the WTO; and how WTO members' decisions to remain publicly silent about these practices jeopardises hopes for rebalancing global economic power.

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<sup>14</sup> See Jawara, F. and A. Kwa, *Behind the Scenes at the WTO: The Real World of International Trade Negotiations*, Zed Books, 2003.

It shows how Lamy's process, far from being bottom-up, has excluded the majority of the WTO's members and forced an outcome that is going in the opposite direction of development. The case study of the services negotiations shows how those in favour of liberalisation were able to marginalise the majority of the WTO's membership and steamroll an outcome. The report also shows that the Hong Kong 'development package' was a deceptive tool of manipulation by the EU and the US to create divisions amongst developing countries. It further reflects on why LDCs are crucial for the strength of the G90 and vice versa.

This report provides important lessons for governments in the months ahead. Developing country members within the WTO are not merely spectators but an essential part of the consensus that drives the organisation. And, united around a common objective at both the technical and the political level, they can dramatically shift the terms of the debate. The unity of groups like the G90 – a joint collaboration of the African Group, the ACP and the LDCs totalling around 64 WTO members – can strengthen the collective power of the more marginalised countries within the organisation. This unity is clearly shown from the recent G33-ACP-LDC-African Group submission on the agriculture negotiations.<sup>15</sup> In addition, with the rise of India and Brazil, the 'old Quad' (the US, EU, Canada and Japan) is no longer exclusively setting the agenda at the WTO.

If the focus is shifted towards strengthening development objectives that suit both bigger and smaller developing countries, this dynamic will foster greater unity between developing country members of the WTO. Currently, the opposite is happening as divisions are brought to the fore through the flawed structure and content of the WTO negotiations and through the manipulation of rich countries which are pitting one poor country against another.

In the coming months, steps must be taken to address the US/EU attempt to divide the South. The Lamy-driven process and the Secretariat's support of exclusive, non-transparent processes must be publicly challenged by those WTO members who have been marginalised. Developing countries' success at the WTO now depends on cross-cutting alliances that go beyond a single negotiating topic such as agriculture. It depends upon them uniting around a common development agenda.

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<sup>15</sup> WTO document TN/AG/GEN/17, accessible at [www.wto.org](http://www.wto.org)

## SECTION I: Power politics and processes

### The psychological blame game: developing countries cannot afford a failure

While civil society organisations and social movements chanted “no deal is better than a bad deal” in the run up to the Hong Kong Ministerial, the psychological pressure building up within trade circles in Geneva was that a third WTO failure would jeopardise the future of the multilateral trading system (MTS). Equally critical was the fear of being blamed for the demise of the trading system. Since developing countries believe that they have a better chance of negotiating a fairer deal in the WTO than bilaterally with the major powers, jeopardising the MTS was the last thing they wanted to do.

The WTO Secretariat, and its ambitious new Director General, Pascal Lamy, were also in no mood for a public display of failure. In order to ensure success in Hong Kong, Lamy orchestrated a ‘recalibration’ of what trade ministers could achieve at the Ministerial. Scaling down ambitions for what could be achieved in Hong Kong would ingeniously ensure that any outcome short of a collapse was a step forward for the multilateral trade talks. It also meant that every country should be willing to compromise in Hong Kong since trade ministers were not going to try to reach for the stars.

This pressure was combined with the urgent need to complete the Round by the end of 2006. If not, the expiration of the US Trade Promotion Authority (TPA) and upcoming elections for countries such as the US, Brazil and France would derail the Round altogether for years to come. Thus, Lamy’s media spin as soon as he entered office in September 2005 was that not only would failure in Hong Kong be bad for the WTO’s credibility, but it might also completely derail the Round.<sup>16</sup> He also brought back threats of TPA expiration from his visits to the US Congress. This reinforced the US’s doom-and-gloom scenario that the chances of completing the talks by early 2007 would be at “great risk” if there was a setback in Hong Kong.<sup>17</sup> These fears – of being viewed as obstructionist and standing in the way of the Doha Round – were a key reason why countries settled for the Hong Kong outcome.

#### An ambassador from an ACP country:

*It was conveyed that US fast track is of critical importance for completing the Round by December. Political considerations in the EU and US were a factor even before Hong Kong. It would be said to us, “Patience of Congress is wearing a little bit thin on trade agreements. Look at CAFTA as an example. There is no expectation that future administrations could push this through after the TPA expires.” But we believe that Congress will find a way to deal with it if the commercial sector wants it.*

#### An African trade negotiator:

*The US TPA can expire. It’s not the end of the negotiations. It was not the end of the world when the ITO didn’t emerge. For 50 years, they still kept reducing tariffs. Issues now are different, the environment is different. Now, we’re focusing on 1001 issues. Those days, there were a handful*

<sup>16</sup> ‘Lamy warns failure in Hong Kong would damage WTO’, *AFP*, November 15, 2005.

<sup>17</sup> ‘Portman Offers Post-Hong Kong Ideas in Case of Ministerial Failure’, *Inside US Trade*, November 4, 2005.

*of countries, now there are a 149. We cannot ignore that. Each country is trying to see what the benefits really are.*

Since Hong Kong, the equation for the Doha Round's success has been reduced to three parties and three issues: for the EU to move on cutting farm tariffs, for the US to cut its domestic support, and for 'leading developing countries' like India and Brazil to offer market access on industrial goods and services.<sup>18</sup> This type of framing conveniently ignores the fact that whatever India and Brazil agree to will be applied to the rest of the membership through the Most Favoured Nation (MFN) principle. MFN means that commitments made by one country in the WTO must be applied to all members without discrimination. And it also ignores the fact that many developing countries have serious problems with the current basis of Doha Round negotiations. As we will see below, this type of exclusive negotiation has created an urgent need for carve outs by developing countries that do not have the same economic clout or negotiating power as the EU, US or India and Brazil.

### **The rhetoric versus the reality of 'bottom-up'**

*The process will remain bottom-up [originating from the members and not imposed from above] and, in keeping with the preparations in Geneva for this Ministerial Conference, there will be no surprises.*

**WTO Secretariat's summary by Chair John Tsang at the start of the Hong Kong Ministerial**

*Whatever transpired, it was in the green room. And the bottlenecks one could see would be discussed in the green rooms. By being in the green room, my minister could put [a particular idea] across without a hue and cry about it. Because he could put it across, it was contained and it went off well. Apart from that, Hong Kong was totally different than other meetings. There were no meetings. If we were not in there, there is no way we would have been able to adequately defend our interests.*

**An Asian trade negotiator**

*I don't feel like I participated in the negotiations...The only time you spoke was in your internal meeting, as well as the informal groupings, headed by friends of the chair delegates – kind of showing, "Look there's transparency". But ultimately, the real forum of negotiations was the green room and whatever you said in the other rooms didn't matter. What mattered was the position of the big guys and what they felt they could deliver. Personally, I don't feel like I participated.*

**An African trade negotiator**

Hong Kong's deception was that it spun the process as participatory and bottom-up, and made it seem absurd to challenge the green room. In reality, Hong Kong legitimised exclusive and undemocratic processes when Lamy formalised the green room by calling it the Chairman's

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<sup>18</sup> Cage, S., 'Australia Minister says WTO Chief Lamy Can See Doha Round to Successful End'.

Consultative Group (CCG). Far from being bottom-up, green rooms are non-transparent, invitation-only meetings for a few selected countries who negotiate the WTO agenda and then convey it to the rest of the members. Participation is not based on self-selection and only the Head of Delegation plus one other person can attend. The most powerful WTO countries and the WTO Secretariat select the participants. Coordinators of large groups such as the ACP, the African Group and LDCs are invited and it is through them that the concerns of their groups are reflected. But Hong Kong shows that this is not always the case. At the same time, other countries are included without a clear rationale as to why they might be invited over others.

In Hong Kong, unlike in the past, the green room met every night. It negotiated every issue, one after the other. For special topics, such as cotton and LDCs, there were green rooms within the green room. The WTO Secretariat never revealed a list of the countries that were actually in the green room. The WTO's own ministerial summaries estimate 30-40 countries, while Lamy's personal internet blog talks of 30 countries.

The lack of representation and the dynamic within the green room disadvantaged countries that are active players in the WTO, but that could not represent themselves directly. The Hong Kong process, so focused on green room results, forced a dynamic where countries that had problems with how the negotiations were proceeding had little choice but to hope that their representatives in the green room would be able to broker a deal. When the final draft was unsatisfactory, they had no other avenues short of rejecting the ministerial draft. This take-it-or-leave-it scenario left dissatisfied members and their groupings with little choice but to accept the deal rather than risk being blamed for the collapse of the Doha Round. Countries like Venezuela and Cuba were forced to invent the precedence of 'reservations' rather than reject the draft.

**At the conclusion of the meeting, Lamy said to journalists that, after 450 meetings, six gatherings and over 200 consultations, WTO members had arrived at consensus in Hong Kong.<sup>19</sup> Yet, delegations interviewed for this report from Latin America, Asia, Africa and the Caribbean all concurred that it was only participants in the green room who really negotiated in Hong Kong, while facilitators went around holding consultations with various groups and countries as a cosmetic exercise in transparency. In reality, Hong Kong only had a few formal plenary sessions – the opening and closing sessions, Tonga's accession and the session on cotton. The full WTO membership never got the chance to meet formally and discuss the trade agenda. They never had the chance either to make formal statements on the final draft text before it was adopted.**

Apart from Venezuela and Cuba, no country has made formal complaints about the process or publicly denounced the legitimacy of the green room process. In the first General Council meeting after Hong Kong, Venezuela and Cuba submitted a four-page document entitled, *Irregularities Identified in the Negotiation and Decision Making Process at the Sixth WTO Ministerial Conference*.

Lamy and others have now convinced many delegations that there is no other way to negotiate in the WTO. They believe that there are no other alternatives, even as they admit that this process is not inclusive, transparent or even in their best interests. They complain about the lack of a

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<sup>19</sup> [www.wto.org/english/thewto\\_e/minist\\_e/min05\\_e/min05\\_18dec\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min05_e/min05_18dec_e.htm)

legitimate outcome in Hong Kong, about the manipulation of power holders within the institution and about their frustration at poor representation through the green room system. Several examples of the deception involved in the so-called bottom-up Hong Kong process are outlined below. They show how consensus was, in fact, fabricated in a top-down and coercive manner.

### **The LDC package: not what the LDCs mandated**

The biggest deception of the Hong Kong outcome is that the LDCs had actually rejected the so-called 'development package' delivered in their name before the final Heads of Delegation (HOD) meeting on the last day. This package took up the bulk of the negotiating time and received the most media attention throughout the Hong Kong Ministerial. However, even by the final hour, rich countries had not given LDCs substantive concessions on Duty Free/Quota Free (DF/QF) market access, and the Trade-related Investment Measures (TRIMS) waiver had loopholes that could allow developed countries to cause problems in the future. These two proposals were more economically valuable to the LDCs than the others and, given the amount of energy and negotiating capital that LDCs had invested, they felt it wise to send the package back to Geneva for further negotiation until substantial results were achieved rather than settle for a half-baked deal that would require further trade-offs in the future. They did not want to block consensus, but rather to send their proposals back for further negotiation in Geneva.

Thus, the LDCs, in their last two-hour internal meeting before the final HOD meeting, asked that the entire annex related to the LDC package, Annex F, be sent back to Geneva for further negotiation. However, the final HOD meeting and the final formal plenary session delivered a different verdict on the LDC package.

Before the final HOD meeting, the WTO Secretariat caught wind of the LDCs' decision – of sending back the LDC package to Geneva for further negotiations - and Lamy and others applied tremendous pressure to countries such as Zambia, which was the LDC coordinator, and Bangladesh.<sup>20</sup> At the final HOD meeting, the LDC coordinator and Bangladesh were cornered: they were presented with the choice of either accepting a partial deal on the LDC package or taking the blame for Hong Kong's failure. **In fact, there was tremendous pressure on Zambia's minister Dipak Patel throughout the conference. He was credited by many LDC delegates as doing an outstanding job on their behalf but, because he was an effective negotiator in the green room, rumours started to emerge midway through the conference that he was being too tough and aggressive. This is a common tactic used by the major powers to pressurise and de-legitimise adept negotiators.**

The LDC package was a public relations victory the WTO needed to prove that 'development' had been delivered in Hong Kong. The LDCs had little choice but to go along with it or risk losing what they had negotiated thus far.

In essence, Lamy took it into his own hands to deliver 'an understanding' via the Chair, John Tsang, on one part of the annex. Moreover, the Secretariat cleverly orchestrated the process in a way that, should any LDC have wanted to object, it would have had no opportunity to do so. John Tsang delivered his 'understanding' just before closing the final HOD meeting. And then

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<sup>20</sup> Bangladesh's textile industry was one of the main reasons why LDCs weren't being granted even 99% Duty Free/Quota Free access.

the final formal plenary session was set up theatre-style without microphones so that no governments could speak. If an LDC wanted to raise an objection, they would have had to stand up, go up to the stage and demand a microphone like Venezuela's Vice-Minister did in the final plenary.

The Secretariat's handling of the LDC decision is indicative of its strong-arm tactics. Though claiming that Hong Kong was bottom-up, Lamy disregarded bottom-up decisions and forced the LDC leadership to make last-minute compromises with a "veiled threat" of dropping the entire process.

The cruel irony of accepting this package is that both the EU and the US used it to silence LDC opposition to the Services Annex C. Negotiating the package also took the LDCs out of being actively engaged in other crucial areas of the trade negotiations, particularly in the areas of agriculture and NAMA.

### **The cotton deal: another deception in the development agenda**

The 'C4' cotton countries (Benin, Burkina Faso, Chad and Mali) plus Senegal have asked for an end to the dumping of cotton in their markets. They are demanding compensation for the economic losses this practice has incurred on their economies. The debate has resulted in the absurd situation where the US has promised aid money to cotton producers to produce more efficiently, while destroying their trade production capacity through dumping.

In Hong Kong, the US committed only to duty-free, quota-free access for the C4 cotton producers by the end of the Doha Round and to removing cotton export subsidies by 2006. The other clauses are still subject to further negotiation. The concessions offered were largely meaningless given that C4 countries mainly export to the EU and because the bulk of cotton dumping comes through the US's domestic support schemes and not export subsidies. Moreover, the US was already required to eliminate export subsidies as a result of a decision made by the WTO's legal dispute settlement body in September 2005. So why did the cotton countries accept such paltry concessions?

As stated above, there was significant pressure on developing countries to compromise and to not be blamed for the failure of Hong Kong. Since cotton had received so much attention prior to the Ministerial, it was important for the C4 to engage in the process and keep the debate alive. It was imperative that the C4 trade ministers accept a deal, no matter how small. The implicit threat was that if the C4 did not compromise in Hong Kong, it might derail any further talks on compensating the C4 in the future. Thus, they accepted a deal in the hopes that their demands would be met before the end of the Round.

#### **A C4 trade negotiator:**

*Ministers were putting political pressure on us. If we don't accept Hong Kong, what will happen to the cotton agenda? The role of the Secretariat was also important here. It was suggested that [the US] will drop the cotton agenda. So be careful, so that cotton negotiations can continue.*

The US strategy was to give in and make minute concessions at the last moment possible.<sup>21</sup> This made it seem as if the US had made a huge sacrifice. While delegations were approving the ministerial text in the final HOD meeting, the cotton text was still being negotiated. Those that witnessed the negotiations within the green room commented on the sheer inequality of power between the US and the C4.

**A senior official from a non-cotton country:**

*At the last cotton meeting on the night of the 17<sup>th</sup> and 18<sup>th</sup> [December]...how vulnerable these countries were, they had absolutely no clout, they are unequal in every way. The US didn't want to move, simply refused to move. When they did finally agree the following night at the 11<sup>th</sup> hour, they tried to do it as late as possible. At the US closing press conference, the green room was still going on. It was longer than expected. Two of [Portman's] deputies fielded the press conference, waving cotton like a huge banner as well as the LDC package.*

Meanwhile, the negotiating process was heavily skewed against the C4 countries. They had limited negotiating strength, and few staff and resources compared with the US. They had to endure non-stop negotiations with the US over several days and nights. This type of a process should be prohibited considering that many countries are resource-constrained and do not have the physical capacity to negotiate for close to 18 hours non-stop.

**A C4 country official:**

*It was us who lost... It was deplorable ... all happening in the night... We worked all day Saturday, all night until 7am in the morning to finalise with the Americans. You have to have extraordinary physical force to do this. It all contributes to the non-transparency. In a state of extreme fatigue, you can't think or negotiate well. The US had more than 200 people. They can change their negotiators in all the meetings. We had to be everywhere, including Sunday evening.*

*So then you have problems of consultation with your base – could [any single minister from the green room] give final agreement? The US was talking on the phone all the time. Our small delegations, we didn't have the means to communicate with others. We would say, "OK, but we have to check with our countries; we will tell you in the afternoon." And they would say, "We give you till noon to tell us definitely..."*

The process was extremely cumbersome for the C4 negotiators who first had to consult with the C4 delegation and then the African Group regarding their position on each change in the negotiating text before they could negotiate with the Secretariat and the US. The Secretariat was unhelpful in this process and exacerbated fatigue, because, at times, it would produce texts without reflecting the changes the C4 had finished negotiating.

**A C4 country official:**

*...But it wasn't easy with the Secretariat. They would go and take the [draft cotton] text after changes had been negotiated. The paragraph would be cleaned up; but we would find the*

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<sup>21</sup> During the final HOD, the US negotiated the removal of brackets around language that called to remove trade distorting domestic subsidies for cotton production "more ambitiously" and "over a shorter period of time" as part of WTO agriculture negotiations. This type of language is non-mandatory and does not treat cotton as separately from the larger agriculture negotiations.

*same things unchanged. Even though we asked that parts of that be changed, we would come back with the same problem. If one wasn't reading carefully and only reading the body of the paragraph, we would have assumed the changes were made... Was this on purpose? Or was this a problem of saving the original file? It made it really hard on us considering the hours we were working.*

In spite of the challenges, the C4 have continued to push negotiations towards a mechanism for compensation for displaced cotton trade in their region. The responsibility now lies with the US and other rich countries to actually deliver to these countries.

### **An African country thwarted from blocking consensus**

This particular African country has less than 35% of its industrial tariffs unbound and thus falls into a special category in the NAMA negotiations referred to as a 'Para 6' country (the paragraph in the NAMA framework that deals with these countries). Though actively engaged on these issues outside of the green room, it was limited in what it could achieve inside the green room where the real negotiations took place and where it was represented by Egypt as the African Group coordinator.

It felt that countries with less than 35% bindings in NAMA should not be forced to bind their tariffs and reduce them at the same time. GATT and WTO members have not had to bind and reduce at the same time. However, the language that was accepted in Hong Kong did not reflect these concerns. For this reason and others, **the country's delegation was prepared to make a strong statement in the final plenary session "tantamount to rejecting the text". However, once again, the Secretariat got wind of this and alerted the country's Geneva-based ambassador about this. The ambassador was obliged to call the permanent secretary who would make the statement on behalf of the delegation. The permanent secretary insisted that the way in which industrial tariffs were treated in the negotiations was important to the country's economy. Then, the country's trade minister was woken up in his hotel room where he was resting after the long overnight green room sessions. These phone calls were made during the final HOD meeting.**

The minister advised the permanent secretary not to block consensus at this very last stage and suggested reopening the issue in Geneva. Given the fact that both the minister and the ambassador were in WTO leadership positions, they could not publicly make the WTO process look bad. The permanent secretary improvised a new statement in the final HOD meeting conceding to the stage-managed consensus.

### **Capital-based delegate of this country:**

*The way the whole thing was orchestrated, Lamy had picked about 20 countries that were to a large extent positive about the text. Nearly all of these speakers maintained that the text serves as a good launching pad for further negotiations in Geneva. The evolving scenario placed some delegates who wanted to oppose the text at a disadvantage and instead they began to question whether or not the problem was their inability to comprehend the text or the problem was the draft Hong Kong text itself. In our case, the statement we had carefully prepared for the permanent secretary [for the HOD] was not read. Instead, he drafted his own during the meeting so as to resonate the popular view.*

Negotiations have indeed re-opened on the binding and reduction issue on NAMA. However, the issue now faces an uphill battle. Had the process in Hong Kong been bottom-up, this country would have been able to voice its concerns on behalf of the Para 6 countries during the NAMA negotiations.

### **The quest for representation in the green room**

The reality of the Hong Kong process was that it was driven by a zealous ex-trade commissioner, Lamy, and driven primarily through an agenda set by very few. Developing countries succeeded when they maintained a strong and cohesive group with a clear bottom line. This is why the G33 was able to gain some ground in the agriculture negotiations in Hong Kong. This is also why more than 12 members of the G20 were represented in the green room and why so much time was spent on agriculture.

Kenya is a good example of why the WTO process and green rooms do not work for developing countries. Kenya is neither an LDC nor a middle-income country. It does not belong to the 'Small and Vulnerable Economy' (SVE) category and yet Kenya remains a poor developing country. Kenya is concerned about preference erosion and about the NAMA negotiations and the negotiations on Special and Differential treatment (S&D).

Ironically, in Hong Kong, Kenya was disadvantaged because both its trade minister and its ambassador from Geneva had special roles. Kenya's trade minister, Mukhisa Kituyi, acted as the facilitator for agriculture negotiations during the meeting, while its ambassador, Amina Mohamed, presided over the conference in her role as General Council Chair of the WTO. This meant that Kenya's presence in the green room was as the facilitator for the agriculture negotiations and it could not represent itself. For its position on NAMA and preferences, it had to rely on Egypt as the coordinator for the African Group. However, it was not clear to many members of the African Group whether Egypt was representing its own interests or those of the African Group in the green room.

### **An African trade negotiator:**

*What was annoying was that whatever we were proposing was not getting through, whether it was the Secretariat or the members who were having a problem, we were not sure. The reports we were getting back were not convincing*

Furthermore, the paragraphs on preferences did not meet the expectations of many preference-receiving countries. The language on preferences was, in fact, watered down by Costa Rica, backed by the US. And the representation in the green room remained inadequate.

**An African trade negotiator:**

*It would be better if the African Group decided we want so and so in [the green room], rather than the DG coming and saying Mauritius because of ACP, African Group Coordinator, and I will take the whole of Latin America and Benin because of cotton. Take Latin America: there's Costa Rica, Argentina, Chile, Mexico, Brazil in there. Costa Rica changed the language on preferences and Africa was represented by one country. And you are told that it is fair representation. It should be based on the principle of a football match: you have 11 on each side. If you're discussing preferences, you cannot have 2 supporting and 20 not. What kind of a deal do you get at the end of the day?*

Another problem is that the NAMA framework agreed in the July Framework divides developing countries into different groupings. This has weakened their ability to unite around common positions in a broad alliance. Existing divisions and conflicts of interest have put them at a further disadvantage, and they have ended up failing to challenge the entire framework. They have instead carved out groups such as the NAMA-11 and the SVEs.

In Hong Kong, the whole process of the NAMA negotiations eluded many, including some of the technical experts of the countries represented inside the green room. It appeared that Lamy had taken the entire process into his own hands. And the fear of failure or rocking the boat prevailed amongst developing countries that were inside the green room.

**An insider describes the NAMA process in Hong Kong:**

*We arrived in Hong Kong with virtually nothing on paper. And the process was really on two parallel tracks. The first one was with the facilitator plus the Secretariat conducting consultations with each country and group. But we were told that Lamy was also holding parallel consultations with selected countries on all issues. At some point we felt absurd. What is the point of discussing in green rooms; we are basically puppets, while Lamy has his own text.*

*A lot of countries didn't have information about what was going on in the green rooms. Delegates would come and ask for photocopies because they hadn't seen what was coming out of there. Even big countries were a bit lost. At times India knew, but Brazil didn't know.*

*In NAMA, there are no formal groups, so the Philippines was not happy and was fishing for information from Indonesia [who was in the green room]. Everyone could fish for representation, but in NAMA people were just fishing for information.*

*No one wanted to rock the boat for fear of having the whole thing fail. It was really important to show we are fully engaged, even if we cannot agree on anything. There was this feeling that we cannot let Hong Kong fail. There was self-restraint from those inside the green room. Opposition has to come from those who don't participate fully in the WTO.*

### **Trade negotiators reflect on representation and the greenroom:**

*It's fine when we are there, but when we are not there, I would find it difficult. The other extreme of 149 members is paralysis and chaos.*

#### **A G4 trade negotiator**

*Lamy made the room more acceptable by putting regional groupings in there. They can't say they are not represented any more. He's done it in a way that's so much more accepted. He's made it appear inclusive. But that is from the point of view of just being there. But with the EC, Japan, US – whose interest is going to come out in the end?*

#### **A trade negotiator from the Caribbean**

*Whatever was reported out of the green room, most of us did not understand what it meant. Most countries did not have the technical capacity to translate it to their countries, a lot of these groups suffered from their own inadequacies; [they would wonder] what did it mean? Unless it was in a written format and even that wasn't understandable to most.*

#### **An Asian trade negotiator**

*I don't feel as bitter as I used to feel. Maybe, it's because we're in a green room and maybe because we got SP/SSM [Special Products and a Special Safeguard Mechanism in agriculture]. But I don't think it's changed. We still have the same process of the green room. Those countries that are vocal, that talked bitterly, have been included in exclusive meetings. Unless other countries now come up, otherwise, now we haven't seen drastic change. We still have consultations by the DG, everything still there. They've just managed to quieten us.*

#### **An African trade negotiator**

### **Conclusion**

**Lamy is so intent on having exclusive green room meetings that, before Hong Kong, he prevented vice-ministers and other senior level officials from entering a green room to which their countries' trade ministers had been invited, even when these officials had travelled to Geneva especially for the meeting. When criticised by these members, he unapologetically defended his stance as a "time-honoured tradition at the WTO, whereby consensus is first sought among a small group of key officials before expanding the discussion to the broader membership".<sup>22</sup> As EC trade commissioner, he did the same at the Doha Ministerial where senior officials were prevented from speaking in the green room.**

Furthermore, in Hong Kong, member states were given only an informal HOD meeting to voice their final statements on the ministerial text that came out a few hours before. And, while the HOD meeting was being conducted, parts of the negotiations, such as those on cotton, were still continuing. Phone calls were even being made to heads of states and to sleeping trade ministers – all to fabricate a consensus.

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<sup>22</sup> Pruzin, D., 'Ministerial: WTO Debates Reduced Ministerial Ambitions', *BNA WTO Reporter*, November 14, 2005.

It was not long ago that green rooms were being outright condemned as they were believed to be one of the causes of the failure of the Seattle Ministerial in 1999. Therefore, unless both developed and developing countries address such process issues soon, there is a danger that the WTO's decision-making process will once again become confined to a few ministers who reach decisions on the final modalities for the Doha Round in a highly exclusive and undemocratic way. Developing countries will be the losers if this is allowed to happen.

The numerous problems of the Hong Kong process:

- There were two parallel processes: one that created the semblance of participation and transparency through informal consultations, and the other which took place in the green room where Lamy brought texts prepared by the Secretariat to be discussed by 30 members. There were also green rooms within green rooms over which Lamy presided. This left most members marginalised and uninformed about what was happening.
- The green room did not have representatives for all the areas where differences exist between members. Many countries were thus forced to go through their designated regional representative even if that representative did not represent their trading interests. In a major negotiating area such as NAMA, for instance, a regional representative could not represent the concerns of all the countries in the region. Because its members fall under different categories in the NAMA framework, the African Group, for example, does not have a common position on NAMA.
- In other instances, certain members were isolated in the green room when they represented the concerns of a much larger constituency. This was the case with Jamaica as it became isolated on the final day defending the G90 position on services (see section II).
- In other cases, a representative of a regional grouping did not adequately represent the agreed position of that group. This was the case with Egypt on the alternative annex for services that was supported by the G90, including the African Group (see section II).
- On the other hand, countries like Pakistan who were in the green room had an advantage in defending their own positions because their ministers knew how DF/QF market access for LDCs was being treated (see section IV). Their inclusion in the process prevented the situation that Venezuela and Cuba had to face when they made last-minute reservations against services and NAMA in the closing hours of the Ministerial.

## SECTION II: Services sabotage

*The manner in which Annex C emerged and then evolved as a negotiating text – not only was it unethical but also unprocedural.*

### Senior capital-based official from an active delegation in the G90

The story of the how Annex C (which relates to services) of the draft ministerial text for Hong Kong came about shows how illegitimate the decision-making process and thus the outcomes of the WTO remain. The Annex C saga illustrates three major concerns. First, it clearly demonstrates how the processes of the WTO are developed and driven by a few powerful ‘core’ members – those seeking liberalisation. Second, it highlights how the process is manipulated to corner the majority of WTO delegations into accepting the will of a few. Finally, it shows how the psychological blame game is detrimental in accepting illegitimate and unjust outcomes at the WTO. Another worrying aspect is how relatively easily the WTO Secretariat and the ‘demandeurs’ (those seeking liberalisation) were able to push through this annex even though more than 70 countries opposed it as the basis of negotiations.

Developing countries who opposed the disputed annex were only able to make three modifications in the draft. Although this watered down some of the more problematic language in the draft, it ramped up ambitions for services liberalisation and launched ‘plurilateral’ services negotiations in the WTO. This means that a group of countries can demand services liberalisation from another group *in addition to* individual countries negotiating bilaterally. This increases the pressure on those requested to negotiate and raises the stakes for all members in the services talks.

The greatest areas of concern regarding the services process are the following:

- Former WTO Services Chair Alejandro Jara from Chile and other services demandeurs made it seem like the services talks were in a “state of crisis” and therefore needed special treatment in Hong Kong, despite the fact that services negotiations are more advanced than either agriculture or NAMA negotiations.
- The services annex was drafted by the Mexican Chair Fernando de Mateo and a few demandeurs from the core group. The repeated objections of the other members were disregarded in drafting this one-sided annex and in subsequent draft versions.
- Because their voices were disregarded in the negotiations, ASEAN presented an alternative annex to the Secretariat version which was also completely ignored and not included as an option for trade ministers.
- It was only after the submission of the alternative annex that the services Chair removed the extremely contentious ‘numerical targets’ from the draft. This was presented as a substantial concession to the majority rather than an acknowledgement that this proposal was only supported by the EU.
- The entire services annex was put in brackets and sent to Hong Kong, indicating that the whole annex was disputed and subject to negotiations. And yet, when the G90 managed to convert the ASEAN annex into their own and tabled it in Hong Kong, it was ridiculed as a basis for discussion
- Although the Secretariat and the major powers were aware that the services annex was disputed in its entirety, services was the area that was least discussed in the green room. What’s more, even the general discussions on services were delayed until as late as

possible in the Ministerial, forcing countries to negotiate the entire document in less than two days – and in the green room for only a few hours.

- The process was so appalling that Venezuela and Cuba raised reservations against joining the consensus on services and nearly blocked consensus of the ministerial draft.

Power politics and the unethical behaviour of the WTO leadership contributed to this outcome. Democratic principles were ignored. Pressure was put on the G90 for supporting their alternative annex. Demandeurs refused to negotiate on it. Egypt, as the coordinator of the African Group, undermined the position of its own group in supporting the G90 annex.

### **The core group and the core agenda**

*Four months leading up to Hong Kong was a challenging exercise. Services was a lot further behind. The meat in the De Mateo text came out of the core group that India initiated as a small group, as an incubator so that Fernando could move it at the multilateral level...US was chosen, ordained to be co-chair with India. We debated whether we should.*

#### **US trade negotiator, Alicia Greenidge, speaking at the UNCTAD Commission on Trade in Services, February 10**

Annex C was taken to Hong Kong as the basis of negotiations despite opposition to virtually all parts of the text.

Canada and Chile are credited with bringing the idea of the plurilateral approach – negotiating in groups rather than bilaterally – to the core group. The EU also introduced its controversial ‘numerical benchmarks’ there, proposing that developed countries should liberalise at least 139 services sectors out of 163, while developing countries should liberalise 93. The numerical benchmarks were, however, widely rejected within the core group and in the Committee on Trade in Services.

When these proposals were presented to the whole membership of the Committee on Trade in Services, the bulk of active developing countries reacted against all of the provisions, collectively labelled ‘complementary approaches’. In written and oral statements in informal sessions, countries from Africa, the Caribbean, ASEAN and Latin America responded strongly against both qualitative and quantitative benchmarks for services negotiations.<sup>23</sup>

However, in spite of the outcry, De Mateo’s draft annex contained these elements in the October 26<sup>th</sup> and November 3<sup>rd</sup> drafts. Between September and the end of November, the African Group, the ACP, five ASEAN members, the LDCs and several other members actively sought to oppose complementary approaches, so much so that ASEAN members became compelled to table an entire alternative annex just weeks before the Hong Kong Ministerial.

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<sup>23</sup> See, for example, *Statement on Complementary Approaches for the Services Negotiations*, 27 October 2005, by Argentina, Brazil, Cuba, Dominican Republic, Guatemala, Kenya, Indonesia, Malaysia, Paraguay, the Philippines, Thailand, Uruguay and Venezuela.

Given the mounting resistance to these approaches, the most egregious of which was numerical benchmarks, De Mateo removed the language on numerical benchmarks in the November 26<sup>th</sup> draft. Insiders suspect that the EU's numerical benchmarks were a negotiating tactic used to make other contentious elements of the text look more acceptable. Because the entire text was problematic, the proponents also launched a psychological attack on the opponents, framing their critiques as irrational and non-conciliatory. The psychological pressure to not be seen as obstructionist started taking effect a few weeks before Hong Kong.

*The proponents saw [services] as a crisis situation as a way to sell those ideas [in Annex C]. The first thing everybody does is to focus on numerical targets because it blatantly undermines their existing flexibilities and totally changes the way GATS operates. Developing countries were united against this, but alongside this was proposed the plurilateral approach. It was just an add-on and, because people didn't really understand it, they focused on the numerical targets.*

*For the EC to support something like [numerical benchmarks] in practice is unrealistic and even the US wouldn't support this. It was a big red herring. [The idea was:] "Be happy that you've just landed with modal objectives and plurilaterals." The feeling in Geneva was that we've outrightly rejected numerical targets so we can't outrightly reject these others. But you have to treat all three [modal objectives, numerical benchmarks, plurilaterals] the same way."*

#### **A close observer of the process in Geneva**

The pressure also got to the ASEAN countries who tabled the alternative annex. The ASEAN alternative text was tabled not in the Committee on Trade in Services but in the final General Council before Hong Kong, reportedly due to time constraints. And, when it was quietly dismissed, none of the ASEAN members actually defended their own proposal.

*Even though we felt victimised at the CTS [Committee on Trade in Services], at the political level, we don't want to be seen as negative.*

#### **ASEAN member**

In the end, Lamy and the Chair of the Committee on Trade in Services sent the disputed annex to Hong Kong without even a discussion on the alternative annex. Moreover, they deliberately stalled discussion on services altogether when the final draft was being put together for trade ministers. The demandeurs convinced the opponents that these problems would be resolved in Hong Kong. However, in Hong Kong, the services agenda was also pushed back to the last minute and there was no patience for an alternative annex.

*The General Council and the green rooms were going on and there was a move to delay services negotiations until Hong Kong. People were angry. But the solution was to put paragraphs in square brackets. We didn't go into the content of what Annex C is. People were concentrated on parallelism between agriculture and NAMA.*

*The same thing happened in Hong Kong. The EC's strategy was to try to delay services until the end. Meanwhile, the US was saying, "You bring it to Hong Kong, show everything to the ministers and let the ministers decide what should go in Annex C." Ministerials are very complicated for developing countries and De Mateo didn't listen to us in Geneva. If it had been up to me, we would have had Annex C1 and Annex C2 and ministers could pick.*

#### **ASEAN trade negotiator**

However, developing countries did not lose hope in spite of being completely sidelined in the Geneva process. Just before Hong Kong, a few African delegations, such as Rwanda and South Africa, took the lead to create a common ACP group position that merged the ASEAN alternative annex with the LDC proposals to form a G90 group position as an alternative to De Mateo's Annex C.

### **The process drives the agenda home**

*Services was not an agenda in the green room. If there were 100 hours of negotiations in the green room in Hong Kong, 1 hour was devoted to services.*

#### **A member from a G4 country**

*We tried to get the text replaced by the G90 alternative text and the demandeurs simply refused to talk about it. They weren't even willing to discuss the annex. It also showed a worrying degree of solidarity amongst the demandeurs in the way they completely disregarded, even belittled, the alternative annex. They insisted that their annex was a fine balance and, in our view, it wasn't. It was simply a refurbished version of [former Chilean Chair] Jara's summations of what happened in the past 18 months.*

#### **A senior capital-based official from one of the G90 countries**

*The argument for not even considering the [G90] alternative annex was the timing issue, "You cannot submit an alternative annex at a Ministerial, it's too late in the game, we are here to finalise...the purpose of the Ministerial is to sign off, not to negotiate." And they believe it. They get intimidated by it. Not realising that every thing is up for negotiation...every word.*

#### **An advisor to the G90**

Member states went along with the de facto decision to not discuss elements of the contentious annex before Hong Kong. They allowed the General Council to send the annex as it was – but with brackets. This was based on the assurance that the cover letter attached to the ministerial draft would clearly state that the annex was created by the Chair and that no part of it was agreed by any member. In fact, the agriculture and NAMA annexes of the ministerial draft explicitly mentioned that they were Chairs' reports.

*All of the annexes, their cover letters stated that these were prepared under the Chair's own responsibility, but that cover letter was removed from the annex and it was removed unilaterally. Whether it was De Mateo or Lamy who did it, it doesn't matter.*

#### **Senior capital-based official of one of the G90 countries**

Trade ministers received a personal letter from Lamy and the General Council Chair stating that it was not a consensual text and that it was based on the Chair's own responsibility. However, the usual procedure has been to put this disclaimer on the legal document itself. **In Hong Kong, services negotiators met as a group only one time during the entire Ministerial. And services talks were pushed to the second to last day in the green room. In short, the most contentious annex was the least discussed in the entire Ministerial.**

Together with the delaying tactic, the Secretariat's sudden sense of procedural propriety hindered the timely circulation of the G90 alternative annex. When Malawi submitted the G90 alternative text to the services facilitator and the WTO Secretariat in Hong Kong on December 15<sup>th</sup>, he did not specify in writing that the text needed to be circulated. The Secretariat clearly knew that Malawi intended the text to be circulated on behalf of the G90 and could have advised Malawi about the proper procedure for doing so. Instead, the Secretariat waited until the next day, at the only open-ended session on services, to tell the G90 that they needed an official letter designating that this was an official submission for circulation. This was also the case when the marginalisation of the alternative annex drove Indonesia, the Philippines, South Africa and Venezuela to submit a formal letter stating that De Mateo's Annex C "is neither an agreed text nor a consensus document. Therefore, it is our position that the said Annex cannot be part of the final Ministerial Declaration."<sup>24</sup>What's more, when Lamy decided to take the cover letter off the draft ministerial text for Hong Kong, he did not get the formal consent of the General Council.

Adding to the Secretariat's procedural manipulation was the misbehaviour of the services trade facilitator, Korean minister Kim, who was biased in favour of the demandeurs. In spite of having served on the WTO Secretariat before, he was criticised as being ignorant of international protocol. In the only full-group services meeting, he declared that 15 countries opposed Annex C and 26 were in favour, thereby treating the G90 as just one member. And he said that, if consensus was not reached within the next 24 hours, he would simply remove the brackets around Annex C! Numerous flags went up in the meeting, including that of the US, and he was reminded that international negotiations are not conducted in this manner.

*Kim, the complicator, he messed around with his inability to conduct meetings... On the third day, Kim set up confessionals, followed by an informal HOD on the fourth day. It was here he said that 26 countries are in favour of the text and counted the G90 as one. He said, "I give you 24 hours, if you don't reach agreement within 24 hours, we accept the text..."*

*Parallel to the green room [that night], Kim called a group at 10 pm of about 20 delegates to discuss Annex C. When we get there, it's delayed to 12 am [since] the G90 was meeting with the demandeurs. It was disastrous. Chile and Mexico were interrogating the G90. Even the US negotiator said that they mishandled it. You don't do that in negotiations. Then we met in a room of about 20-25 countries – the Quad, New Zealand, Australia, ASEAN, Jamaica, Egypt, Brazil, Malawi, Kenya, South Africa and Minister Kim. Once again Kim mishandled it, saying there was consensus when there was none... We came out that night and there were other issues in the green room, and there was no follow up. Kim and the Secretariat picked up [ideas from the small meetings] and took them to the green room and, in the green room, people didn't make the same case as in the other room.*

#### **A services trade negotiator**

The G90 annex was dismissed by the Secretariat and belittled by proponents of the De Mateo annex. With minimal discussion in the green room that night, the services language was slightly changed in paragraphs 1, 2, 4 and 7, and not much more changed between that night and the last night. Furthermore, the delegations never met again as a full group. The alternative annex ended

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<sup>24</sup> South Africa, Indonesia, the Philippines, Venezuela. Personal Communication to Chairman John Tsang, 6<sup>th</sup> WTO Ministerial Conference, Hong Kong, 15 December.

up being a non-starter even though members were promised in Geneva that the entire text was up for negotiation.

*Chile was even more militant than India....[They] told us that [they] did not come to Hong Kong to discuss an alternative annex and will not have [their] time wasted and negotiate with countries who are here to waste time.*

#### **A G90 negotiator**

#### **Arm twisted to give up the G90 services annex**

The importance of the De Mateo annex for the demandeurs should not be underestimated, regardless of how it was downplayed. **The LDCs were put under pressure from the US and EU to relinquish support for their own G90 alternative annex on services. Phone calls were made to heads of state or trade ministers and to trade negotiators from the G90. Reportedly, they were not direct threats to their economies, but rather rhetorical questions of why certain trade negotiators or countries were being problematic when there was no problem with Annex C, least of all for LDCs who were not going to be targeted.**

#### **An ACP trade negotiator on why the G90 accepted the controversial services annex:**

*They accepted it because countries don't want to seem isolated – no one wants to be. And it's easy to get isolation. In terms of solidarity, when a developed country pulls a developing country minister aside and says things, he acts accordingly. It happened to certain LDCs. When they were very active, and their activity was good for the process, their minister was approached and reminded that LDCs do not have to commit, so why are they doing this? [That] it is not good for the relationship between developing countries and developed countries. It's a diplomatic reminder of where you are geo-politically and where they are.*

Rwanda, along with South Africa, had led the Geneva-based effort to adapt the ASEAN proposal for an alternative services annex for the G90. Rwanda played a key role in adding the LDC elements to the alternative text. Since Rwanda had taken a lead role in Geneva, it was expected that Rwanda would lead the process until the end. It is reported that developed countries, particularly the US and EU, contacted several LDCs including Rwanda and delivered a 'diplomatic reminder' that the LDCs did not have to commit to anything within services. And, if they were also looking for duty free and quota free, why would they be more active on the alternative annex than their ACP and African Group counterparts?

Although Rwanda had played an important role in galvanising G90 support in Geneva, it was less active in Hong Kong, preferring to let other developing countries speak up on services. In trade negotiations, once you silence the messenger, the message also gets lost. With Rwanda silenced, the political energy for the G90 proposal diminished. Delegations were thus forced to lower their level of engagement and their position not through their own volition, but because proponents of services liberalisation wanted them to do so.

#### **Malawi, the ACP coordinator on services, silenced**

The first few days in Hong Kong were fraught with difficulty as more than 60 countries tried to negotiate and submit a joint proposal. The lack of capacity amongst many G90 ministers, the

pressure of the negotiations and the overwhelming agenda resulted in tremendous difficulties in getting the alternative annex approved by G90 ministers in Hong Kong in such a short period of time. But, despite these challenges, the G90 succeeded in submitting an alternative annex that was approved by their ministers.

Malawi had been designated as the representative for the G90 position in Hong Kong and thus was responsible for speaking on behalf of the group when the Heads of Delegations gathered. **When the G90 succeeded in submitting a joint alternative annex, the proponents of the contested annex resorted to underhanded strategies to block the alternative. Malawi's president was called and questioned about why Malawi was causing problems in the services negotiations.**

On December 16<sup>th</sup> (two days before the conference ended), several G90 members helped prepare written notes for Malawi's minister to raise concrete G90 objections on the services annex at the evening HOD meeting. At that meeting, however, Malawi did not use the prepared notes but made general statements that were much 'softer' in nature than what had been prepared. Members of the G90 were then forced to make their own statements. Their positions were, therefore, interpreted as individual country positions rather than one position representing more than 60 countries in the G90. Political pressure exerted on Malawi had clearly limited its performance in the HOD meeting. By the next day, the alternative annex had been effectively sidelined in the negotiations by the proponents of services liberalisation.

**A capital-based Malawi delegate:**

*The Malawi minister was called by the president. He had asked why Malawi was being so difficult on Annex C. The minister had to explain what the mandate was and why Malawi was taking the position. Then the president had given him the full go-ahead.*

*[Later when Malawi presented the G90 position in an informal HOD] I was surprised that the minister was quite short when we prepared the notes for him; he let other delegations speak. We suspect it was the EC who called given what they were saying to us in the meetings about letting the Brazils and others fight, that it wasn't our markets they were after.*

The G90's alternative annex was politically marginalised when pressure was put on the key countries that were taking the process forward. Although Malawi had a clear mandate from the G90 on services, Malawi's president was pressurised regarding its role in the negotiations. It is ironic that powerful WTO members such as the EU and the US feel the need to resort to such underhanded tactics against countries who are much weaker than them in every respect. Phone calls were not the only mechanisms used. The EU didn't shy away from making overt demands in meetings with G90 groupings.

**Capital-based member of one of the G90 delegations:**

*Peter Mandelson had an exclusive meeting with LDC countries in Hong Kong in which he told them how he had supported their concerns on development and on the LDC position on DF/QF market access to developed country markets as well as more advanced developing country markets. And very categorically, he told them that he did not want them to open up the discussions on the language on Annex C, citing that he too must take something back home. "Annex C has nothing to do with LDCs hence you should be least concerned about Annex C," he had said.*

*With these tactics (bad guy vs good guy), they managed to break up the G90. The EC and the US always preferred to meet G90 as individual groupings, instead of meeting with them as G90. They preferred to meet with the ACP, the LDCs and the African Group separately. For the EC, the development round meant different things. It meant opening up all the sectors except agriculture where they were not willing to open up themselves. On the other hand, four hours of the night were spent in the green room to try to get the EC to accept 2010 and they refused. Imagine four good hours negotiating an end date for elimination of export subsidies!*

The US and the EU also pressurised individual countries, as well as putting pressure on country groupings, such as the LDCs, to undermine support for their G90 annex. What's more, the WTO Secretariat manipulated the process in order to marginalise efforts by members to challenge the Secretariat draft. They stalled the negotiations and controlled open debate amongst members.

By the fourth day, neither the Philippines nor Indonesia were being vocal any more about the annex because progress had been made on agriculture. South Africa too had quietened down, although they offer no explanation other than that they were assuaged by the compromise language. Eventually, all who conceded to Annex C gave that explanation. Ultimately, Jamaica bore the brunt of pushing for Annex C in the green room on the last morning while their other G90 colleagues remained silent.

#### **An ACP trade negotiator:**

*Those in the green room is a different ballgame again. It doesn't mean your interests will be heard either. The incident in the green room is that you're isolated. You keep repeating your position over and over again, and rather than being heard, people get annoyed, they start to demand concessions from you rather than actually compromising with you.*

*The text came out early afternoon. We had meetings, the last informal HOD. Negotiations were at the end, so what could we do – send a lot of it back to Geneva for more negotiations? There was a split between negotiators and ministers. The ministers said let's not oppose it, there is minute progress so send it back to Geneva.*

#### **Venezuela and Cuba**

Venezuela and Cuba had similar concerns to ASEAN and the G90 on the services annex but, unlike other countries, their governments back home did not succumb to veiled or overt pressures from the US and the EU. By the final day, it was clear to everyone that De Mateo's Annex C was not going to change dramatically. At the same time, the agriculture negotiations had yielded some favourable results for G33 members, such as Cuba and Venezuela, on Special Products and the SSM. According to some sources, Cuba came up with the idea of a reservation against the services annex. However, Venezuela was not happy with both NAMA and services and thus decided to block the Ministerial on those grounds.

At the final plenary, the WTO Secretariat did not give delegations the opportunity to make formal comments on the declaration. They deliberately arranged the seating in a theatre-like formation so that countries could do no more than applaud consent to the declaration in the

closing moments of the Ministerial. Venezuela, however, did not risk having its reservations marginalised through informal WTO processes and rushed up to the stage and demanded the microphone to make its reservation formal. Cuba also quickly improvised a formal statement:

*I have a statement of reservation which I would like to...a statement that we had intended to make here when this decision was taken but I see that this is not the appropriate moment to do so, so we will be handing in...the statement... the full statement so that Cuba's suggestion can also be reflected in...we go along with the consensus but we have a certain specific reservation which we would like to have taken into consideration and which will be reflected as you have suggested.*

**Statement by Cuba in the final formal plenary**

*Mr Chairman, thank you, we too wish to reiterate our reservations as regards the aspects which were referred to in the previous meeting in relation to services and NAMA. We would be grateful if these reservations would be duly reflected.*

**Statement by Venezuela in the final formal plenary**

The status of these reservations remains unclear. Venezuela and Cuba have demanded that their reservations be included in writing as part of the ministerial text. Apart from the webcast recording of the final plenary where Venezuela's vice-minister dramatically halts Chair John Tsang's proceedings to demand a microphone, there is little public evidence of these reservations. These reservations have potentially opened up a debate on the Single Undertaking and thus the Doha Round which is supposed to be based on consensus by all members on all things.

**Conclusion**

*Developing countries will have to address this at a political level. All the relevant ambassadors and ministers, they need to stress this point, that if there is a negotiation the way that this Annex C suffered [in the process], then we, as developing countries, will simply walk out of these negotiations or refuse to negotiate anything in services.*

**Senior official of an African country**

The entire services saga hinges on a myth that has been perpetuated that the services talks are in crisis. But, the talks are, in fact, further along than the agriculture and NAMA negotiations. They have had their modalities in place since 2001<sup>25</sup>, while those for agriculture and NAMA are still currently being negotiated. Even though very few WTO members are actually competitive in global services trade, 70<sup>26</sup> countries have submitted their initial offers, and 31 of those have submitted their revised offers. This is more than has been achieved in the other key areas of negotiations at the WTO thus far.

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<sup>25</sup> In 2001, a group of 74 developing countries, including India, fought with great difficulty to ensure that the flexibility in the GATS to open up sectors and modes of supply as and when members were ready was captured in the negotiating guidelines or modalities for services. The qualitative and quantitative benchmarks were seen as a way to undermine these very modalities.

<sup>26</sup> 'Services Questions Persist as WTO Member Groups Prepare for Plurilateral Talks on Services', *WTO Reporter*, February 6, 2006.

Hong Kong was effective in creating enormous self-restraint from developing country members on many issues. The mindset was that if we can create damage control then the rest can be negotiated in Geneva. This was certainly the case with services. Since returning from Hong Kong, members have also been convinced that Annex C did not actually change the structure of the services agreement. Nonetheless, plurilateral negotiations have recently begun in earnest and, what's more, delegations are currently discussing how governments should regulate their domestic services sectors. Though the domain of national processes, this debate is now taking place in the WTO with serious ramifications for the right of governments to regulate.

The acceptance of the services annex, in spite of the way it was brought to Hong Kong, legitimised the WTO's unethical and unaccountable processes. It legitimised the marginalisation of developing countries' concerns and allowed an outcome wrought through unjust means.

## SECTION III: Creating divisions

### Deception regarding development and hiding behind developing countries

The EU and US have been deliberately deepening divisions between developing countries using a number of tactics. For instance, divisions had already been created by explicitly dividing up the LDCs' proposals from those of the non-LDCs on Special and Differential Treatment. Then, prior to Hong Kong, the notion of a 'development package' was introduced, offering a solution and an aid-for-trade package for LDCs. Furthermore, both the major powers and Lamy stressed that LDCs should let others fight their trade battles in agriculture, NAMA and preferences. The LDCs, they insisted, should focus on LDC-specific issues. It was reiterated that LDCs did not have to make any commitments in this Round and they were therefore encouraged not to invest their political capital on trade negotiations that also concern the rest of the membership.

The G90 consists of the African Group, the ACP and the LDCs. Together they represent 92 countries, around 64 of whom are WTO members. The strength of the African Group, the ACP and hence the G90 lies in the ability of both non-LDCs and LDCs to work together as LDCs are the majority in all of these groupings.<sup>27</sup> Part of the G90 has also designated itself as comprising 'Small and Vulnerable Economies', and this grouping is fighting for special consideration to not liberalise according to the existing NAMA framework. The EU and the US manipulated the needs of all these groupings to create division and fragmentation in the Hong Kong process and they continue to do so, post-Hong Kong.

All WTO members, except for the LDCs, will be expected to make tariff reductions in all sectors of their economies. However, in reality, the LDCs already have some of the most liberalised economies in the world, regardless of WTO requirements. Thus, being exempt from tariff reduction commitments in the WTO is not a concession. Rather, commitments made by their neighbours in the main trading agenda directly affect LDCs, many of whom are in Africa and have common external tariffs with their regional partners. Liberalisation in their regions will impact on their own exports and the quantity of imports. Thus, their involvement in the core trade agenda of the WTO remains essential not only for the G90, the African Group and the ACP, but also for themselves. However, the EU and the US used the divisions within this group to weaken the G90.

### The EU's divide-and-rule tactics

By October 9<sup>th</sup>, EU trade commissioner Peter Mandelson had already put the US on the defensive by asking trade ministers to deliver on five issues – known as the 'development package' – in Hong Kong. They were: 1) LDC-specific proposals for S&D; 2) a solution on cotton for the C4 countries<sup>28</sup>; 3) preference erosion and its impacts on preference-receiving countries 4) addressing the concerns of SVEs; and 5) 'aid-for-trade'.<sup>29</sup>

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<sup>27</sup> Out of around 43 members of the African Group, approximately 30 are LDCs. LDCs are also roughly half of the membership of the ACP.

<sup>28</sup> The C4 are the four cotton-producing countries of Benin, Burkina Faso, Chad and Mali. The C4 plus Senegal are negotiating with the US to end US dumping of cotton in their markets. This dumping wipes out a major source of livelihood in these countries.

<sup>29</sup> Ishmael, F., *An Assessment of the 6<sup>th</sup> WTO Ministerial Conference: Hong Kong 13<sup>th</sup>-18<sup>th</sup> December 2005*.

This package served three purposes for the EU. Firstly, it put the US on the defensive on cotton and on the LDC-specific provision that demands Duty Free/Quota Free market access for all LDC products to other countries. Secondly, by positioning itself as their supporter against the US, the EU gained more leverage with the LDCs, SVEs and the ACP. Thirdly, the package attempted to shield the EU on reduction of its agriculture tariffs by linking the impacts of such reductions to preference erosion of the ACP.

On the eve of the Ministerial, Mandelson wrote in a *Guardian* opinion piece<sup>30</sup> that Africa needed aid for trade more than the liberalisation of European agriculture tariffs because lowering those tariffs would result in losses for sub-Saharan Africa. The EU receives 85% of Africa's exports. The EU accused the US, Australia and Brazil of pursuing "national self-interest," while portraying itself as the nobler party for having "struck a balance between additional market access and protecting the needs of the most vulnerable".

The EU is playing 'the good cop' while being disingenuous on ACP preference erosion. Providing no concrete solutions to the ACP on how to resolve the issue, Mandelson urges these countries to push other developing countries to liberalise rather than the EU. For instance, he urges the G90 to pry open the markets of India and Brazil rather than have the EU cut its agriculture tariffs. This would help the ACP protect its preferences with the EU, Mandelson insists.

The US rightly accuses the EU of "hiding behind"<sup>31</sup> poorer countries especially as the EU is simultaneously slashing sugar prices and reducing tariffs on bananas. The EU's compensation for economic losses resulting from the elimination of these preference margins is a paltry sum of €40 million to 18 countries in the ACP, not including LDCs.<sup>32</sup> Outside the WTO, Mandelson is busy weaning the ACP off its preferences. "Preferential access has not helped Caribbean countries develop to compete in a global economy. In fact, it may well have done the opposite," Mandelson said at an EU-Caribbean summit in St Lucia amidst protests from sugar and banana farmers.<sup>33</sup>

The EU assures the African group that it "is fully committed to supporting" Africa's interests in the WTO.<sup>34</sup> It says the same to LDCs on Duty Free/Quota Free access to developed countries as the EU already offers them the Everything But Arms Initiative. However, while maintaining its right to protect its market, the EU wants the G90 to provide market access for EU products.

The EU is demanding reciprocal Economic Partnership Agreements (EPAs) from the ACP after the preferential Cotonou Agreement with the ACP expires in 2008. It is taking a hard line on the EPAs, insisting on liberalisation commitments from the ACP that go way beyond what is required of them in the WTO and without giving Special and Differential Treatment to the poorer economies.

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<sup>30</sup> Mandelson, P., 'A Balance of Free and Fair', *The Guardian*, December 12, 2005.

<sup>31</sup> 'Agriculture: U.S. Accuses EU of 'Hiding Behind' LDCs to Thwart Progress in WTO Agriculture Talks', *WTO Reporter*, BNA Monitoring Service, December 2, 2005.

<sup>32</sup> 'EU Farm Ministers Prepares (sic) for Sugar Reform Showdown', *AGRA Europe*, November 18, 2005.

<sup>33</sup> 'EU Trade Commissioner Says Preferential Trade Policies Haven't Helped Caribbean Economies', *AP*, September 29, 2005.

<sup>34</sup> 'EU Mandelson: Africa Should Demand Brazil, India Open Markets', *Dow Jones*, February 9, 2006.

This is causing resentment amongst many ACP countries. They feel that the EU expects carve-outs for itself on agriculture and ambitious market access for its exports from poor economies, and yet it is unwilling to do much for genuine ACP trade concerns.

**A trade negotiator from an LDC:**

*So, the ACP will give preferences to the EU, while EU tariffs erode except for sensitive products that don't cover ours. The WTO and the EPAs will completely leave the ACP out of competitiveness. With COMESA, SADC, our economic objective is regional integration, but EU imports will result in trade evasion. EU products are more competitive because of their subsidies. Countries will be importing from the EU rather than each other.*

**The US's empty promises and hiding behind countries**

The US accuses the EU of hiding behind LDCs, and yet it does the same with countries who are part of the Africa Growth and Opportunity Act (AGOA), a preferential trade agreement with the US. On the eve of the Hong Kong Ministerial, US Trade Representative (USTR) Robert Portman stated that the US would like “flexibility” in the LDC deal on DF/QF because, not only did the US have a domestic textile industry, “but also because additional competition in textiles and apparel could hurt countries that have preferential access under the African Growth and Opportunity Act”.<sup>35</sup>

He also suggested that the US could consider additional market access to LDCs in a Generalised System of Preferences (GSP) scheme that the US would renew at the end of 2006. However, Congressional watchdogs warn that any attempt to include zero duty textiles in a GSP renewal plan will incite Congress to dismantle the scheme altogether. The US's Congress-backed textile producers oppose such a deal because they do not want to compete with cheap Bangladeshi imports at zero tariffs; and US textile retailers oppose it because they do not want to jeopardise the existing GSP scheme which provides them with cheap textile imports.<sup>36</sup>

In fact, Portman's entire exercise in Hong Kong was based on development package promises over which the USTR has little control. Aid-for-trade, decisions on zero duties on tariffs of LDC products and cutting domestic subsidies on cotton all depend on the US Congress. Yet, it was precisely these negotiations that took up the bulk of the LDC and cotton countries' time in Hong Kong, and they proved divisive for the G90 in other areas of the negotiations too.

**An African LDC trade negotiator:**

*You are not sure the US has the mandate to do some of the things it's committing to you, yet nobody is coming out frankly to say so. The negotiation process can be even more difficult with such complexities.*

The USTR dangled these carrots, including the doubling of aid-for-trade to \$2.7 billion over four years to 2010. However, an analysis of the USTR's aid-for-trade figures shows that its current aid-for-trade budget is already falsely inflated because it has counted some of USAID's

<sup>35</sup> 'Portman Says US Needs Textile Flexibility In LDC Initiative', *Inside US Trade*, December 12, 2005.

<sup>36</sup> 'Revealing the Empty Promises of the US Development Package 'Pledges' Announced at Hong Kong', *Public Citizen*.

development projects as ‘trade capacity building’.<sup>37</sup> Meanwhile, the deficit crisis in the US puts the USTR in a vulnerable position when it comes to obtaining additional Congressional funding for aid-for-trade.

Even if the US could deliver on these unrealistic promises, it is offering an additional sum of \$1.4 billion over four years to be divided amongst several developing countries. Compare this to the \$3.7 billion the US has spent on a contract with weapons producer Lockheed Martin to deliver a satellite system that is still not complete after nine years of work.<sup>38</sup> The ‘Aid for Trade’ task force will deliver its recommendations to the membership in July and thus these promises of aid will continue to be a divisive tool in US hands.

In Hong Kong, the US hid behind other countries to defend its own bottom line on issues such as DF/QF. For example, in the final days in Hong Kong, Pakistan was forced to come out in opposition to the 100% DF/QF market access deal with LDCs when the US said that it might agree to 99% DF/QF.

The US never had any intentions of giving in to 100% DF/QF access to LDCs because of textiles and other sensitive products. Given the intense pressure from its Congress-backed textile lobby, this would have been political suicide for the USTR. It was a strategic decision to let Pakistan oppose the deal in public instead. This was especially helpful considering the US was also on the defensive regarding cotton dumping in West Africa.

While the USTR has been busy making empty promises and putting forward other countries to fight its battles, the US Congress has not shied away from brandishing sticks post-Hong Kong, threatening the removal of US preference schemes:

*Those who continue to use ‘preference erosion’ as a stumbling block to liberalisation need to appreciate that without a Doha Round there may very well be no US preference programs to erode. On the other hand, if progress is being made toward a multilateral round, Congress may very well extend, deepen and even expand our trade preference programs for the poorest countries as part of implementation of our Doha Round commitments.*

**Charles Grassley, Senate Finance Committee (R-Iowa) on the issue of GSP and the Andean Trade Preference Act (ATPA) renewal.**<sup>39</sup>

Both the GSP and ATPA<sup>40</sup> are up for renewal at the end of 2006, coinciding with the proposed deadline for the end of the Doha Round.

After Hong Kong, the report card from Congress on Portman’s performance brought no relief for developing countries either. The US expects ambitious liberalisation from developing countries in all sectors, “Without market access for US farmers, manufacturers and service providers, there won’t be a deal. Congress has high expectations, and if we don’t see progress, there won’t be a final agreement in the Round,” says Grassley.<sup>41</sup>

<sup>37</sup> Ibid

<sup>38</sup> Ibid

<sup>39</sup> ‘GSP: Sen. Grassley Warns of Expiration of Unilateral Trade Preference Programs’, *WTO Reporter*, January 26, 2006

<sup>40</sup> ATPA is a preferential agreement between the US and Bolivia, Ecuador, Peru and Colombia.

<sup>41</sup> ‘Portman’s Performance, a Hit in Hong Kong, Has Critics at Home’, *Bloomberg.com*, December 20, 2005.

## The development package

LDCs, SVEs, preference-receiving countries and the four cotton countries have resorted to special considerations within the WTO because the main trading agenda does not address their concerns. In fact, the current direction of the trade agenda is bound to exacerbate their economic conditions. By proposing the development package, the EU and the US are shamefully taking advantage of these different groupings to win public relations victories and to further their own trade agenda by demanding trade-offs in other areas of the negotiations.

None of the development package elements – which include preferences, DF/QF, cotton, aid-for-trade and the treatment of SVEs – were actually resolved in Hong Kong. Post-Hong Kong, the EU continues to use the carrot of the development package and the issue of preferences to divide countries. The EU and the US also continue to use these tools to weaken opposition to their own interests while promising to deliver on these issues later.

The irony about aid-for-trade is that it will be negotiated by a myriad of agencies outside of the WTO. It may also undermine developing countries' ability to negotiate the main trade agenda if they are side-tracked by this issue.

### **As one ACP trade negotiator commented:**

*The development package– it's still dividing us, like a carrot on a bungee, just when you reach for it, it goes back up again. In the TNC this week, Lamy announced the aid-for-trade task force. A big fight erupted about who should be on the task force. People complained about the lack of preference-receiving countries [on the task force], about not having enough middle-income countries, while poor countries said that there were not enough of them.*

*The mantra three to four years ago was 'trade not aid,' remember that? Now, it's 'aid for trade'. We are intelligent people involved in trade with PhDs and masters degrees and we could be a bit more original, no?*

By February 2006, Lamy had deflected all the critical elements of the development package including aid-for-trade by insisting that most of these issues should be decided after the formulas for tariff cuts in NAMA and agriculture are agreed. However, preferences, DF/QF, SVEs and cotton are all connected to the main areas of negotiations and delegations therefore worry that, if the main negotiating agenda is not in their favour, there will be nothing left to harvest in the development package.

### **A trade negotiator from the Caribbean:**

*In one of our first meetings with Lamy, he said that we'll take care of development issues after FIPS has resolved their differences. S&D and development issues, Small and Vulnerable Economies, we can fit it all in the end. He takes things in his control, gets the results he wants...Lamy is not concerned about being neutral. He is concerned about the whole thing coming to a conclusion and through whichever mechanism is useful.*

## The G90 and the LDCs

According to the *Commission for Africa Report*, agriculture makes up more than 70% of the employment in Africa and accounts for 30% of the GDP. The report also says that Africa's terms of trade (the price of exports relative to imports) have deteriorated dramatically over the last 30 years.<sup>42</sup> Flawed structural adjustment policies since the early 1980s and declining global commodity prices have been major factors contributing to the decline. According to World Bank indicators, "the number of extremely poor people in sub-Saharan Africa has almost doubled since 1981 to 313 million people in 2001".<sup>43</sup> Many of these countries are also experiencing de-industrialisation. Moreover, a recent assessment of the Doha Round actually predicts losses for much of Africa because of preference erosion.<sup>44</sup> Ironically, these estimates for losses also include Mexico – a member which is eagerly seeking liberalisation in the WTO.

It is thus vital, in a Round that is supposed to be about development, that Africa and the ACP are allowed to maintain the policy space they need to protect farmers' livelihoods and diversify their economies. Since EU and US dumping will continue unabated beyond Doha, this also means that the G90 needs the ability to protect at the border, but reaching agreement on such measures will require tremendous political will on the part of the EU and the US, both within and outside the WTO forum.

On NAMA, UNCTAD studies indicate that tariff revenues could fall by 41% under an ambitious Swiss formula (the formula agreed at Hong Kong which cuts the highest tariffs by the largest amount) and by as much as 21% even in a "flexible scenario".<sup>45</sup> This will hit poor countries the hardest because tariffs comprise a significant part of government revenue according to Stiglitz and Charlton.<sup>46</sup> And Africa relies more on this form of revenue than any other region of the world.

Although LDCs appear to be exempt from tariff reduction in NAMA, they will nevertheless be affected by what is expected of their neighbours. Moreover, the tariff reduction formula agreed by majors will be used to calculate how to reduce the tariffs they bind in the WTO. Members have agreed to a 'Swiss' type formula that will bring down high tariffs much more sharply than lower tariffs. Even though many African countries and the LDCs will be allowed to 'mark up' or raise their final bound rate by a certain percentage from this agreed Swiss formula, the final rate will still depend on the formula agreed upon by the majors. There will be pressure on LDCs to bind their tariffs accordingly. It is thus vital that the G90 collectively engage on NAMA negotiations to oppose the heavily skewed nature of the existing NAMA framework.

According to UNCTAD's *Least Developed Countries Report* in 2002 and 2004, LDCs are even more integrated into the global economy than OECD countries, with 36 out of 46 LDCs having average tariff rates of less than 20%, despite being some of the poorest countries in the world.

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<sup>42</sup> pp. 271-272

<sup>43</sup> [http://devdata.worldbank.org/wdi2005/Section1\\_1\\_1.htm](http://devdata.worldbank.org/wdi2005/Section1_1_1.htm)

<sup>44</sup> Ackerman, F., *The Shrinking Gains from Trade: A Critical Assessment of Doha Round Projections*, CDAE Working Paper No. 05-01, Tufts University, 2005

<sup>45</sup> Khor, M., 'Big Losses Projected for Developing Countries from WTO's NAMA Proposals', *TWN Info Services on WTO and Trade Issues* (Feb 06/12)

<sup>46</sup> Stiglitz, J. and A. Charlton, *The Doha Round of Trade Negotiations: An Agenda to Promote Development and Facilitate Adjustment*, Paper for the Initiative for Policy Dialogue (IPD), date/year??

The EU and the US have impressed upon LDCs that their involvement in the main areas of trade negotiations is unnecessary given that they are exempt from making commitments. However, the level of liberalisation in services and formula cuts in agriculture and NAMA have a direct bearing on imports in their region and exports through preference erosion.

Having opened their economies far wider than others, it is also important for them to retain the right to raise their tariffs as and when needed to shelter their domestic industries. Universal standards will affect their ability to do this. Moreover, if regional integration is a goal for Africa – the home of the poorest LDCs – it will be important that sufficient agriculture and industrial capacity remains within the region to be able to develop intra-regional trade. Policy space in the main trade arena therefore remains vital for sub-Saharan Africa as a whole and for the G90.

LDCs should not be forced to choose between their alliance with the G90 and getting permanent DF/QF access. This cannot be the trade-off. Currently, both the EU and the US are forcing these divisions without the likelihood of delivering on 100% DF/QF access to LDCs. Their strategy to defer the discussion on these and other development issues until after the modalities of the main negotiating agenda are agreed is deceptive and an indication of their hypocrisy.

## SECTION IV: The new power equation

*Before, the Quad was deciding and it was a pre-cooked thing. The process to Cancun and the groups changed this, the G90, the G20, G33. A few months after Cancun, there was the replacement of Japan and Canada by India and Brazil – the nucleus of decision-making guaranteed to two developed and two developing countries – which is not to say that it is sufficient, but it's where you have the first glimpse of alternatives to conduct negotiations.*

### **A trade negotiator from the G4**

The Hong Kong process – largely driven by meetings of the ‘new Quad’ (the US, the EU, Brazil and India) – created a new dynamic that hadn’t been present at past WTO Ministerials, and, by the spring of 2006, it was widely accepted that the Round’s success depended on three parties and three issues: for the US to cut its domestic support in agriculture; for the EU to cut its agriculture tariffs; and for India and Brazil to liberalise NAMA, services and agriculture. Such a simplification of the issues, however, obscures the different trading objectives and needs of the remaining WTO members and marginalises them. It also obscures the fact that the WTO agenda is bigger than it has ever been with on-going negotiations in over 17 different areas.

There are, nevertheless, both pros and cons to this new power equation for developing countries. Having India and Brazil in exclusive meetings with the US and the EU allows for greater sharing of information with other developing countries about the US and EU’s agenda. Since the two continue to drive the WTO, this has created more transparency compared with the days of the old Quad and when the EU and US negotiated only with each other.

However, ActionAid believes this is not sufficient and all developing countries should be in the influential decision making position at the WTO.

Brazil and India have also played leadership roles in the G20 and the G33 respectively, and this has helped strengthen the positioning of these developing country groupings in the agriculture negotiations. This is reflected in the final Hong Kong draft where the G33 was able to get stronger language on a potential price trigger mechanism for a special safeguard and greater flexibility in declaring certain crops as Special Products so that they will not have to be liberalised to the same degree as others. The real benefits of these provisions, though, will only become clear with further negotiation. What’s more, the G20 has been able to put more pressure on the EU and the US than was the case in previous negotiations.

Both India and Brazil also continue to stress the importance of developing country solidarity. And both recognise the need for broader developing country support in their effort to rebalance the WTO and overcome US-EU domination. Without the support of the G90 in all of the core WTO agendas, India and Brazil cannot expect to salvage a development deal out of Doha, and vice versa. Therefore, all developing countries must be proactive and vigilant against the attempt by the US and the EU to divide developing countries.

In fact, recent trends – such as the May 11<sup>th</sup> joint G33, ACP, African Group and LDC submission (on Special Products and the Special Safeguard Mechanism in agriculture) – show that countries are recognising the political need to create a unified platform that addresses the concerns of developing countries’ agrarian economies.

## **CONCLUSION: the aftermath of Hong Kong**

*There is too much on the agenda of major and significant importance that ministers are being required to address and decide on in 2-3 days. So the question is, “What is the agenda and what kind of a contraption do you need to solve this?” ... Maybe if you did a ministerial meeting on agriculture over a week or two rather than bringing it all at one time, it would be better.*

*The Single Undertaking – the idea that without it, how you can have energy. We don’t want it. It’s all about trade-offs – services, agriculture, NAMA. No one will move unless all of it is on the table.*

### **Ambassador of an ACP country**

*The environment has changed, a much less activism than some years ago. It’s either that people are much more comfortable or it’s that the WTO is a ‘sui generis’ [one of a kind] organisation.*

### **A long-time WTO ambassador of a developing country**

The WTO’s Director General, Pascal Lamy, hailed the Hong Kong Ministerial outcome as a “rebalancing in favour of developing countries”.<sup>47</sup> He conveyed to the world that the outcome was achieved through a “bottom-up,” “inclusive,” “transparent” process with “no surprises”. This report has shown, however, that the rhetoric is very different to the reality. Hong Kong legitimised the deception of the Doha ‘Development’ Round agenda in process and in outcome. But there is no reason why this must be repeated in June and July.

The EU and US have perpetuated divisions between developing countries at the WTO. They have attempted to create mistrust and successfully created structural divisions within the WTO framework. Through the deception of the so-called ‘development package’, they have conveyed to the world that development concerns are being addressed in the Doha Round.

There are now signs that this is changing. Developing countries are galvanising and seriously questioning the rationale of agreeing to a deal from which they stand to gain little.

## **Recreating a sense of activism**

In the run up to the Seattle (1999) and Doha (2001) Ministerials, developing countries pushed back the powers of the old Quad by organising a developing country coalition called the Like-Minded Group (LMG). The LMG was a group of around 19 developing countries of different economic backgrounds and regions working to forge common positions against the old Quad. Power politics, however, dismantled the LMG following Doha, thereby attesting to its effectiveness within the WTO. In 2003 (Cancun), developing countries came together again, in new groups – such as the G20, G33 and G90 – and stood firm, rejecting a bad deal.

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<sup>47</sup> [www.wto.org/english/thewto\\_e/minist\\_e/min05\\_18dec\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min05_18dec_e.htm)

The current negotiations in the WTO, however, demand an even greater and more coordinated coalition amongst the developing countries and their groups. Because of the Single Undertaking system, it is critical that they come up with collective demands in all the areas of negotiation. They need to work out their differences and strengthen their unity so that they can more effectively challenge the rich countries' tactics and the undemocratic process allowed by the WTO Secretariat. Such unity would help to rebalance the global trading system in favour of the poor.

Hong Kong should teach WTO members a number of lessons. Many developing countries stand to lose substantially from what is currently being negotiated in the WTO, but they, nevertheless, restrained themselves in Hong Kong out of fear of being blamed for the collapse of the multilateral trading system. But they must now reassess what this system and this self-restraint will give their economies if the Doha Round is concluded this year. They can no longer let rich countries manipulate and coerce them into a consensus that could literally be a life and death matter for some in poor economies.

Developing countries have shown their collective strength in the WTO before, and continue to do so with alliances such as the G20, G33 and G90. But the current situation requires a major rethink of the WTO's mandate itself.

As one delegate puts it, *“The entire machinery is geared up for allowing individual developing country interests to clash against each other...Developing countries are competing to get a piece of a small cake...Trade distortions will still be there in the form of green, blue, violet, whatever you want to call them. The pie is not getting bigger, it's staying the same size and developing countries are fighting for that same piece.”*

Rather than continuing blindly in the same direction, this reality could force a major rethink of the global trading system and how it could actually work to raise living standards of both poor and larger economies. It could serve as a catalyst to rebalance and rethink the multilateral trading system through an agenda that appropriately addresses the complexity of the global economic architecture rather than ideologically pursues liberalisation for its own sake.

The lessons of Hong Kong show that damage control and being seen as conciliatory do no favours to developing countries and their citizens. It also shows that major powers use exclusive processes to compromise developing country priorities. India and Brazil continue to play a strong leadership role for the developing world in the WTO and they must ensure that their efforts align with the G90. Similarly, the G90 must unite on all elements of the ACP, African Group and LDC agenda.

Above all, rich countries must stop cheating poor people. They must stop pressurising weaker and marginalised countries to support their own economic interests. Strengthening the legitimacy of the multilateral trading system lies in their hands by creating a just, democratic and accountable system of governance. This should not be a system that requires the South to follow a one-size-fits-all policy, while the US and EU are allowed to protect their own economic interests.

The lessons from Hong Kong are clear. Developing countries must recognise that the threat of being blamed for the demise of the multilateral trading system is a political tactic and resist such

coercion. A fair system means creating a just process that allows both bigger and smaller countries to use trade rules to promote economic development, not trade liberalisation, in their countries. It is now clear that the current framework offers no gains for the majority of the membership. Developing countries must, therefore, further revive their activism to reject the current WTO deal and proactively demand a rethink of the existing multilateral trading system. Only then can it be transformed into a fair system that does not pit one developing country against another.

Developed countries must acknowledge that Doha is yet another one-sided WTO deal and go back to the drawing board. They must stop using other agreements and their economic power to force WTO members to accept outcomes against their will. They must end the shameful use of ‘diplomatic’ threats and other covert means of coercion against sovereign states.

Finally, the WTO Secretariat, Pascal Lamy and powerful WTO members must stop driving the agenda in an aggressive and exclusive manner, whereby mini-ministerials and members chosen by a select group are designated to negotiate on behalf of the rest of the membership. All countries must challenge this process and bring back debates on transparency, legitimacy and accountability to address the deception involved in the current Doha Round.

For years, civil society organisations have warned WTO members that blindly pursuing trade liberalisation is contrary to a just and humane development agenda. The WTO must catch up and realise that the world has moved on from the Washington Consensus. It’s time for the WTO to learn from the lessons of the past decade and acknowledge its impact on developing countries. What’s more, recent economic studies confirm that the numbers simply won’t add up. WTO members must, therefore, act now before an unethical, power-driven process once again determines the fate of developing economies. Member states owe it to their citizens to redress the ‘development’ deception of the Doha Round.

## **ACTIONAID'S RECOMMENDATIONS**

In light of the findings outlined in this report, ActionAid International recommends that the following steps be taken to make the WTO a more just, transparent and accountable organisation and to ensure that the Doha Round concludes with an agreement that will truly help bring about development:

- The WTO must terminate the green room process.
- Given that some regions have a large membership, all regions must be given adequate time to consult their delegations, and the appropriate amount of time should be decided by the regions themselves. Ministerials must be lengthened in order to allow time for decisions to be properly made.
- Draft ministerial texts must not be presented on a take-it-or-leave-it basis. Drafts, such as Annex C, should never have been allowed at the Ministerial.
- July Framework-type meetings must not be allowed to make binding decisions for the entire membership.
- The WTO's membership must revisit the organisation's mandate, specifically addressing the question: is the WTO a multilateral trading system or is it a trade liberalisation organisation?