

An Assessment of the WTO's Hong Kong Ministerial, December 2005

by Martin Khor

The sixth WTO Ministerial Conference, which took place in Hong Kong on 13-18 December 2005, imposed potentially damaging industrial and services market-opening commitments on developing countries, which received dismally paltry concessions in return.

The WTO's Hong Kong Ministerial Conference has resulted in an imbalanced outcome to the disadvantage of developing countries.

The developing countries gave in on the key market-access issues of services and non-agricultural market access (NAMA). In return they did not receive any significant gain on cotton, market access for the least-developed countries (LDCs) or "aid for trade", the three main components of a so-called "development package".

As for the 2013 end-date for elimination of agricultural export subsidies, the most publicized claim of benefit from Hong Kong, it was no victory. This most distortive of subsidies should have been eliminated many years ago, and no price should have been asked for it. In fact, it should have come with apologies. The date, 2013, was the furthest possible, and it was a shame that the European Union would not agree to 2010 (a date acceptable to everyone else), which would have been barely "credible".

That the EU should have held back till the last minute before agreeing even to this inferior alternative, so that it could extract even more from developing countries, showed to what a low level the Ministerial Conference, and the WTO's Doha negotiations overall, have fallen in terms of development content.

After the closing session, a senior ambassador from a developing country, reflecting on what had transpired in the "Green Room" meeting at the conference, revealed that the EU Trade Commissioner Peter Mandelson had thrown in his 2013 offer at the last hour of the meeting, when those present were preparing to leave.

If it is so hard to get so little from the developed countries, the Doha round of negotiations will be very tough when they resume in Geneva, he said. "They wanted to extract such a lot from the developing countries, until there is blood on the floor."

The real prize that the major developed countries wanted out of Hong Kong was a change in the mo-

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dalities of the services negotiations, so that they would have new instruments to pressurize developing countries to open up their key services sub-sectors. Despite massive opposition from a very large number of developing countries, including the G90, for five days, the developed countries eventually got what they wanted.

The plurilateral approach, which will incorporate sectoral and modal approaches as well, is now set not only to “complement” but to replace the bilateral request-offer approach as the main negotiating method for services. It threatens to erode the existing flexibilities in the WTO’s General Agreement on Trade in Services (GATS) and is aimed at accelerating the liberalization process in the South.

The transnational services companies, whose representatives were present and active in Hong Kong, and which expressed delight at the outcome on services, are already preparing themselves and their governments to launch a first round of plurilateral negotiations involving many key sub-sectors. The Hong Kong Ministerial Declaration says the plurilateral requests should be submitted to other members by 28 February 2006.

As a bonus, the developed countries also extracted important concessions from developing countries on the last day and in the last hours of Hong Kong on NAMA. Ministers have now agreed that the “Swiss formula”, with coefficients, would be used to cut industrial tariffs. The final language in the Ministerial Declaration (“We adopt a Swiss formula”) is much stronger than the Geneva text, which only notes that there is a working hypothesis to use a Swiss formula.

It was also agreed that applied rates would be used as the basis for treating unbound tariffs. The 18 December final text adopts a “non-linear mark-up approach to establish base rates for commencing tariff reductions.” This had not been in previous drafts, and was thus included at the last minute. The applied rates will be “marked up” to base values, which would then be cut by the formula and bound - a very drastic treatment of unbound tariffs that would result in low bound tariffs.

These NAMA commitments extracted from developing countries are unprecedented in the history of the multilateral trading system. When implemented, they will have severe deindustrialization effects.

How did the developing countries end up making such commitments, and in return for what, if anything?

From the start, the EU’s Mandelson had gone on an aggressive campaign to get developing countries to agree to its services and NAMA proposals, threatening that he would not offer anything on agriculture otherwise. This in itself would not have worked, however, if the developing countries felt they had nothing to gain from the Declaration.

Recognizing this, the major developed countries, aided by the Secretariat, sought to offer (or seem to offer) something for each group of developing countries early on in the conference. Each group was embroiled in negotiations to get its bit of benefit. By the last day, each group - the G20, G33, LDCs, cotton-producing countries, the African, Caribbean and Pacific (ACP) Group - was convinced that what it got was valuable enough to give up its fight on services or NAMA, and thus all the groups were persuaded (or persuaded themselves) that they could accept the whole package.

The persuasion aspect was important in the final hours. When finally on the last day the EU agreed to the 2013 end-date for export subsidies, the G20 leaders (India, Brazil, China) went on a persuasion drive to get other developing countries and their groupings to agree to the services text.

Kamal Nath, the Commerce Minister of India, which is a demandeur of the services text, persuaded other Ministers that Annex C (of the Ministerial Declaration) on services was harmless, agreeing with the US argument that according to the text, participation in plurilateral talks is voluntary.

This is contrary to the view of many trade and legal experts, that the revised language in paragraph 7b of Annex C would require a developing country that is requested by a group of other countries to participate in plurilateral, sectoral or modal negotiations.

Most developing countries that spoke at the last heads-of-delegation meeting gave the “OK” to the last draft Ministerial Declaration text. Venezuela and Cuba, however, persisted in their objections to the services annex and to parts of the NAMA text, but they were by themselves too few in number and influence either to have the relevant parts of the draft amended or to block consensus on the whole draft.

They did succeed, however, in making their point that they had reservations and that they had the right to put their reservations on record in a dramatic intervention at the closing session of the con-

ference, despite the arrangements in the hall that made it almost impossible for delegations to voice their opinions.

Onerous commitments

A reading of the final Ministerial Declaration shows serious commitments by developing countries in services and NAMA, while they obtained little in agriculture or in the “development package” issues.

The worst outcome for developing countries is in services. The controversial Annex C, which had been drafted by the chairperson of the services negotiations and had been hotly contested in the run-up to Hong Kong, was nevertheless transmitted to the Ministerial Conference. At the Ministerial, it was again hotly contested, with most developing countries rejecting its key provisions for almost the whole duration of the conference. The revised drafts of 17 and 18 December nevertheless left the annex fundamentally unchanged in substance.

Thus, the final outcome opens the way for the modalities of the services negotiations to be steered in the direction demanded by the EU and other developed members. New methods of negotiations (plurilateral, sectoral, modal) are agreed to that will erode the flexibilities available to developing countries to liberalize only in sectors they choose to and to the extent they want to.

The alternative services proposal of the G90 developing countries, which they submitted midway through the conference, was not reflected in the Ministerial Declaration. The textual changes proposed by the developing countries were rejected. The EU's amendments were taken up instead, and these changed the language but retained the substance of the original.

The result is that developed countries have been given additional leverage to subject the developing countries to negotiate with the “Friends of Services” (there are such Friends groups for 19 sub-sectors) in a plurilateral setting, when the services talks resume.

With regard to NAMA, the Swiss formula has been confirmed by the Ministers. For the first time in the multilateral trading system, developing countries will have to be subjected to a tariff-reduction formula, and a harsh Swiss formula at that, and

worst of all, on a line-by-line basis (affecting all products). The flexibilities and exemptions are minimal and even these are under threat.

The treatment of unbound tariffs using applied rates as the basis, which has never been done before and should not be done, has been adopted by the Ministers. These elements together spell a devastating effect on the industrial development prospects of developing countries.

Little in return

In return for these major concessions from developing countries, the developed countries had to give up very little.

After protracted negotiations, the EU finally agreed to eliminate agricultural export subsidies by the end of 2013. These should have been eliminated many years ago. The target date of latest 2010, acceptable by all others, would have been the minimum but that was not agreed to by the EU. It waited till the last hour of Green Room negotiations to accept 2013 so that it could extract more concessions from the developing world.

According to Tim Rice of the NGO ActionAid (UK), the EU had already committed internally to reducing export subsidies anyway and by 2013 the cut would amount to one billion euros. In contrast, the EU gives 55 billion euros in domestic subsidies each year.

Moreover, as the French economist Jacques Berthelot points out, the ending of direct export subsidies does not mean the end of these, as a large part of domestic subsidies enter into exported products and are thus export subsidies in disguise. According to Berthelot: “For example, formal export subsidies to EU cereals were reduced from Ecus 2.2 billion in 1992 to 121 million euros in 2002. But domestic support in the form of direct payments that benefited exported cereals rose from 117 million euros in 1992 to 1.3 billion euros in 2002.

“As cereals exports have halved (from 36.4 to 18.4 million tonnes), the subsidy per exported tonne of cereals has increased 20% from Ecus 62.5 to 75.1 euros. In the same way, the EU subsidies to the animal feed consumed by the exported poultry or pork meat are larger than the export refunds which have been reduced significantly.”

Unless domestic subsidies are cut, export subsidi-

zation will continue even after the “elimination of export subsidies” in 2013 or their phasing out before that. The Hong Kong conference would have been more meaningful if there had been a decision leading to substantial cuts in total trade-distorting domestic subsidies to levels below the current or planned applied levels, and serious disciplines on the Green Box subsidies and their reduction, so that overall domestic support is really decreased. This did not happen.

On the cotton issue, there was little comfort for the cotton producers of Africa, whose organization, which was present in Hong Kong, criticized the decision as having achieved nothing. The Declaration offers the elimination of cotton export subsidies in 2006. But export subsidies constitute only a small portion of the nearly \$4 billion subsidies the US gives to its cotton producers every year.

In contrast, there is no concrete action agreed for trade-distorting domestic subsidies which amount to about \$3.8 billion or 80-90% of total US support for cotton. Domestic subsidies also make up almost all of the European cotton subsidies.

The African Ministers had demanded that 80% of domestic subsidies for cotton be eliminated by the end of 2006, and the rest within a few years. The Hong Kong decision is miserly; it only endorses the objective that, “as an outcome of negotiations, trade distorting domestic subsidies for cotton production should be reduced”. The African Cotton Producers Association’s response is that “there has not been any concrete proposal on the most essential request”.

For the first four days of the conference, much of the focus was on providing duty- and quota-free access for LDC products to developed countries’ markets. There was unending rhetoric about the need for Hong Kong to benefit the LDCs. But they were left with far less than what was expected or what they had demanded.

The LDC Group had asked for bound duty- and quota-free market access to rich countries’ markets for all LDC products and countries. But the developed countries could not agree to that. In the end, the Declaration does not give a binding commitment (which would have meant that a member that does not fulfil it can be brought to dispute settlement in the WTO) but only the vague term “access on a lasting basis”.

On product coverage, there is also an escape clause that countries having difficulties providing such

market access shall provide access for 97% of products. This allows developed countries to continue to protect “sensitive products” that are of export advantage to LDCs, such as textiles and clothing, rice, sugar, leather products and fishery products.

Japan at a press briefing has indicated that products sensitive to LDC imports cover 2% of the total, and thus the 3% exemption allows it comfortably not to include those LDC products that could effectively enter its market. The US has also indicated it cannot include textiles and clothing from Bangladesh or Cambodia.

In other words, the LDCs can have market access for products they do not produce at all or do not produce competitively, but access can be blocked for those products in which they are competitive. They are only given rights in areas where they cannot realize these rights.

Besides the market-access issue, there were four other LDC-specific decisions adopted in Hong Kong, which had been battled over for many months in Geneva. But there has been no movement on the many other proposals for special and differential treatment.

Neither is there any progress on the developing countries’ proposals on implementation issues. The Hong Kong Ministerial confirmed that the “development issues” mandated in Doha have been put in a corner in a state of comatose.

This is also reflected in the timelines given in the Declaration for finishing negotiations in different areas. The deadlines for agriculture and NAMA modalities are 30 April 2006. The review of outstanding agreement-specific proposals on special and differential treatment is December 2006, when the Doha round is supposed to end. If the review is completed only by then, can the decisions be taken before the round ends?

The Hong Kong meeting thus produced an imbalanced result. The outcome will make it more difficult for the developing countries when they negotiate on services and NAMA in 2006.

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