

Policy brief



INSTITUTE OF ECONOMIC AFFAIRS

POST HONG KONG: OUTCOMES AND CHALLENGES

Introduction:

The Doha Development Agenda (Doha round), which was launched in 2001, was meant to correct the imbalances associated with the Uruguay round. The Doha round was to end in 2004, however this deadline was not achieved. One of the reasons for this was the failure of the 2003 5th WTO Ministerial Conference in Cancun which ended abruptly without consensus on any of the items on its agenda. After long and arduous negotiations, WTO Members on 31 July 2004 agreed on a framework package to keep the Doha round of trade negotiations alive.

The Sixth WTO Ministerial Conference was held in Hong Kong, China, 13–18 December 2005. The main task before members in Hong Kong was to settle a range of questions that would shape the final agreement of the Doha Development Agenda, which members hoped to complete, at the end of 2006. Three deadlines were set. These are 30 April 2006, where an agreement has to be reached on the modalities of eliminating farm export subsidies, and also establishing modalities in non-agricultural market access. Based on agreed modalities, members are required to submit comprehensive draft schedules by, 31 July 2006 and finally the most important end date is to conclude the Doha Round by end of 2006. IEA therefore organized a policy round table in collaboration with the National Committee of the WTO of the Ministry of Trade and Industry, to discuss the outcome of the 6th WTO Ministerial Conference.

Outcomes and Challenges

1) Agriculture

The Doha mandate, the July Framework Agreement provided the basis for negotiations by WTO members in Hong Kong. The draft text submitted to Ministers

for consideration reflected a lower ambition with the Chair's report attached to it on his own responsibility.

The ministers focused on trying to resolve contentious political issues leaving the most difficult and complex issues to be handled in Geneva.

Members reaffirmed their commitment to the mandate on agriculture as set out in paragraph 13 of the Doha Ministerial Declaration and to the Framework adopted by the General Council on 1 August 2004.

➤ Market Access

- ☑ Members agreed on four bands for structuring of tariff cuts but further negotiations were needed on the issue of the size of tariff cuts, thresholds and flexibilities for developing country Members.
- ☑ The Chair's report noted that there had been very considerable convergence on adopting a linear-based approach for cuts within those bands
- ☑ Developing countries had the flexibility to self-designate an appropriate number of tariff lines as Special Products guided by indicators based on the criteria of food security, livelihood security and rural development.
- ☑ Developing country Members would also have the right to have recourse to a Special Safeguard Mechanism based on import quantity and price triggers, with precise arrangements to be further defined.
- ☑ Special Products and the Special Safeguard Mechanism would be an integral part of the modalities and the outcome of negotiations in agriculture.
- ☑ Took note of the progress made on *ad valorem* equivalents and recognized the need to agree on

treatment of sensitive products, taking into account all the elements involved.

- ☑ Reaffirmed the importance of other issues reflected in the July Framework including tropical products and products of particular importance to the diversification of production from the growing of illicit narcotic crops, long-standing preferences and preference erosion.

➤ *Domestic Support*

- ☑ There would be three bands for reductions in Final Bound Total AMS and in the overall cut in trade-distorting domestic support, with higher linear cuts in higher bands.
- ☑ The EU would be in the top band while the US and Japan would fall in the second band and all other countries in the last band.
- ☑ However the issue of the actual tariff cuts to be applied and thresholds would have to be worked further.
- ☑ In addition, developed country Members in the lower bands with high relative levels of Final Bound Total AMS will make an additional effort in AMS (Aggregate Measure of Support) reduction.
- ☑ Developing country Members with no AMS

commitments will be exempt from reductions in *de minimis* and the overall cut in trade-distorting domestic support.

➤ *Export Competition*

- ☑ There will be parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect to be completed by the end of 2013.
- ☑ Elimination should be achieved in a progressive and parallel manner, so as to ensure that a substantial part is realized by the end of the first half of the implementation period

- ☑ Members noted the emerging convergence and agreed that programmes such as export credit guarantees or insurance programmes with repayment periods of 180 days and below should be self-financing, reflecting market consistency, and that the period should be of a sufficiently short duration so as not to effectively circumvent real commercially-oriented discipline.

- ☑ Further disciplines to eliminate export credits with repayments periods beyond 180 days will have to be agreed so as to ensure progressive and parallel elimination.

- ☑ As a means of ensuring that trade-distorting practices of STEs (State Trading Enterprises) are eliminated, disciplines relating to exporting STEs will extend to the future use of monopoly powers.

- ☑ On food aid members reconfirmed their commitment to maintain an adequate level and to take into account the interests of food aid recipient countries. In this respect, a "safe box" for bona fide food aid will be provided to ensure that there is no unintended impediment to dealing with emergency situations.

- ☑ The end date of 2013 for the elimination of all forms of export subsidies, together with the agreed progressivity and parallelism, will be confirmed only upon the completion of the modalities.

- ☑ Developing country Members will continue to benefit from the provisions of Article 9.4 of the Agreement on Agriculture for five years after the end-date for elimination of all forms of export subsidies.

- ☑ The disciplines on export credits, export credits, STEs and food aid to be completed by 30 April 2006 as part of the modalities.

- ☑ Appropriate provisions in favour of least-developed and net food-importing developing countries as provided for in paragraph 4 of the Marrakesh Decision to be an integral part of the modalities.

➤ *Cotton*

- ☑ All forms of export subsidies for cotton will be eliminated by developed countries in 2006.
- ☑ On market access, developed countries will give duty and quota free access for cotton exports from

least-developed countries (LDCs) from the commencement of the implementation period.

- ☑ Trade distorting domestic subsidies for cotton production to be reduced more ambitiously than under whatever general formula agreed and that it should be implemented over a shorter period of time than generally applicable.
- ☑ On the development aspects of the cotton initiative members just notes the importance of achieving enhanced efficiency and competitiveness in the cotton producing process and therefore urges the development community to further scale up its cotton-specific assistance and to support the efforts of the Director-General in his consultations in this regard.

Challenges

- ☑ On export subsidies, the agreement on the principle to eliminate export subsidies including export credits, STEs and food aid was to be agreed under the July framework. In Hong Kong all forms of export subsidies and disciplines on all export measures are to end by 2013 with a substantial reduction to be realized by 2011. The main challenge is to ensure parallelism and working out a phase-out programme
- ☑ Under the July framework, members with the highest trade distorting domestic support would make deeper cuts, while developing countries that allocate diminished support for subsistence and resource poor will be exempted from reductions. In Hong Kong it was agreed that members will be classified in three bands according to their trade distorting domestic support. The main challenge is to agree on the size of subsidy reduction and prevention of members from 'box shifting'.
- ☑ In as much as there was an agreement on four bands of structuring tariff cuts with different thresholds for developing countries. An agreement has to be reached on size of tariff cuts and the specificities on the treatment of special products and sensitive products.
- ☑ The reduction and elimination of domestic support in cotton remains unsolved and depends on the agriculture negotiations.
- ☑ A lot of research needs to be done in the area of safe box that was introduced in order to inform policy.
- ☑ There is need to balance food aid in monetary

terms and in kind. In cases of emergency, food aid should not be in cash but in kind.

2) Services

Paragraph 25 reiterated the Doha mandate for negotiations to conclude economic growth for all trading partners and the development of developing and least-developed countries. It reaffirms the objectives and the principles of the GATS, Doha Mandates, guidelines and procedures for negotiations, modalities for special treatment of LDCs (LDC modalities) and the July framework .

- ☑ Paragraph 26 urges active participation in negotiations to achieve a progressively higher level of liberalization with provision of article XIX flexibility for developing countries. Negotiations are to recognize the size of the economy. LDC are not expected to make new commitments
- ☑ Paragraph 27 agrees to intensify negotiations in accordance with annex C
- ☑ Annex C of the ministerial declaration outlines the objectives, approaches, timelines and review of progress for negotiations.
- ☑ Paragraph 2 establishes that members may refer to sectoral and modal objectives of the Chairman's report TN/S/ 23.
- ☑ Paragraph 3 mandates the implementation of LDC modalities.
- ☑ Paragraph 5 mandates to conclude the GATS Article VI:4 negotiations on domestic regulation with consideration of proposals and the Chair report JOB(05)/280
- ☑ The request and offer method shall remain the main method of negotiation
- ☑ In addition to bilateral negotiations, paragraph 7 agrees to that the request-offer negotiations should also be pursued on a plurilateral basis in accordance with the principle of GATS and the guidelines and procedures for the negotiations in trade in services.
- ☑ Small economies shall be given consideration in the negotiations.
- ☑ Paragraph 9 mandates developing methods to implement LDC modalities and outlines the specific ways to do it.
- ☑ The WTO and others should provide technical assistance to enhance developing countries and LDCs participation in negotiations.

- ☑ Initial offers are to be submitted as soon as possible, plurilateral requests are to be submitted by the 28th February 2006, revised offers by 31 July 2006 and final draft schedules by 31 October 2006.
- ☑ The council on Trade in Services should review the progress in negotiations and monitor the implementation of Annex C.

Challenges

- ☑ Annex C has focused on market access and does not aim to fulfill the development objective of the negotiations.
- ☑ The modal objectives infringe on the GATS flexibilities for developing countries as it focuses on liberalization without development considerations. This implies that Kenya will end up opening sectors in services that it is not ready to open.
- ☑ The document -Chair report TN/S/23 is a non-consensus document outlining market access objectives. Should it be used?
- ☑ The LDC modalities do not commit members to conclude implementation by end of this round.
- ☑ Given the emphasis on plurilateral approach, it is not clear how this will work in practice or how it will relate to bilateral negotiations
- ☑ It is not clear how the proposals of small economies will be taken into account. Considering trade-related concerns of small economies in negotiations provides an opportunity for furthering proposals on development related concerns.
- ☑ Under LDC modalities, activities mandated in this paragraph include members' assistance to LDCs in identifying their sectors and modes of export interest, however, the Ministerial Declaration weakens this by agreeing to paragraph 6 (which requires members to give special priority in market access in sectors and modes of supply of export interest to LDCs) on a best endeavor basis.

NON AGRICULTURAL MARKET ACCESS (NAMA)

The Declaration reaffirmed the mandate contained in paragraph 16 of the Doha Ministerial Declaration and the elements of the NAMA framework adopted by the General Council on 1 August 2004. It further takes note and welcomes the progress as reported by the Chairman of the Negotiating Group on Market Access on his own responsibility.

- ☑ Ministers adopted the use of a Swiss formula but left the coefficients and other details to be finalised by their representatives in Geneva.

$$t_1 = \frac{at_0}{a+t_1} \quad \text{Where } t_1 =$$

- ☑ The Swiss formula: $t_1 = \frac{at_0}{a+t_1}$ Where $t_1 =$ new tariff; a =coefficient; t_0 = base rate
- ☑ The numbers of coefficients are not specified in the Declaration.
- ☑ The Declaration reaffirms the importance of the principles of special and differential treatment and less than full reciprocity in the reduction commitments.
- ☑ On sectoral approach, the Declaration makes it clear that it should be on voluntary basis.
- ☑ On the treatment of unbound tariffs for the purpose of applying the formula, the Declaration calls for a non-linear mark-up approach to establish the necessary base rates for commencing reductions.
- ☑ The issue of small economies found its way to the Declaration even though it was not part of the NAMA framework.
- ☑ The Declaration calls for provisions of flexibilities for small economies without creating a sub-category of WTO Members
- ☑ On non-tariff barriers (NTBs) the Declaration takes note of the progress made in identifying, examining and classifying them and of the various approaches that Members have used in the negotiations on NTBs.

- ☑ The Declaration urges Members to submit proposals on how NTBs could be resolved.
- ☑ The Declaration sets 30 April 2006 as the latest date that modalities should be established and comprehensive draft schedules based on those modalities by 31 July 2006.

Challenges

- ☑ The coefficients are quite difficult to operationalise in negotiations terms as these coefficients provide leeway for steep tariff cuts and less steep cuts.
- ☑ Paragraph 14 suggests that other parameters could be used to determine the level of coefficients hence it is even possible to use “cuts into applied rate”, “harmonization” etc in the negotiations.
- ☑ There is no operational language for the effective delivery of special and differential treatment provisions.
- ☑ The declaration does not clarify how the principle of less than full reciprocity will be operationalized.
- ☑ The declaration did not discuss credit for autonomous liberalization which was in the July framework, this implies that it will have to be discussed this year (2006)..
- ☑ Preference receiving countries will have to watch out so that those participating on sectoral approach do not include products that contribute significantly to the growth and development of preference dependent countries.
- ☑ The critical mass approach could lead to considerable arm-twisting of recalcitrant developing countries.

WTO RULES

Paragraph 28 of the Doha mandate aimed at clarifying and improving disciplines under the agreements on implementation of the Article VI of the GATT 1994 and on subsidies and countervailing measures, while preserving the basic concepts, principles and effectiveness of agreements and their instruments and objectives, and taking into account the needs of developing and least developed participants. The July framework further reiterates the member's

commitment to progress in WTO rules negotiations. The Hong Kong ministerial text acknowledges that amendments to the anti-dumping (AD) agreement are necessary to achieve the objectives of the Doha declaration and members are to submit text-based proposals aiming to:

- ☑ Improve transparency, predictability and clarity of relevant disciplines to benefit all members.
- ☑ Avoid unwarranted use of AD and SCM while preserving the basic concepts, principles and effectiveness.
- ☑ Limit the costs and complexity of proceedings while strengthening the due process of such proceedings and measures.

⇒ Fisheries Subsidies

- ☑ Strengthening disciplines including through the prohibition of certain forms of subsidies that contribute to overcapacity and over-fishing.
- ☑ Appropriate and effective S&DT for developing and LDCs should be an integral part of the fisheries subsidies negotiations, taking into account the importance of development priorities, poverty reduction and livelihood and food security concerns.

⇒ Research Trade Agreement (RTA)

- ☑ Transparency of RTAs is of systematic interest as are disciplines that ensure the complementarity of RTAs with the WTO.
- ☑ To resolve outstanding issues, with a view to a provisional decision on RTA transparency by 30th April, 2006

⇒ Dispute Settlement Understanding

- ☑ Special session directed to continue to work towards a rapid conclusion of the negotiations.

⇒ Special and Differential Treatment

- ☑ General Council adopted the decision of 1st August, 2004 that all S&DT provisions be reviewed with a view to strengthening them and making

them more precise, effective and operational.

- ☑ Lack of progress on the category II proposals that had been referred to other WTO bodies and negotiating group.

☞ **Implementation issues**

- ☑ Outstanding implementation issues under Para 12 (b) of DND
- ☑ TNC, negotiating bodies and other WTO bodies concerned to redouble their efforts.
- ☑ The Council shall review Progress and take appropriate action not later than 31st July, 2006

☞ **Trade, Debt and Finance**

- ☑ Lack to continue on the basis of the Doha Mandate.
- ☑ GC to report further work in the next Session

☞ **Trade and Transfer of Technology**

- ☑ Possible recommendation on steps that might be taken within the Mandate of the WTO to increase flows of technology to developing countries.
- ☑ GC to report further in the next session.

☞ **E- Commerce**

- ☑ Trade treatment of electronically delivered software.
- ☑ Members to maintain their current practice of not imposing customs duties on electronic transmission until next session.

☞ **Technical Cooperation**

- ☑ Strategic review of WTO's technical assistance is to be carried out by members.
- ☑ In future planning and implementation of training and technical assistance, the conclusions and recommendations of the reviews will be taken into account as appropriate.
- ☑ Kenya has graduated from JITAP.

☞ **Commodities**

- ☑ Adverse impact of the long term decline and sharp fluctuation on the prices of these commodities.
- ☑ CTD in cooperation with other relevant international organizations to report regularly to the GC with possible recommendations.
- ☑ Particular trade-related concerns of developing least-developed countries related to commodities shall be addressed in the course of the agriculture and NAMA negotiations.
- ☑ Members and relevant international organizations to consider favorably requests by these countries for support and assistance.

☞ **Coherence**

- ☑ Welcome of the Director General's actions to strengthen the WTO's cooperation with the IMF and WB in the context of the WTO's Marakesh mandate of coherence and invite him to continue to work closely with the GC in this area.
- ☑ Noted discussions taking place in the Working Group on Trade, Debt and Finance on *inter alia*, the issue of coherence and look forward to any possible recommendations it may make on steps might be taken within the mandate and competence of the WTO

☞ **Aid for Trade**

- ☑ Noted discussions of Finance and Development Ministers in various fora, including the Development Committee of the World Bank and IMF that have taken place an expanding Aid for Trade.
- ☑ Aid for Trade should aim to assist developing countries to build the supply side capacity and related infrastructure necessary to implement and benefit from WTO Agreements and more broadly to expand their trade.
- ☑ The DG to consult with Members, IMF, WB, relevant international organizations and the regional development banks on appropriate mechanisms to secure additional financial resources for Aid for Trade, where appropriate through grants and concessional loans.

Challenges

- ☒ From an extremely large number of problems identified, members must move to identify possible concrete solutions (amendments)..
- ☒ The lists of items to be negotiated and priority accorded to items will be contentious as it will determine the quality if final outcome.
- ☒ The technical nature of the elements being negotiated implies time consuming discussions for the finalization of each individual element.

TRIPS

- ☑ Intensify negotiations on article 23.4 of TRIPS.
- ☑ The protection of traditional knowledge and folklore to be undertaken for report to the next session.
- ☑ Decision on public health and extension of implementation of TRIPS to LDCs welcomed.

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Challenges

- ☒ The following issues are important to Kenya: Geographical indications (GIs) Extension, access to genetic resources (GR), protection of traditional knowledge and folklore (TK&F). The Hong ministerial declaration simply extends the Doha mandate by requesting the Director General to continue on negotiations on the same. However the process is moving slowly as other countries benefiting from the status quo do not want negotiations to move.
- ☒ Kenya should therefore push for conclusive results from the TRIPS council.
- ☒ These results could be achieved by Kenya actively attending and participating in the council taking into consideration expertise and continuity.

The Way Forward

- ☒ The Next meeting should be held in Mid April to take stock of what has been done.
- ☒ The secretariat should be mandated to constitute working committees on new issues.

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