

Imbalances in the WTO's Hong Kong Ministerial Outcome

by Bhagirath Lal Das

Instead of redressing the many inequities in the existing international trade laws, the WTO's Hong Kong Ministerial Conference ended up stacking the deck further against developing-country members. The developing countries will now have to intensify their efforts in the post-Hong Kong negotiations to bring about development-friendly trade reforms in the WTO.

Introduction

Doha opened the door in 2001 for correcting the iniquities and imbalances in the WTO agreements and Hong Kong provided an opportunity in December 2005 to take concrete steps towards this end. But the opportunity has been totally lost. The WTO appears to be set on the usual path of developed countries' pressure tactics and developing countries' weak submission.

The irony is that the major players among the developing countries keep on announcing that they have got the best of results. A reality check is necessary to keep us on the right track in the negotiations in future. It is all the more necessary as the developed countries are showing signs of assuming an aggressive approach in the coming months that may be crucial, given that the end April 2006 is target set for working out modalities in agriculture and NAMA (industrial tariff)

and end October 2006 for the final schedules of commitments in services.

Developing countries' own proposals

It is relevant to go back in time a little. With the experience of the operation of the WTO agreements for nearly five years in end 1999, the developing countries prepared a set of nearly one hundred proposals to remedy the imbalances and inequities in the WTO agreements.

These proposals formed an integral part of the official document for the Seattle Ministerial Conference in December 1999 and came to be known as "implementation issues". The Doha Ministerial Declaration attached "the utmost importance" to them and yet they were not on the central stage in Hong Kong. They have been mired in technical and procedural squabbles.

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The same fate has fallen on two other important subjects that are of special interest to the developing countries: special and differential treatment of the developing countries and non-tariff barriers affecting agricultural and industrial products.

On the former, the Doha Ministerial Declaration speaks about “strengthening them and making them more precise, effective and operational”. The latter forms an integral part of the exercise for enhancing market access and have been included in the negotiations on agriculture and non-agriculture market access (NAMA). But both these subjects, like the implementation issues, continue to languish in technical and procedural quagmire.

The developing countries have not been able to bring these subjects into prime focus. Even though the Doha Ministerial Declaration stipulates that “conduct, conclusion and entry into force of the outcome” of the entire negotiations shall be treated “as parts of a single undertaking”, there is no parity so far in the progress made in these three subjects or even in the attention given to them with that in the three areas at the centre stage: agriculture, NAMA and services. That brings us to these three subjects that claimed total attention in Hong Kong.

Agriculture

Very little happened in agriculture in Hong Kong. In this sector, what is much more important is what did not happen, as will be explained later.

The Hong Kong Ministerial Declaration has only three concrete decisions in agriculture: (i) export subsidy will end by 2013, (ii) developing countries can self-designate some products as “special products” in which tariff reduction will be less stringent and (iii) a large number of the developing countries can retain their permissible de minimis level of domestic subsidy. Let us see what these decisions mean in practice.

Continuance of the export subsidy until 2013 is a big tragedy. The European Union (EU) spends about 3-4 billion Euros on it annually. The US pro-

vides it mainly in the form of food aid, a substantial portion of which has adverse commercial impact on the export prospects of other countries.

The payment of export subsidy is generally made to large exporting firms and does not go directly to the farmers of the exporting countries. It puts the farmers of the importing countries to great disadvantage and, in case of the developing countries, even threatens their income and livelihood. There is absolutely no justification for it to continue even for a year. Now the declaration ensures its continuance until 2013.

The clear decision on self-declaration of the special products is a small step forward as there was some vagueness about it earlier. But its practical utility is still shrouded in uncertainty as to the number of products to be so designated and the precise nature of their special treatment.

Retention of the de minimis subsidy of the developing countries (10% of the value of production in case of a product specific subsidy and another 10% of the value of total agricultural production in case of non-product specific subsidy) is also a step in the right direction.

In fact, it was never seriously challenged; the proposals of the major developed countries for its reduction appear to have been made more for strategic reasons in order to put the developing countries on the defensive. In any case, this enabling provision is of little use to the developing countries as they do not have adequate financial resources to pay subsidy to their farmers up to this level.

Against such marginal gains, there has been a big set back, as the Declaration does not call for eliminating the huge payments of domestic subsidies in the major developed countries. Among the possible formula options for reduction of the total trade distorting subsidy (TDS), even the most stringent one asking for 70-80 percent reduction, as given by the Group 20, would enable the EU to give annual subsidy of about 27 billion Euros which is about 1 billion Euros higher than what it has itself planned for 2008.

The US will be able to pay annually about US\$ 12 billion. Though it will result in reduction from the last notified level (2001) of payment of about US\$ 21 billion, it is still a very high subsidy. These subsidies concentrated on a few selected critical products will continue to damage the competitive environment in those products.

The declaration does not attempt to close the new window of domestic subsidy that the US is trying to open through the new "blue box" for its counter-cyclical payment to the farmers. Some experts say that this new facility, if approved, may even be utilised by the European Union (EU) for expanding its own subsidy in some sectors.

Also, the Declaration does not envisage curbing or even effectively disciplining the "green box" subsidy of the major developed countries. Their untenable claim that this subsidy is non-trade-distorting and their insistence on their right to give these subsidies have been left unchallenged.

It is well known by now that the major developed countries have done a lot of "box-shifting" of domestic subsidies since the coming into force of the WTO agreement on agriculture and pushed many of their reducible subsidies to "green box". Some provisions of the "green box", for example the "decoupled income support" under paragraph 6 of Annex 2 of the agreement on agriculture enables the major developed countries to pay any amount at any time to any farmer for any product.

These payments may not be in the nature of price intervention, but they certainly add to the staying capacity of the farmers and support their unviable agricultural production. Thus they clearly distort production and trade.

The Declaration is nearly silent on this matter. It merely repeats the position of the major developed countries to review the criteria of the "green box". There is not even a hint of elimination, reduction, stand-still, capping etc..

These vital omissions in the area of agriculture will result in continued risk to the developing coun-

tries' weak farmers from highly subsidised imports and also denial of export prospects for our competitive farmers.

While this area is afflicted by omissions, in the other two areas, NAMA and services, there have been significant commitments by the developing countries in Hong Kong without any commensurate gain.

NAMA

There are two specific decisions in the Declaration in this area: (i) reduction of industrial tariff will be done according to Swiss Formula and (ii) in case of currently unbound tariff, there will be a mark up from the currently applied rates and then reduction will be effected following the formula. The first point means that there will be reduction of tariff on all products. The second point means that there will be total binding coverage, i.e., all products will be covered by tariff binding.

These two decisions signify a long march of the developing countries in commitments in the GATT/WTO system. Never in the past negotiations there has been an obligation on the developing countries to reduce tariff on all products.

They had merely assumed obligation for reducing the average of their bound tariffs, keeping the option to themselves to spread this average over different products covered by binding. This gave them the flexibility to modulate tariffs on different products in line with their development objectives in respect of industrialisation. Now this option has been lost as they have agreed to reduce tariffs on all products.

Also, in agreeing to a full binding coverage, i.e., binding tariffs on all products, they have made a significant concession. Their unbound tariff is a part of the current rights and obligations. They have given up this important right in Hong Kong.

And all this has been done without any concessions or commitments from the developed countries. They have not made any specific commit-

ment to undertake special reduction of tariffs that they retain mainly to discourage imports of specific products from the developing countries. There is only a vague mention in the declaration that the formula of reduction will have coefficient(s) that will reduce their tariff peaks and high tariffs.

The imbalance in commitments is obvious. While the developing countries have given up their current specific rights as discussed above, the developed countries have not made any commitment of specific reduction of tariff peaks and high tariffs. It has been left to be worked out through a suitable formula.

The commitment of the developing countries is already operational. It is also very specific and basic. On the other hand, the obligation on the developed countries is only general and vague and in the nature of expectation in future.

The use of tariffs is now the only means of protection of developing countries' industry. They do need protection particularly in areas where they are not technology leaders. The commitments in Hong Kong can put the current domestic industry of the developing countries to risks from imports and also hamper industrial upgradation to higher technological production.

Services

Like NAMA, in services too, the developing countries have made commitments without any commensurate concessions from the developed countries. The Declaration has decided to intensify negotiations in accordance with the objectives and approaches contained in an annex (Annex C).

This annex says that commitments will be taken at existing levels of market access in Mode 1 (supply of service by the service provider of a country to a consumer located in another country) and Mode 2 (supply of service in a country to the consumer coming from another country). In respect

of Mode 3 (supply of service through commercial presence of a foreign firm), the annex stipulates commitments on enhanced levels of foreign equity participation and elimination or substantial reduction of necessity criteria applied by a country.

These are major commitments in view of the flexibility available to the developing countries in the WTO agreement on services. The agreement allows countries to choose the sectors for liberalisation and also to impose conditions and limitations on market access and national treatment in these sectors. In particular, the agreement requires that the developing countries shall have the flexibility to liberalise fewer sectors and fewer transactions.

By undertaking the commitments in Hong Kong as listed above, the developing countries have surrendered this flexibility in a significant way. This will largely benefit the major developed countries, but they have given no commensurate concessions to the developing countries in return.

Conclusion

It is well known by now that the WTO agreements are full of iniquities and imbalances. One would have hoped that the developing countries would move resolutely to remove them. But the Hong Kong result further tilts the balance against the developing countries. They will have to work really hard in the coming months to rectify the situation. But first they will have to muster enough political will towards this end.

(This Briefing Paper is an edited version of a paper prepared by the author for the Centre for Trade and Development, India.)

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