

An Appraisal of the WTO's Hong Kong Ministerial Outcome

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Several claims made on the "achievements" of the WTO's Hong Kong Ministerial Conference are grossly exaggerated, patently false and if persisted in, could have an adverse impact on the bargaining position of developing countries. The outcome of the Ministerial in fact poses many pressing problems for these countries.

In the days and weeks after the conclusion of the Hong Kong Ministerial meeting, understandably perhaps for reasons of domestic political exigencies, negotiators in key developing countries, like India and Brazil, have made exaggerated claims on the achievements.

Some of these claims are partially true, some are grossly exaggerated, while others are patently false. Such claims if persisted in may seriously affect the bargaining position of developing countries.

Agricultural export subsidies

In Agriculture, the objective of eliminating export subsidies on agricultural products was agreed upon, in the Doha Declaration itself. In the subsequent negotiations, the main issue has been to agree on a dateline for elimination. At Hong Kong, the EU, which accounts for the bulk of global export subsidies, was persuaded to agree on a dateline, which is the end of 2013.

The implementation of this provision will begin only after the stipulated conclusion of the Doha Round at the end of 2006. After that it will take seven more years for the export subsidies to go. Besides, the EU's agreement at Hong Kong is tentative in that it "will be confirmed only upon the completion of the modalities", which is going to be a highly complex task.

This will involve not only parallel and commensurate progress in dealing with export credits, export credit guarantee and food aid — the devices resorted to mainly by the US — but also upon agreement on other major components of the modalities on agriculture. Besides, export subsidies account for only a minor part of the trade distortion besetting the agricultural sector.

Domestic subsidies constitute the crux of the problem of distortion. The elimination of export subsidies is unlikely to result in either any improvement in India's competitive position in the world market or in lessening the impact of cheap imports of agricultural products.

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The elimination will help only those countries, like Argentina, Brazil and China, which by virtue of the efficiency of their agricultural sector, have the capacity to overcome the barrier of domestic subsidies given by major developed countries and thus place themselves in a position of close competition with these countries. For them, even the little advantage provided by the elimination of export subsidies can make a difference at the margin. But this marginal advantage will be of no practical value to India, which is a relatively high cost producer of agricultural products.

Agricultural domestic support

In Hong Kong, the developed countries agreed to the G-20 proposal for three bands for reductions in the final bound total trade distorting subsidies, with higher linear cuts in higher bands. This indeed marks some progress but there are several other problems.

Firstly, the base point for reduction will be the final bound rates of subsidies and not the applied rates. Secondly, the extent of reduction is still left for negotiations. Thirdly, the Blue Box and Green Box subsidies will be excluded from the scope of reduction.

The Blue Box was sanctified in the 31 July Agreement (Geneva framework) and it has come to stay. In fact, the US is planning to transfer a sizeable proportion, as much as 10 per cent, of its Amber Box subsidies to the expanded Blue Box.

There is no doubt a provision for a review of the criteria of the Green Box, in which most of the EU domestic subsidies are parked. But the outcome of the review is at best uncertain. Going by the offers of cuts made by the US and the EU in the negotiations held before the Hong Kong conference, it seems that the cuts leave untouched the current level of applied subsidies, including those in the Blue and Green Boxes.

In the Doha Round, there is a proposal on the table for undertaking negotiations for reducing the minimum levels of support (*de minimis*), permitted for developed and developing countries, that are exempt from reduction. Developing countries, which are entitled to a *de minimis* of 10 per cent of total production, have opposed this move.

In Hong Kong, they scored a small victory, as it was agreed that those developing countries whose

domestic support is below 10 per cent and hence have no commitment to reduce them, will be exempt from reductions in *de minimis* as well as in the overall trade distorting domestic support.

This gain is again of a purely defensive nature. All that has been secured is to maintain the status quo. Besides, the *de minimis* as well as overall trade distorting domestic support will be subject to reduction once it exceeds the level of 10 per cent. As far as India is concerned, there are indications that in the case of some agricultural products this *de minimis* may soon be crossed.

Agricultural tariffs

The Hong Kong Declaration sets its seal of approval on the banding approach, suggested by the G-20, for the reduction of agricultural tariffs. According to this approach, agricultural tariffs have been put in four bands ranging from the lower to the high level, with the provision that tariffs in the higher band will be subject to deeper cuts. This amounts to the acceptance of a non-linear approach to agriculture tariff reduction advocated by developed countries.

The extent of cuts in each band is yet to be agreed upon, though there were various figures bandied about in the negotiations prior to the Hong Kong conference. Deeper cuts in the higher bands will no doubt bring down appreciably the agricultural tariffs of developed countries, most of which took very high tariff bindings during the Uruguay Round of negotiations.

But it will also involve substantial reductions in the tariff bindings of developing countries like India, which are also on the higher side. India's tariff bindings for major agricultural products are in the range of 100 to 150 per cent. This may require India to accept a cut of approximately 35 per cent. This is quite a drastic reduction, particularly when tariffs remain the only means of protection after India eliminated quantitative restrictions on imports of all agricultural products by March 2001.

In the Hong Kong Declaration, the developing countries have been provided a few escape routes of an uncertain character. Firstly, they have been given the flexibility to self-designate an appropriate number of tariff lines as Special Products (SPs). But the deal is by no means clinched. The self-designation of SPs will be "guided by indicators based on the criteria of food security, livelihood

security and rural development”.

Developed countries are likely to exercise their influence in the determination of the guidelines and in the process make life difficult for the developing countries. This was evident from the loopholes picked by them in the indicators proposed by Indonesia on behalf of G-33, the developing countries group, on SPs and related issues.

Secondly, developing country members “will also have the right to have recourse to a Special Safeguard Mechanism (SSM) based on import quantities and price triggers”. The precise arrangements for the SSM are yet to be negotiated. Moreover, both these special dispensations for developing countries will come into operation only when other elements of the modalities for agricultural negotiations are put in place.

There are also other limitations to the exercise of these dispensations. So far as SPs are concerned, the developing countries will be able to effect softer cuts (say 5 per cent or so) in their tariffs, but they are unlikely to be able to get away with no reductions at all.

Under SSM, developing countries will be able to raise their tariffs in the event of a sudden surge in imports or decline in prices, but they will not be permitted to reintroduce QRs, which both developed and developing countries were using until very recently as an instrument of trade policy conducive to development.

Developed countries, particularly the EU, had made any movement in reductions in domestic subsidies conditional upon the developing countries sharing the former’s high level of ambition for liberalisation in industrial goods and services sectors.

A formal linkage has been established between Non-Agricultural Market Access (NAMA) and access in agriculture. This implies that any movement in NAMA, the prospects for which have much improved as a result of the ground yielded by India and Brazil, both prior to and during the Hong Kong conference, will trigger commensurate movement in agricultural market access, leaving far behind, progress in achieving substantial cuts in domestic subsidies. This will ideally suit the interest of the developed countries and will represent a shift away from the battleground where the developing countries have since Cancun, proved most effective and convincing.

NAMA

Developing countries have conceded their ground substantially in NAMA and Services. The surrender of their well-known positions on these issues was spearheaded by India and Brazil, which perceived their interests in NAMA and Services differently from those of the majority of developing countries.

Because of the competitive edge acquired by some of their manufacturing and service industries, India and Brazil are apparently interested in gaining greater access for their goods and services in the markets of developed countries, and are, therefore, prepared to offer reciprocal concessions. These countries, therefore, share the objective of developed countries to adopt a more ambitious approach towards liberalisation in these sectors.

In the negotiations preparatory to the Hong Kong conference, they took initiatives to advance proposals designed to put the negotiations in these areas on a faster track. These proposals found general acceptance in Hong Kong and were elevated to a higher legal status by virtue of being included in the Hong Kong Declaration.

On NAMA, the Swiss formula, which the developing countries had previously opposed, was formally adopted. This will mean deeper cuts on a line-by-line basis for countries levying higher tariffs. Since the tariff levels maintained by developing countries on industrial products are much higher than those of developed countries, the former will be offering larger tariff concessions and will not be able to protect particular tariff lines.

How deep will be the cuts will depend upon the coefficients to be agreed. Here, there are two proposals on the table, the first stipulating a limited number of coefficients, may be one for developed and the other for developing countries, and the other, mooted by Argentina, Brazil and India, calling for multiple coefficients, based essentially on the average bound tariff of each country.

The importance of the concepts of special and differential treatment (S and DT) and less than full reciprocity for developing countries has been reaffirmed as in several previous documents. But there is no agreement on how to apply them in concrete terms. There is, however, a proposal that

for developing countries, a certain proportion of tariff lines may be subjected to cuts lower than that obtained by applying the Swiss formula and that a certain percentage of the tariff lines of these countries may be kept unbound.

The developing countries have also conceded ground on the treatment of unbound tariffs and especially the base values to be adopted for applying the tariff cuts. They will now, in principle, be the applied rates as proposed by developed countries and not the bound rates. The slight concession offered is that a "mark up" over the applied rate, the extent of which remains to be negotiated, will be permitted.

For some time, there has been under consideration a proposal advanced by the US on sectoral initiatives whereby tariffs on all products in selected sectors will be reduced to zero by all countries in a phased manner within a time bound framework, the phasing being different for developed and developing countries. This has caused a great deal of consternation among developing country governments, except for a few like India, which perceive themselves as competitive, and hence, prepared to consider the zero option in some of the suggested sectors.

In the Geneva framework, this proposal was relegated to the background as one of the options which could be resurrected for consideration if other approaches failed to yield the desired results. But in Hong Kong the sectoral approach has been revived.

A concession made to developing countries is that "participation should be on a non-mandatory basis". Indian industry by and large does not favour the sectoral approach. They are not confident that they can rush to zero tariffs in any of the sectors proposed unless they have a level playing field *vis-a-vis* foreign competitors, mainly in matters of infrastructure facilities and tax treatment.

The Hong Kong formulation on non-tariff barriers (NTBs) does not hold out any promise for the removal of these barriers in the near future. The ministers have only taken note of the work done for "the identification, categorisation and examination of notified NTBs" and have recognised "the need for specific negotiating proposals", which should be submitted as quickly as possible.

There is, thus, no deadline even for the submission of proposals let alone for the elimination of

NTBs. Most of the NTBs are in the nature of sanitary and phyto-sanitary measures (SPS), technical barriers to trade (TBT) and anti-dumping and countervailing measures.

The position of major developed countries has been that NTBs be considered within the frameworks of the respective agreements. As they are strongly opposed to any substantive amendment to these agreements, the most likely scenario is that the identified NTBs will continue and multiply in the coming years.

Services

The Hong Kong conference has imparted a new momentum to the negotiations on Services. It has been decided to achieve "a progressively higher level of liberalisation" and "intensify the negotiations" to that end. New datelines have been set for the submission of plurilateral requests, revised offers and draft schedules of commitments.

The adoption as a consensus document, of Annex C of the draft Declaration for the Hong Kong conference, is going to quicken the pace of the negotiations. The Annex C was put forward unilaterally by the chairperson of the Negotiating Group on Services, as a consensus document, in the teeth of strong objection of developing countries. The adoption of this contested document, with a few changes here and there, represents a huge concession by developing countries.

The developing countries have accepted the proposal of developed countries to adopt a plurilateral approach to the negotiations on services. This has, however, been qualified to take care of the concerns of developing countries. Firstly, this will be of a voluntary nature. Secondly, the results of the negotiations based on it "shall be extended on a MFN basis" to all member countries. Thirdly, such negotiations will be conducted in accordance with the principles of GATS and the Guidelines and Procedures for the Negotiations on Trade in Services.

In spite of these qualifications, the adoption of the plurilateral approach will contribute substantially to the hastening of the pace of the negotiations in a sector where the vast majority of the developing countries would have preferred to move with circumspection and at a slower pace.

The plurilateral approach would be used as a lever of pressure on developing countries to further liberalise their services sector. For, when a large number of major economic powers band together to make a demand, it is extremely difficult for the weaker negotiating partners not to move at least some distance towards conceding it.

The endorsement at the Hong Kong ministerial meeting of the "sectoral and modal approach" to negotiations, brings in, through the back door, the concept of benchmarking and targets earlier advanced by developed countries and strenuously opposed by developing countries.

According to this concept, members are required to undertake commitments in advance, as a part of the modalities, to open up a minimum number of sectors and agree on a minimum extent of opening across the sectors. This militates against the basic character of GATS, according to which developing countries are required to liberalise only in sectors and modes of supply of their choice and determine the extent of liberalisation in the selected sectors and modes.

In the face of strong opposition by developing countries, the terms benchmarking and targets were deleted from Annex C of the draft Declaration. However, the Annex as now agreed, recognises that "the sectoral and modal objectives as identified by members may be considered".

Though like the plurilateral approach, the adoption of the sectoral and modal approach is optional, there is no doubt that the text as adopted provides an opening to developed countries to bring back their proposal for benchmarking and targets.

In the Geneva framework, developed countries agreed to drop their proposal for rule-making on transparency in government procurement, which was one of the Singapore issues. But soon thereafter they took advantage of the negotiations on services to bring back the proposal as rule-making on government procurement of services.

The developing countries took strong exception to it. But they have now agreed to the formulation in Annex C, which calls upon members to "intensify their efforts to conclude the negotiations on rule-making under GATS" and for this purpose, among others, to "engage in more focused discussion and in this context put greater emphasis on proposals made by members".

Why did India depart from the position of the developing countries — in fact reversed its own position — on the above issues? The explanation is that India legitimately wants to enlarge its access in the markets of developed countries for the services in which it is competitive.

Earlier, the emphasis was on the supply of services under Mode-4, i.e., temporary movement of skilled persons for supply of services. But as the scope for the supply of such services is inherently limited and the offers made so far by developed countries are disappointing, the emphasis has now shifted to supply of services under Mode-1, i.e., cross-border movement, which includes service outsourcing in which India has proven its competitiveness.

However, the objective of the negotiations on Mode-1 agreed in Annex C, is confined to binding the existing levels of market access and removing the existing requirement of commercial presence. These will, of course, be of benefit to India but in lieu of this India will have to accept similar and even higher commitments under Mode-3 relating to right to establishment. These may have far-reaching consequences in terms of further erosion of space for sovereign macro-economic policy-making.

Provisions for the LDCs

The only significant provision in the Hong Kong Declaration in favour of the least developed countries (LDCs) is the commitment undertaken by developed country members and members declaring themselves in a position to do so to "provide duty-free and quota-free market access on a lasting basis for all products originating from all LDCs by 2008 or no later than the start of the implementation period".

This is, however, qualified by the provision that "Member facing difficulties at this time to provide market access as set out above shall provide duty-free and quota-free market access for at least 97 per cent of products originating from LDCs defined at the tariff line level". The qualifying provision drastically erodes the value of the agreement. For the 3 per cent exclusion is not a percentage of the products originating from LDCs but the tariff lines. A 3 per cent of tariff lines may amount to as much as 80 per cent of the exports of a particular LDC (as in the case of ready-made

garments for Bangladesh) and may more than take care of all the sensitive imports from LDCs.

Other items of interest

Other major items of the Doha Development Agenda (DDA) of interest to India are geographical indications and relationship between the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and the Convention on Biological Diversity. In the Hong Kong Declaration, these are covered under Implementation Issues.

The decision taken on these and related implementation issues is to "request the director general, without prejudice to the positions of members, to intensify his consultative process on these issues". There is thus not even a suggestion for negotiation among member countries but only for consultation by the director general.

The dateline of July 31, 2006 has been set for the WTO Council to review progress on this subject. This is of no value, because a number of similar datelines set in the past have been ignored. What we should go by is not the datelines but the positions of members. And the position of developed countries, particularly of the US, on these issues is totally negative.

The initiatives of India, Brazil and other major developing countries have indeed brightened up the prospects of concluding the Doha Round by the end of 2006 or soon thereafter. However, the magnitude of the problems still remaining unresolved should not be underestimated.

There are still seemingly irreconcilable differences on some of the major elements of the modalities. The time available, a maximum of five months from now on, is too short. Therefore, one cannot rule out the possibility of the agreement reached in Hong Kong falling apart and the Doha Round being delayed indefinitely, posing new threats to the multilateral trading system.

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