

Development is not possible in the WTO!

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INTRODUCTION

The collapse of negotiations in the World Trade Organisation's (WTO) Doha Round is good news for people around the world. Despite efforts by some delegations to "save" the Doha Round, talks during the mini-ministerial meeting that was scheduled from June 29-July 2 also did not bear fruit.

Developing countries have held their ground and not caved in to the demands of developed countries to provide greater market access in agriculture, fishing, industry and services unless the developed countries first fulfill their own long-standing and neglected commitments to reduce trade distorting subsidies and promote a more balanced and equitable negotiating environment within the WTO.

This document attempts to summarise the different government positions in the WTO negotiations since the Hong Kong Ministerial Conference. It relies on and borrows greatly from analyses already conducted by policy research organizations, social movements and civil society coalitions monitoring the WTO (please see the References section for details). The document is intended as an informational resource for social movements, civil society organizations, elected representatives, and concerned groups and individuals on the state of the Doha Round negotiations at this time. It outlines some important developments overall and provides a summary of key issues in the agriculture, NAMA and services negotiations.

The focus of negotiations in the recent collapsed mini-ministerial meeting was a triangle' of issues consisting of: market access in agriculture; domestic supports in agriculture, and; market access in non-agricultural market access (NAMA). In particular, the pressure was on the European Union (EU) to improve its offer on agricultural market access, for the United States (US) to improve its offer to reduce domestic supports and lower its ambition on agriculture and NAMA market access, and for the larger developing countries to agree to higher cuts to industrial tariffs. While the EU and the "NAMA 11" indicated a willingness to move on their positions, the US was completely unwilling to revise its market access demands or agree to further cuts in domestic support.

However, the battle is not over yet. Agriculture, industry and services, which form the backbones of the economies of all countries, can still be traded off against each other with scant regard for the livelihoods and well-being of hundreds of millions of people who will not receive any benefit from the trade offers currently on the table. Equally serious is the potential erosion of the sovereign rights of governments to protect broad based public interest in their countries as a result of WTO

commitments.

Negotiations are being led by the G6, made up of the US, EU, India, Brasil, Australia and Japan. As always, the negotiations are top down and non-transparent, with the likelihood that majority of the WTO members can still be pushed to accept a trade package agreed on by a minority. In a renewed bid to “save” the Doha Round, the G6 had planned two meetings in Geneva in July: first on July 23-24, and again on July 28-29 in Geneva. The July 23 meeting did not result in a new trade package. It remains to be seen whether some agreement will be forged in the coming weeks.

Overall, the following developments and issues have been important in the current negotiations:

1. WTO director general Pascal Lamy has been given the task of “facilitating” consensus among the WTO members. This is extremely dangerous because Lamy knows the fears and insecurities of developing country members, especially the Least Developed Countries (LDCs) and the Africa group, which have thus far been strong in defending their positions.

There have been concerns that Lamy would himself come up with a draft negotiating text based on the “convergences” that he perceives. Lamy has also attempted to turn the language of negotiations to stress market access instead of development. A catch phrase he used before and during the mini-ministerial is “real trade flows” which means cutting a country’s bound tariffs to below the applied rate.

There was also lack of clarity about what Lamy’s mandate actually entails. There is a real possibility that Lamy will create convergences based on his discussions with the G6. And further that these convergences will only address what he and the g6 consider “core modalities” while ignoring other crucial issues such as special products (SPs) and special safeguard mechanisms (SSMs) in agriculture, flexibilities in NAMA, and how to deal with preference erosion. Many developing countries are also worried that the urgency of the time schedule to very rapidly reach agreement will pressure developing countries to accept a deal they cannot fully comprehend technically (given the short time span) or that they do not substantively agree with.

2. During the G6 meeting before the 29 June mini-ministerial meeting, Lamy talked about a “landing zone of 20” in as a possible negotiating position or goal. Lamy’s “landing zone” is the place where he is likely to push so-called “convergence” of negotiating positions. This means: the US adopts a \$20 billion ceiling for agriculture subsidies, developing countries cut industrial tariffs to no more than 20 per cent, and the WTO membership adopts the G20’s suggestion on agriculture tariffs. The first two elements of this position are of absolutely no benefit to developing countries. The second element asks developing countries to take much greater cuts in industrial tariffs than they have currently proposed.

With regard to the ceiling on US domestic supports and subsidies in agriculture, we need to first examine the US’s own proposal. The October 2005 US offer to cut domestic supports did not touch on the real supports they provide. The proposed cuts would allow them to provide supports of up to US \$ 23 billion, which is already more than the amount of supports the US actually provides. But more important, these cuts do not include the \$51 billion that the US provides under the Green Box, which will remain unchallenged even under the current negotiations. Lamy’s suggestion that the US cut its subsidies to \$20 billion is meaningless since 70 per cent of US subsidies are housed in the green box. It would be quite simple for the US to do some creative accounting to shift about a \$1 billion of subsidies from the blue to the green box, thus not making any real cuts in its overall level of domestic supports and subsidies.

In such a scenario, developing countries would only be able to challenge the US by bringing it to the

Dispute Resolution Mechanism (DSM). But despite having won cases, such as the one on cotton, developing countries, including Brazil, have not been able to ensure that the US complies with the findings of the DSM. Equally worrying is that the US is now asking for the “peace clause” to be brought back into the Agreement on Agriculture (AoA). The “peace clause” was a provision agreed to in the Uruguay Round which provided a 9-year grace period during which domestic support policies and export subsidy arrangements were exempt from dispute challenges. This expired on 31 December 2003. Since then, the US has been bothered by cases such as the cotton dispute. The Agriculture Commission Chair Crawford Falconer did not include the “peace clause” in his text for the mini-ministerial on the grounds that it is not part of the Doha mandate. However, Lamy seems open to bringing it back in as “a detail towards the end of the round as in the case of the Uruguay Round.”

If Lamy’s proposals are agreed to, dumping of agriculture goods by the US and EU will continue. And if the “peace clause” is brought back in, even challenges to the green box will not be possible through the DSM. The round then will really be only about opening up developing country markets both in industrial products and agriculture.

3. So far the US is unwilling to reduce domestic supports in agriculture further and lower its demands for market access in agriculture and NAMA from developing countries. US law has, in a sense, created special pressure on setting the deadline for negotiations. Right now, the USTR still has “fast track” authority (which comes from the US trade promotion act of 2002) but this will expire in the middle of 2007. Fast track authority means that US Congress can only accept or reject the trade deal that emerges from the negotiations, but it cannot amend it. Without fast track authority, the USTR’s office is negotiating with uncertainty because US Congress has the power to amend the agreement even after it is accepted in the WTO, thus rendering the negotiations a waste of time. In order to meet the USTR’s fast track deadline, the current negotiations need to be concluded latest by the end of 2006, since after that, the USTR has to prepare the legal text to submit to US Congress, etc.

Despite the fact that the USTR’s office has fast track authority at present, US Congress has already indicated to the USTR’s office what it will or won’t accept by way of a trade deal. It is very likely that spurred by agribusiness lobbies and other commercial interests, US Congress will reject any agreement that does not result in major improvements in market access for US agricultural exports. The G 33 proposal for Special Products (SPs) and Special Safeguard Measures (SSMs) demand full flexibility in the use of SP-SSM measures to protect food security, farmers’ livelihoods and rural development. But the US agriculture proposal imposes limits to the number of products designated as “sensitive” or “special,” and also on the extent to which developing countries can use SSMs. With regard to Mode 4 access in the GATS negotiations, US Congress has made it clear that it will not accept an agreement that modifies US immigration policy, thus nullifying the possibility of new Mode 4 visas for developing countries.

The present US intransigence is tactically useful to the cause of seriously crippling the Doha Round. However, regardless of the compromises that the U.S or any other developed country might make, there is nothing in the Doha Round of negotiations that provides any hope for either development, or for transforming the WTO into a fair, multilateral and rules-based global trading system.

4. Developing countries maintained a unified stand against the developed countries before and during the last mini-ministerial meeting. They are increasingly vocal in their criticisms that the Doha Round is not a “development round” as promised, but a “market access round.” This is important. Before and during the Hong Kong Ministerial Conference, although the LDCs, African countries, G33 and G90 were making this point, the other G 20 countries were more or less silent on this issue. Now even India, Brazil and South Africa highlight the importance of “development” in their press

statements.

On 1 July, all the developing country groupings— G20, G33, Africa, Caribbean, Pacific (ACP) Group, Least Developed Countries (LDCs), Africa Group, Small Vulnerable Economies (SVEs), the NAMA11, the Cotton4 and CARICOM -held a joint press conference in which they stressed that the lack of progress in talks is because some developed countries are not willing to move further on their commitments. Developing countries are being asked to make deep cuts in NAMA tariffs while developed countries are not willing to undertake similar commitments in NAMA and agriculture.

The governments of these countries have so far stood firm on the following issues:

- Developing countries are united in their position that the Doha round of negotiations must be a development round; the development dimension is not open for renegotiation and developing countries will “reclaim” the essence of the development round;
- The governments state that flexibilities demanded by the G 33 proposal on Special Products (SPs) and Special Safeguard Measures (SSMs) are intended to protect specific sectors that are vulnerable, and are not intended to erode market access as alleged by developed countries;
- Developing countries have different vulnerabilities and the benefits of markets access also differ across groups of developing countries; hence flexibilities to protect specific vulnerable sectors and target groups are very important in order to defend development;
- Market access should be enabled for developing countries to the markets of developed countries and not the other way around;
- Developed countries want market access in NAMA, agriculture and services and also want to retain their levels of domestic supports and subsidies in agriculture; this is not acceptable to developing countries;
- Farmers’ subsistence and livelihood security in developing countries cannot be negotiated;
- No trade package should disadvantage the small vulnerable economies, given their vulnerability, and their already extreme openness in trade and investment;
- Unrealistic demands were being placed on developing countries by developed countries in the NAMA negotiations and these were motivated by specific commercial interest groups in developed countries;
- The level of tariff reductions in NAMA that are being demanded of developing countries will result in tremendous social dislocation and adjustment, without any compensatory measures being discussed;
- The concerns of LDCs and small vulnerable economies are being marginalized by the demands by developed countries in NAMA negotiations;
- WTO trade rules are inequitable in that domestic supports and export subsidies are legal for agriculture, but illegal for industrial products;
- The proposal by the Cotton 4 must be included in any new deal;
- In NAMA negotiations, the Hong Kong Declaration mandates less than full reciprocity for developing countries and this must be applied when discussing tariff reductions;

- Developing countries have a bigger stake than the developed countries in the multilateral trading system; they are committed to completing the round but developed countries must demonstrate their own commitments first;
- Although movement needs to be made on domestic supports in agriculture, agricultural market access and NAMA, the three elements are not equal; the most substantial results must be achieved in areas where the greatest distortions lie, i.e., in agriculture, that displace developing country products and threaten the livelihoods of hundreds of millions of poor farmers;
- Market access will be an important component of a successful Round, but market opening in developing countries must take into account their social and economic realities;
- A development Round should not lead to the deindustrialization of the developing world;
- Special and Differential Treatment (S&D) must be integrated in all areas of the negotiations; particularly important are flexibilities in NAMA for industrial development in developing countries, and SPs and the SSM in addressing the food security, rural development and livelihood concerns of developing countries;
- The expectations of the LDCs with regard to operationalising the Hong Kong Ministerial Decision on Duty Free and Quota Free market access and simplification of rules of origin must be fulfilled;
- Issues of preference erosion must be addressed; and,
- The negotiating process must be bottom-up, inclusive and transparent.

At the same time, however, most developing countries reaffirmed their commitment to a successful completion of the Doha Round by the end of 2006. The LDC, SVE and ACP groups consider a bilateral trading system more hostile than a multilateral one and seem committed to making the WTO “work” for them. It is very possible that they will be pushed into accepting a trade deal antagonistic to their interests under pressure to “save the round.”

AGRICULTURE

Agriculture continues to be the most contentious area of negotiations. Deep divisions exist among developed and developing countries on how to address market access (through tariff reductions), domestic supports, export subsidies, Special Products (SPs), Special Safeguard Measures (SSMs), food aid and State Trading Enterprises.

The EU and US refuse to make significant cuts to the subsidies paid to their own producers and exporters which result in the dumping of produce on developing countries. Simulations by WTO members illustrate that the offers by the US and EU to reduce their domestic support will not actually change current spending levels. “Box shifting” continues and the US proposal for reducing its domestic supports allows it to actually expand the amount of subsidies it currently provides. The US is also unwilling to make substantial reductions in its cotton subsidies. The EU has stated that it will not reduce export credits unless there is “parallel treatment” of all the various components of export competition: export subsidies, subsidized export credit, food aid, and exporting state trading enterprises.

The G33 proposal on Special Products and Special Safeguard Mechanisms - supported by a broad alliance of over 100 WTO member countries - is being resisted by the major trading powers. Built

upon an established set of criteria for food and livelihood security and rural development, this is the only proposal at present in the WTO that attempts to define appropriate mechanisms for developing countries to protect their agriculture sectors from trade distortions.

Tariff reduction proposals on the table are complex and while there is a clear divide between developed and developing countries on tariff reduction formulas, there are also sharp differences among developing countries. The ACP Group has argued that they should not be obliged to undertake significant tariff reductions and that their rates of cuts should be lower than those proposed by the G-20. The ACP proposal states that the “overall average reduction of tariffs by developing countries shall not exceed 24%.” Although the ACP contains the largest number of WTO members, it is not directly represented in the G-6, which is dominating the current negotiations. ACP members have also proposed a separate provision for Small and Vulnerable Economies (SVEs) in relation to the tariff cuts.

Many developing countries agreed to launch new talks in the WTO with the hope that imbalances in the Agreement on Agriculture (AoA) would be redressed. Yet instead of reviewing the AoA to address the livelihood and survival needs of hundreds of millions of family farmers worldwide, agriculture talks have focused on expanding global markets for exporters from developed and to a lesser extent, developing countries. Uncontrolled imports of agricultural products into local markets in developing countries are devastating local livelihoods and driving local producers to ruin. The beneficiaries of market access are exporting agribusinesses from wealthy countries and large developing countries while small family farmers, peasants and agricultural workers in developing countries have been displaced from their sole source of livelihood.

Urgent agricultural trade problems are not being addressed in the current negotiations. Dumping of agricultural exports originating in the US and EU continues, driving down world prices for crops that the poor depend on, such as cotton, maize, rice, poultry, dairy, and sugar. And while the market distorting activities of state trading enterprises are under scrutiny, the much greater power of a small number of agribusiness firms in a number of commodity markets is left unchecked.

Possibly the only serious attempt by governments to realize a development dimension in the Doha Agenda is a recent proposal by the African Group on how to manage trade in agricultural commodities and address the crisis in agriculture within multilateral trade rules. The proposal emphasizes the need to ensure stable, equitable and remunerative prices for commodity producers and to deal with structural oversupplies in commodity markets, with measures including taxes on exports and other export restrictions to promote development. The African commodity proposal has potential to be enlarged to cover temperate zone commodities as well.

THE AFRICAN COMMODITY PROPOSAL

Since the November 2001 Doha Ministerial Conference, a group of African countries - including Côte d'Ivoire, Kenya, Rwanda, Tanzania, Uganda and Zimbabwe - called for WTO Members to address the rural crisis in developing countries that arises from the decline in prices of commodities. This group of African countries emphasized the negative effects of the “colossal power asymmetry” in commodity markets, which allows a small number of multinational companies to gain an ever-increasing share of the profits from commodities trade, leaving producers in developing countries unable to get a fair price for what they produce. To date, the majority of WTO members have not given serious consideration to these concerns although the declining price of agricultural commodities remains a serious obstacle to reducing poverty levels and to securing benefits from expanding global trade for many developing countries.

In June, a group of 41 African countries offered a proposal on commodity trade. The proposal focuses on ensuring stable, equitable and remunerative prices for commodity producers and to deal with structural oversupplies in commodity markets. The proposal argues that the following four issues are essential in preventing the ruin of rural communities:

1. The elimination of tariff escalation where it discourages development. Tariff escalation describes a tariff structure in which tariffs increase as products are transformed from their raw state into a processed good. For example, tariffs on raw cotton are typically lower than tariffs on clothing. Tariff escalation allows developed countries to import raw materials at low cost from developing countries for their own industries but protects developed country industry from value-added imports, which discourages industrial development in developing countries.
2. The adoption of international systems to manage the supply of commodities so as to stabilize prices. For commodities such as coffee or cocoa, world prices are severely distorted by the structural oversupply of the commodities on international markets. Oversupply has depressed prices with devastating effects for small-scale coffee and cocoa producers.
3. Allowing the use of export taxes and export restrictions to stabilize commodity prices. Major suppliers of commodities to world markets, or a number of suppliers acting in concert, can thereby avoid sharp declines in the world price when supplies increase. This also allows countries to slow exports if they want to retain commodities for their own food security. And it offers countries another option for increasing government revenue.
4. Negotiating more concrete disciplines to eliminate non-tariff barriers that affect commodity trade. Non-tariff barriers can include health and safety standards and packaging requirements that are essential to any country's trade regulation. (although those domestic regulations may be made illegal under the GATS negotiations) However, other non-tariff barriers can be used as a way to keep out imports, unfairly discriminating against producers and exporters from poorer countries. A better system at the multilateral level is needed to ensure that any standards put in place are the result of a participatory process, ideally one that provides funding to commodity producers to raise the quality of their goods.

The African proposal is particularly important when viewed in light of the kinds of domestic supports provided by the US and EU and their effects on world commodity prices. While lowering domestic supports would affect agricultural commodity prices, it is not the only measure needed to ensure price stability. Although the US could cut domestic support payments for a particular crop—such as cotton—and affect the price of that particular commodity, experience shows that land used for cotton production would simply be shifted to corn, soybeans or wheat, driving down the price for those crops on the world market. In order to stabilize world prices, the US and EU will need to implement supply management programs for all commodities in concert with the other major exporters. In the absence of such measures, lowering domestic supports will get rid of more family farmers, but will not change the quantity of commodities produced. Commodity prices will thus remain hostage to the political maneuverings of law makers in wealthy countries.

NAMA

The direction of current negotiations in Non-Agriculture Market Access (NAMA) is being opposed by developing countries, especially the NAMA 11. Accepting the proposals tabled by developed countries on NAMA will lead developing countries in the direction of 'de-industrialisation.' Not only will their industrial development be blocked, but also, they will be locked into the production of primary commodities and simple, resource-based, low technology and labour intensive products. At

the same time, the imports of industrial goods and raw materials that will likely flood developing country markets once tariffs are reduced may result in the closure of factories and regulated manufacturing units, leading to massive unemployment of industrial workers. Proposals under negotiation will also reduce the flexibilities that developing countries have to use tariffs to protect specific sectors or specific goods against import surges and other unforeseen situations. And unlike as in agriculture trade, there are no provisions for protecting sectors and products under SP-SSM type measures.

The proposals by developed countries for liberalization in NAMA have three main characteristics:

1. Reduction of tariff rates across the board, leading to very low and eventually to zero tariff rates;
2. Reduction in tariff dispersion, leading to uniformity of tariff rates across sectors and products;
3. Near-universal application of tariff reduction principles and formulas to almost all countries, with only some special treatment for LDCs for a temporary period;

In sum, it is proposed that countries cut their tariffs, reduce their dispersion and bind at least 95 per cent of their individual tariff lines at about the same low rates.

The tariff reduction formula is based on coupling initial tariffs applied by countries with fixed (low) coefficients in a non-linear tariff-reduction "Swiss formula," which is designed to subject higher tariffs to deeper cuts and lower tariffs to shallow cuts. This would result in a "harmonization" of tariff rates among developed and developing countries. The coefficients in the tariff reduction formula also make a difference. In the Swiss formula proposed by developed countries, a lower coefficient coupled with a high initial tariff would result in a deep tariff cut. But a low coefficient coupled with a low initial tariff will result in shallow cuts. The latest coefficient numbers being floated by the developed countries are 10 for developed countries and 15 for developing countries.

Since many developing countries have high industrial tariffs compared to developed countries, applying the Swiss formula with low coefficients means that developing countries overall will have to reduce their industrial tariffs much more than developed countries. Further, in that these tariffs will be bound, developing countries cannot raise tariffs to promote domestic consumption of domestically produced goods. Many Southeast Asian countries have low industrial tariffs at present. But these tariffs are not bound, and countries can raise these tariffs to protect specific sectors and products as needed, or to promote the development of specific industries or to upgrade industrial capacity in any given sector. Tariff binding will take away this policy space. Many LDCs do not have much industrial capacity at present and are primarily agriculture based economies. Binding tariffs at low levels will severely limit their abilities to develop industrial capacity even for small and medium sized industries, thus locking them into primary commodity producers.

Such steep reductions in industrial tariffs also mean that developing countries lose a significant source of revenue. But developed countries on the other hand, will stand to gain greater access to the markets of developing countries without any loss of revenues or worries about threats to their own industrial sectors. Developed countries are already industrialised and have the capital, technology, know-how and skilled labour to produce a wide range of mid to high value industrial goods. Further, their technological capacities and know-how are already protected by the TRIPS Agreement. They also have the capital and well developed capacities for research and development of new technologies, and upgrading their industrial sectors will not pose problems for them. Reducing their industrial tariffs to very low levels will therefore not hurt developed countries, especially if they gain market access in developing countries. The situation is reverse for developing

countries as tariffs are practically the only remaining form of protection they have for their domestic industries.

Developing countries are also opposed to the above proposals since these proposals do not honour agreement in the Hong Kong Ministerial Conference Declaration that developing countries will enjoy Special and Differential Treatment and make tariff reduction on the principle of "less than full reciprocity." This means that developing countries have - at least in theory - the flexibility to maintain the required level of industrial tariffs (despite making some tariff cuts) to protect their future industrial capacity. LDCs in particular would require exemption from tariff reductions, as well as technical support and technology transfer to develop their industrial capacities.

Reducing industrial tariffs and giving up the right to increase tariffs means that small, medium and even heavy industries in developing countries will have to face stiff competition from imported manufactured and industrial goods, many of which would be more cheaply priced than local goods. This in turn would reduce demand for locally/ nationally made goods, and eventually result in job losses and unemployment, much in the same way as cheap agricultural imports have led to the displacement of peasant producers from local agriculture.

Recent studies (as the one conducted by the Carnegie Foundation) find that by reducing industrial tariffs, the poorest developing countries and regions-Bangladesh, East and Sub-Saharan Africa- actually lose unskilled jobs in manufacturing industries, as well as market share in some or all manufactured products. Losses in tariff revenues because of drastic revenue cuts are estimated to be worth about US \$63.4 billion in the industrial sector alone. This loss is ten times greater than the projected gains for developing countries as a whole from the Doha Round (US \$6.7 billion).

Deindustrialization combined with the proposed 'sectoral negotiations' for sharp or complete tariff liberalization of natural resources under NAMA (which is planned to include fisheries, forestry and mineral resources) is also likely to push countries into increasing dependence on exports of primary commodities, natural resources and mineral wealth. Not only do such exports generate relatively small and temporary returns, but also, they destroy the livelihood base for millions of people who depend on these resources and associated lands. For example, at least 350 million people live in or next to dense forests and rely on them for subsistence or income, and 60 million indigenous people are directly dependent upon forest resources for food, fuel, medicines and raw materials. Some 30 million people are directly employed in small-scale artisanal fishing. All these livelihoods are jeopardized by efforts to appropriate natural resources for export.

SERVICES

Since the Ministerial Conference in Hong Kong, concessions in the liberalization of services under the GATS have become a trade-off for concessions in agriculture and NAMA negotiations. Many developed countries, including the US and the EC, have made it clear that they are not prepared to make reductions in their domestic supports, export subsidies and tariffs in agriculture unless developing countries make substantial market access commitments in GATS and NAMA.

Unfortunately, many developing countries seem willing to go along with this "trade-off" approach. Although most developing countries do not have well-developed service sectors, services are vital to their national economies. Most services are essential for agricultural and industrial production (for example, water, electricity, energy, transportation, retail, finance, etc.). Trading them off for doubtful gains in other negotiations will undermine these sectors as well as cripple the abilities of developing countries to use their service sectors to generate employment and shore up domestic capital and assets.

GATS negotiations are aimed towards securing greater market access for foreign service providers and are anti-development. Although some developing countries-including LDCs-have expressed interest in specific modes of service provision such as Mode 1 (cross border provision of services) and Mode 4 (the movement of natural persons across international borders), the most aggressive push for services liberalization is coming from developed countries, who seek to secure market access for their respective firms/ corporations in the service sectors of developing countries. Of particular interest to them are public interest sectors such as health, education, telecommunications, water, retail, transportation, logistical, environmental and financial services, energy, etc., which have the largest markets in developing countries. Developed countries want their companies to be given "national treatment" in developing countries and be allowed to establish commercial presence with the same privileges and facilities as domestic firms, including the eligibility to bid for government/public procurement contracts.

Since the Hong Kong Ministerial Conference, GATS negotiations have entered a new and intensive negotiating phase. The key elements in the current negotiations are:

1. Establishing various "benchmarks," including sectoral and modal objectives, designed to increase and deepen GATS coverage;
2. Mandating a new negotiating model: "plurilateral request-offer," that gives a more prominent role to the so-called "Friends groups," who are the most aggressive GATS demandeurs;
3. Providing a major impetus to domestic regulations negotiations, which are now mandatory and have been de-linked from the other rule-making negotiations;

While before GATS negotiations were bilateral, now they are also proceeding on a plurilateral basis. Plurilateral negotiations take place among groups of countries, rather than between two parties as in bilateral negotiations. By the end of February 2006, some 20 plurilateral requests had been tabled, largely by so-called "Friends groups"³ towards mostly developing countries with larger economies (also called emerging countries). The next round of revised offers are due on July 31, 2006. Final draft schedules of commitments must be submitted by October 31, 2006, so that the final, legally binding GATS schedules can be ready by year-end.

Some of the most worrying negotiations in the GATS are on new rules regarding domestic regulation. The proposed new rules would restrict domestic laws and regulations at all levels of government even when they do not discriminate against or between foreign investors. Such restrictions would seriously curtail governments' rights to regulate their service sectors and weaken governments' abilities to protect the public interest. GATS Article VI:4 specifies that WTO Members shall develop "necessary disciplines" to ensure that "measures relating to qualification requirements and procedures, technical standards and licensing procedures do not constitute unnecessary barriers to trade in services." Annexe C (the section on services) of the Hong Kong Ministerial Declaration mandates that negotiations on these disciplines be concluded and legal text developed by the end of 2006.

Although GATS recognizes the rights of government to regulate, these rights can be exercised only in accordance with GATS obligations. Means and forms of domestic regulatory action will be open to challenge in the WTO's Dispute Settlement Mechanism (DSM) if they do not conform to GATS disciplines.

Current negotiations seek to make domestic regulations non-discriminatory, i.e., to say that the same rules apply to local/national and foreign service providers in order to ensure full market access for foreign providers. Of particular concern are proposals to apply some form of "necessity test" to

domestic regulations and licensing requirements, which would assess whether these measures are indeed necessary to achieve domestic policy objectives. Such tests are difficult for governments to meet since policy objectives often require a range of policy measures implemented in concert with one another. Proving 'causality' between a single regulatory measure and a single policy objective is not only difficult, but also, it ignores the systemic inter-relationships between domestic laws, regulations and development policies.

Brazil and Philippines recently tabled a proposal that rejects the necessity test as "neither necessary nor convenient." This stance is supported by the Africa Group, the ACP, SVEs and Argentina, among others. Developed countries led by Switzerland, Australia and New Zealand have attacked the Brazil-Philippines position saying that it "lacks ambition." But some developing countries including India, Chile and Mexico support the inclusion of a necessity test. India's main concern is that its professionals should not be prevented from working abroad because licensing requirements. Chile, Taiwan, and Hong Kong, China recently tabled text that includes the full application of a necessity test and stipulates that regulatory measures should be "not more burdensome than necessary to meet specific national policy objectives to ensure the quality of the service." A joint China-Pakistan proposal states that "Members shall ensure that licensing requirements do not act as barriers to trade in services and are not more trade restrictive than required to fulfill national policy objectives." The US has even made a proposal on transparency requirements that would require governments to give foreign governments and service providers prior notice of and an opportunity to comment on new regulations.

In most countries, almost all regulations act as trade barriers of some sort because they deliberately seek to curb commercial activities in order to promote other public interest related objectives. This is especially so in the case of the GATS, which defines trade to include investment. Proposals to inhibit licensing and other regulatory measures are dangerous and signal a move towards regulatory regimes that prioritise trade and investment over broad based public interest.

Overseeing domestic regulations is not an appropriate role for the WTO. Domestic regulations are drafted according to the political realities, contexts and needs of each country and should not be overridden by commercial, trade and investment interests. If allowed to be brought into the WTO regime, domestic regulations will become vulnerable to challenge in the WTO's DSM. This in and of itself will undermine the willingness of law-makers to draft new public interest regulations, especially in developing countries where regulatory structures are generally weaker than in wealthy countries. It is critical that the public, civil society organisations, regulators, and elected representatives at national and local levels oppose necessity tests and any proposal that interferes with the rights and abilities of local and national governments to regulate.

GATS proponents have successfully forced the pace of negotiations and are pushing for ambitious results within a very short time-frame. At the same time, there has been almost no discussion about the negative impacts of GATS commitments on public services, public interest regulation and regulation of foreign investment. The mandated assessment of the implications of existing GATS commitments has never occurred, despite long-standing developing country demands for a thorough evaluation before the treaty is expanded.

Negotiations on domestic regulations need to be halted immediately. In fact, there should be no further negotiations on services liberalization at all until countries have carried out comprehensive assessments of the impacts of past services liberalization and privatization.

CONCLUSIONS

Although the Doha Round was launched in 2001 as a “Development Round,” the nature of negotiations since then has demonstrated that development is the farthest issue on the minds of WTO members. Pascal Lamy and the trade majors have transformed the language of current negotiations to stress market access instead of development.

At the very outset of the Doha negotiations in November 2001, developed country governments rejected the demand of developing countries that the talks focus on implementing past commitments and avoid initiating a new round of trade liberalization. But from the very start, the aim of developed countries was to extract greater market openings from developing countries while making minimal concessions on their part. Calling this a “development round” was a cynical ploy to make sure that developing countries did not leave the negotiating table.

Developed countries and some developing countries are single mindedly seeking to expand market access for their businesses and corporations at the cost of majority of the world’s peoples, especially those who are already impoverished. The way the negotiations are proceeding it is likely that most developing countries will be pressured and brow-beaten to accept trade deals that they are either opposed to, or which they may not have time to fully assess.

The current global model of agricultural trade has already left millions impoverished, undermined food security and sovereignty, entrenched hunger and starvation world-wide, and destroyed the livelihoods of subsistence farmers. If negotiations in agriculture, NAMA and services conclude in accordance with the ambitions of developed countries, the above conditions will be heightened to unprecedented levels, along with additional crises of deindustrialization, unemployment and environmental destruction. Instead of promoting development, reducing poverty and increasing spending on health care, education, water and other essential services, governments will give corporations a free reign over their economies. Particularly vulnerable are family farmers and fishers, peasant producers, agricultural and industrial workers, indigenous communities and rural and urban poor communities.

To placate the most vulnerable developing countries, developed countries proposed an “Aid for Trade” scheme to address the “adjustment costs” of trade liberalization such as increases in unemployment, and the destruction of some industrial and agricultural sectors. However, it is clear that any “aid” from rich countries will be conditioned on the willingness of developing countries to trade away their policy space and agree to deep liberalization commitments. Once lost, no amount of money can buy back policy space.

The Doha package is a bad deal. It serves the private interests of the biggest corporations around the world, most of them headquartered in the developed world. It fails to respond to a series of publicly identified public policy priorities for trade: ensuring food sovereignty and security, full employment under decent conditions, sustainable management of our natural resource base, the generation of domestic capital to build virtuous economic circles in poor countries, the need to curb dumping of under-priced agricultural commodities in world markets, and the need to address the market distortions created by monopoly and oligopoly power exercised by a small number of corporations in many sectors of the global economy.

A complete collapse of the Doha Round negotiations will not be a failure; on the contrary it will be a victory for development and the majority of the world’s peoples. Trade negotiators from developing countries must hold firm and fight for development and the well being of their populations. The only ethical position for them is to hold firm and walk away from these negotiations.

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P.S.

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