

Revised Hong Kong draft retains services text and Annex

Monday 5 December 2005, by [KHOR Martin](#) (Date first published: 2 December 2005).

A revised draft of the text for the WTO's Hong Kong Ministerial Conference was issued on the evening of Thursday, 1 December and was the main subject of discussion at the formal General Council meeting on Friday, 2 December. The document is JOB(05)/298/Rev. 1 dated 1 December.

The new draft, presented by the Chairman of the General Council, Ambassador Amina Mohamed of Kenya and Director-General Pascal Lamy, contains some additions in the main text (particularly new language on agriculture and non-agricultural market access) and a few revisions in various areas.

However, while it attempts to capture the main elements of the state of play of agriculture and NAMA in general terms, the revised draft does not alter the first draft, issued on 26 November, in any fundamental manner.

In particular, the new draft contains identical treatment (as the first draft) on services, with the three paragraphs (paras 19-21) in the main text and the controversial Annex C remaining the same. This is despite concerns and objections raised by many developing countries that the services Annex contains many elements that are not agreed upon and with which many members have disagreement with.

Several developing country delegations are preparing to raise a new round of objections to the treatment of services in the text, according to diplomatic sources. They may ask that the text properly clarify that Annex C was prepared by the Chair of the services negotiations, Ambassador Fernando de Mateo of Mexico, on his own responsibility and has not been agreed on by members. By asking for this, the delegations are asking for the possibility of the Annex C text to be re-opened for negotiation in Hong Kong or after.

The addition of the new agriculture and NAMA text in the main body of the document came as a result of intense "Green Room" meetings over several days after the first draft was issued. The new language on cotton is also the result of a passionate plea made by African cotton-producing countries (by a representative in the Green Room) that there must be an effective result in Hong Kong on cotton, otherwise the Ministers of affected countries would find it difficult or impossible to agree to any overall deal.

A cover page to the revised draft states that it "incorporates amendments made in light of the views expressed by Members

in our consultations and in the recent Heads of Delegation and TNC meetings. As stated by the Director-General at the TNC, the revision has been undertaken in full respect of the bottom-up approach to which we are all committed."The cover page adds:"It should be emphasized that this text remains

a draft. It does not purport to represent agreement overall, and it is without prejudice to any delegation's position on any issue. It draws on and incorporates much work done by the Chairs of the negotiating bodies and other WTO bodies. Their consultations have in many cases produced inputs for the present draft which are either fully agreed by Members or reflect a high level of convergence. In other areas, the text reflects a lower level of convergence.

"A number of annexes are attached to the draft text. These are in differing formats, reflecting the differing situations in the negotiating areas to which they relate. We wish to make it clear that, with the exception of Annex E on Trade Facilitation, which is a report agreed by the Negotiating Group, the texts in all of these annexes were presented on the responsibility of the respective Chairs. They do not purport to be agreed texts, and are without prejudice to the position of any Member."

While this qualification is in the cover note, there is no indication within the draft text itself that the services text in Annex C is drafted by the Chair and contains many parts that many members object to. This is unlike the references to Annex A on agriculture or Annex B on NAMA where it is clearly stated that they contain reports by the Chairs on their own responsibility, and unlike other parts of the text (for example, para 11 on cotton and para 26 on environment) in which the lack of agreement is shown by placing two alternative texts side by side in brackets.

As there is no qualification in the Ministerial text, there will be no indication in that text, if it is adopted, that Annex C is only the draft of a Chairman and not a consensus document. In effect, Annex C would have then become "owned" by the Ministers and be part of the Ministerial text.

This is unlike Annex A and B which would remain only status reports of the Chairs, for the Ministers to "take note of."

Many developing country delegations have also expressed concern about the imbalance in the treatment of agriculture and NAMA on one hand (where the annexes contain only progress reports by their Chairs) and services on the other hand (where the Annex contains operational text that includes binding and semi-binding commitments by members).

The operational para 21 on services in the revised text is as follows: "We are determined to intensify the negotiations in accordance with the above principles and the Objectives, Approaches and Timelines set out in Annex C to this document with a view to expanding the sectoral and modal coverage of commitments and improving their quality. In this regard, particular attention will be given to sectors and modes of supply of export interest to

developing countries."

Annex C on services, which purports to be agreed Ministerial text, contains commitments on para 1 (on best endeavour basis) to higher liberalisation in all the four modes of delivery; references to "sectoral and modal objectives" in para 2; and plurilateral negotiations on a mandatory basis (in which members requested shall enter into negotiations) in para 7.

In the revised draft, the main additions (as compared with the earlier draft) are in the sections on agriculture, cotton and NAMA. The annexes on agriculture and NAMA remain the same.

The new text on agriculture (in paras 4 to 9) are as follows: "We reaffirm our 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. We take note of the report by the Chairman of the Special Session on his own responsibility (TN/AG/21, contained in Annex A). We welcome the progress made by the Special Session of the Committee on Agriculture since 2004 and recorded therein.

"On domestic support, we note in particular that there is a working hypothesis of three bands for developed countries for reductions in Final Bound Total AMS and in the overall cut in trade-distorting domestic support with higher linear cuts in higher bands. In addition, developed countries in the lower bands with high relative levels of Final Bound Total AMS will make an additional effort in AMS reduction. We also note that there has been some convergence concerning the reductions in Final Bound Total AMS, the overall cut in trade-distorting domestic support and in both product-specific and non product-specific de minimis limits.

"We recall our agreement to ensure the parallel elimination of all forms of export subsidies, and disciplines on all export measures with equivalent effect by a credible end date. We note emerging convergence on some elements of disciplines with respect to export credits, export credit guarantees or insurance programmes with repayment periods of 180 days and below, as well as on some aspects of exporting state trading enterprises, and on some elements regarding the disciplines on food aid necessary to eliminate commercial displacement.

"On market access, we note in particular the progress made on ad valorem equivalents and that there is a working hypothesis for four bands for structuring tariff cuts. We also note that there have been some recent movements on the designation and treatment of Special Products and elements of the Special Safeguard Mechanism (SSM).

"On special and differential treatment, we note in particular the consensus that exists in the Framework on several issues in all three pillars of domestic support, export competition and market access and that some progress has been made on other special and differential treatment issues.

"However, we recognise that much remains to be done in order to establish modalities and to conclude the negotiations. Therefore, we agree to

intensify work on all outstanding issues. In particular, we are resolved to establish modalities no later than [...] and to submit comprehensive draft Schedules based on these modalities no later than [...]."

On cotton, there is a significant addition in the revised text, in para 10. Within square brackets, text has been inserted to the effect that there will be an "early harvest", represented by the adoption of modalities that are to be decided on at Hong Kong. The text is as follows:

"We recall the mandate given by the Members in the Decision adopted by the General Council on 1 August 2004 to address cotton ambitiously, expeditiously and specifically, within the agriculture negotiations in relation to all trade-distorting policies affecting the sector in all three pillars of market access, domestic support and export competition, as specified in the Doha text and the July 2004 Framework text. We note the work already undertaken in the Sub-Committee on Cotton and the proposals made with regard to this matter. [We reaffirm our commitment to ensure prioritization of the cotton issue and to establish modalities which are in full conformity with the terms of the August 2004 Decision.] [We reaffirm our commitment to ensure having an explicit decision on cotton on an "early harvest" basis and we adopt the following modalities [...].]

On NAMA, the revised text, in paras 12 to 18, are as follows: "We reaffirm our commitment to the mandate for negotiations on market access for non-agricultural products as set out in paragraph 16 of the Doha Ministerial Declaration and to the Framework adopted by the General Council on 1 August 2004. We take note of the report by the Chairman of the Negotiating Group on Market Access on his own responsibility (TN/MA/16, contained in Annex B). We welcome the progress made by the Negotiating Group on Market Access since 2004 and recorded therein.

"On the non-linear formula, we note that there is a working hypothesis to use a Swiss Formula for these negotiations, as recorded in paragraph 6 of the Chairman's report. We instruct the Negotiating Group to pursue discussions with a view to finalizing its structure and details, as well as the issues of unbound tariffs and flexibilities, as early as possible.

"We reaffirm the importance of special and differential treatment and less than full reciprocity in reduction commitments as integral parts of the modalities.

"We take note of the progress made to convert non ad valorem duties to ad valorem equivalents on the basis of an agreed methodology as contained in JOB (05)/166/Rev. 1.

"We take note of the level of common understanding reached on the issue of product coverage and direct the Negotiating Group to resolve differences on the limited issues that remain as quickly as possible.

"We note that the Negotiating Group has made progress in the identification, categorization and examination of notified NTBs. We also take note that Members are developing bilateral, vertical and horizontal approaches to the

NTB negotiations, and that some of the NTBs are being addressed in other fora including other Negotiating Groups. We recognize the need for specific negotiating proposals and encourage participants to make such submissions as quickly as possible.

"However, we recognize that much remains to be done in order to establish modalities and to conclude the negotiations. Therefore, we agree to intensify work on all outstanding issues to fulfil the Doha objectives, in particular, we are resolved to establish modalities no later than [...] and to submit comprehensive draft Schedules based on these modalities no later than [...].