

THE TSANG TEXT ANOTHER BROKEN PROMISE

Nowhere are too many broken promises than made to the least developed countries (LDCs). The hopes that the Doha had set for a Development Round glaringly remain proverbial as Hong Kong delivers the first Tsang Text this afternoon. The Text is a stark opposition to headlines made by championing the cause of LDCs to 'jumpstart' the dogged trade talks. The rich countries have pitched the playing field against the poor.

The rhetoric of a special development package for the LDCs was aired in Hong Kong, and was told that, for sure, this Ministerial would deliver on the promise of market access.

The text remains a diktat and contains a wide range of ambiguities, and blank spaces, to serve the interest of a few countries. The Text neither provides binding commitment, nor covers all products, nor grants the preferential treatment on a permanent basis, with keeping the option of reversibility of the treatment wide open.

The space kept blank for the commencement of the implementation period (i.e. without a specific dateline), signals a grave danger that it would be made operational at the end of the round, implying that the rich country would swallow the rules that negatively impact on the lives of masses of LDCs while benefiting a few multinationals of the rich countries, as happened in the Uruguay Round negotiations – the developing world were compelled to sign TRIPS, GATS, TRIMS while areas of interest to South such as agriculture was held in abeyance for future negotiation. Secondly, the undefined timeline in the bracket further indicates that there is a time lag between commencement of the implementation period and [by the [x] year]. Thirdly, market access on 'lasting basis' is an ambiguous one on account of trade rules and is not defined clearly; implying a scope for a country to reverse the facility in future.

The above proposal was further constrained by a subparagraph of (a) of the paragraph 36, which states that LDCs would not get duty-free and quota-free market access for all products from the beginning. The scope of duty-free and quota-free market access for all products has been sunk in the above para, which is also confusing for a number of reasons. First, the phrase - "Members facing difficulties" - raises the question of the genuineness of the difficulties. Additionally, who would decide the degree of difficulties? Secondly, the percentage of product coverage that would get the duty-free and quota-free market access remains in the bracket; the uncovered products are not defined yet. The export base of the LDCs is very narrow and mainly exports one or two products. Now if these products are the same products that the providing Members are facing difficulties, the market access for LDCs would remain meaningless. Thirdly, the unpredictability is the hallmark of the entire proposal as no timeline was mentioned, keeping the bracket blank.

This has surfaced many questions: Is it possible to talk about "a renewed emphasis on development" only because there was a move to call the Doha Work Programme a development agenda? In what way have the development issues surfaced in trade negotiations in the WTO? Have the problems being faced by LDCs as a result of the agreements arising out of the Uruguay Round received priority attention? Is there any collective thinking, other than extolling the virtues of market mechanism, on the issues of market access? Will the problem of downward trend in commodity prices be addressed? Will the question of transfer of technology receive any consideration?

The steering of the wheel towards development is long overdue in the multilateral trading system. The objective of ensuring that the fruits of the rule-based system are widely shared is not a matter of altruism. Justice and a fair deal make economic sense.

Rashed Al Mahmud Titumir, Unnayan Onneshan

Collapse of 'development': a humiliating 'Special and Differential Treatment'

Expectations from Hong Kong Ministerial were low, yet the draft that came out in the afternoon of 17 December failed to meet the meagre expectations. It seems that the draft outraged both developed and least developed countries and triggered angry protest outside the official venue of trade negotiations. One can not yet discern collapse of the Hong Kong for political reasons. The developed countries do not want media uproar, and therefore the idea that the negotiation is a continuous 'process' and could be extended to meetings in Geneva will be the escape route from bad publicity .

Literally, the Annex F of the draft WT/MN(05)/w/3/Rev.1 is an insult to the Least developed Countries. Their demand for duty free and quota-free market access has been rejected outright, albeit with diplomatic niceties. While the draft says the LDC will be provided 'duty free and quota free market access on a lasting basis', but such promise is not obligatory. The text clearly says, 'Members facing difficulties at this time' only have to agree to offer duty-free and quota free market access to a minimum of certain percentage of products originating from LDCs.

Rejecting the wish of LDC countries on market access the text proposes 'diversification of LDC economies'. The LDC's will have to meet their 'implementation obligations, including fulfilling SPS and TBT requirements'. LDCs may receive financial and technical assistance to address these matters.

It is clear that the concept of the a 'development' round has miserably collapsed and there is hardly any scope for improvement of the text. The text stands at best as a bad joke. The question could be raised if it was inevitable or imminent. The answer is affirmative since there has always been the grand element of hypocrisy with regard to making the Doha Work Programme meaningful; a strong force to derail the 'development' content from the current negotiation was always dominant in trade negotiation.

But LDC's should also review the singular focus on 'market access' as if the development issue is covered by having access to the market of industrialised countries. In fact agriculture is also major concern of the people of LDC countries. Many LDC governments are criticised for standing behind the traders in export sectors completely ignoring the need of their large

farming communities and the consumers. Such singular focus has also increased gap between developing and least developing countries and the unity that was necessary to gain the most was lacking . When G-20,, the G-33, the ACP and the African Group and the LDCs stood together it was too late to pressurise the developed countries.

Only hope is if one learns from experience. Only future could tell...

Forhad Mazhar, UBINIG

Some LDCs' Flawed Response to Tsang Text

The latest wording suggested by some LDCs, in response to the circulated first draft, deducted 0.1 per cent from the hundred percent they have been demanding so long. This surrender by the LDCs opens the much sought Pandora box to the king-pins of 'market fundamentalists' for milking the LDCs. The laid down of their arms has equipped the US and others to pitch the each of LDCs on other's back. The crack in the LDC tent paves the avenue for the capitalist Moguls, responsible for the miseries of the billions, to tighten their grips over the world.

The proposal of some LDCs (a group of 14 Asian LDCs who were left out from US-AGOA) suggested about a mechanism for inclusion of the remaining 0.1 per cent. It suggested for a quota-based (perhaps mistakenly includes 'quota free' in their text?) system up to a towering value of one billion per tariff line of a country. The absurd figure might be a non-starter. For example if USA insists for 95 per cent coverage, the value of the quota would to a monumental amount of 3.25 trillion for USA, only for a single country. The proposal may further crack the unity of LDCs and would have been inclusive, if the proposal was drafted keeping in mind of products of export interest of all LDCs and should it propose in the wake of no agreement for full coverage: 'the rest of the product shall not exceed 0.1 per cent of the import value of the preceding year from an individual LDC into preference giving country.'" Another alternative could have been: "the remaining product shall be granted duty free access up to three year import average value from an individual LDC in to preference giving country with annual growth rate of 13 per cent." The 13 per cent country level comes from 12.89 per cent expansion rate applied in the last stage of phasing out of multi-fibre arrangement. The use of HS 8 digit level is also misleading as six digit level is used in most countries.

Differences between Revised Draft of 17 December 2005 and 7 December 2005

The following contains revision made on the Annex F of Draft Ministerial Declaration which was circulated on 17 December 2005 (WT/MIN(05)W/3/Rev.1). The bold face indicates inclusion (revised wordings) while strikethrough represents replacements of the Text of 7 December 2005 (WT/MIN(05)W/3) which was forwarded by the Director General and the Chair of the General Council of the WTO for adoption by the Sixth Session of the Ministerial Conference.

Annex F Special and Differential Treatment

LDC Agreement-specific Proposals

23) Understanding in Respect of Waivers of Obligations under the GATT 1994

(i) The General Council agrees that requests for waivers by least-developed country Members under Article IX of the WTO Agreement and the Understanding in respect of Waivers of Obligations under the GATT 1994 ~~{shall}~~ **{should}** be given positive consideration and a decision taken within 60 days.

(ii) When considering requests for waivers by other Members exclusively in favour of least-developed country Members, the General Council agrees that a decision ~~{shall}~~ **{should}** be taken within 60 days, or in exceptional circumstances as expeditiously as possible thereafter, **without prejudice to the rights of other Members.** ~~{taking into account the interests of other developing Members so as not to affect them}.~~

36) Decision on Measures in Favour of Least-Developed Countries

The ~~Ministerial Conference General Council~~ **Ministerial Conference** agrees that Developed Country Members shall, and Developing Country Members in a position to do so should:

(a) Provide ~~bound~~ **bound** duty free and quota free market access **on a lasting basis**, for all products originating from all LDCs ~~[by the~~ **[x]** year ~~]~~ **from the commencement of the implementation period** in a manner that ensures stability, security and predictability.

~~(b) Ensure that preferential rules of origin applicable to imports from LDCs are simple and transparent, and contribute to facilitating market access.~~

~~In this context these Members shall notify once every year to the General Council, which shall review the steps taken to provide duty-free and quota free market access to the LDCs.~~

~~The General Council urges all donors and relevant international institutions to increase financial and technical support aimed at diversification of LDC economies, while providing additional financial and technical assistance through appropriate delivery mechanisms to meet their implementation obligations, including fulfilling SPS and TBT requirements, and to assist them in managing their adjustment processes.~~

OR

~~The General Council agrees that developed country Members, and developing country Members declaring themselves in a position to do so, shall build on the commitments made at Doha and in the General Council decision of 1 August 2004 to:~~

~~(a) Provide duty free and quota free market access for products originating from LDCs in a manner that ensures stability, security and predictability, consistent with the Enabling Clause.~~

~~(b) Ensure that preferential rules of origin applicable to imports from LDCs are simple and transparent, and contribute to facilitating market access.~~

~~In this context these Members shall notify once every year to the General Council, which shall review the steps taken to provide duty-free and quota free market access to the LDCs.~~

~~The General Council urges all donors and relevant international institutions to increase financial and technical support aimed at diversification of LDC economies, while providing additional financial and technical assistance through appropriate delivery mechanisms to meet their implementation obligations, including fulfilling SPS and TBT requirements, and to assist them in managing their adjustment processes resulting from MFN liberalisation.~~

OR

~~The General Council agrees that developed country Members and developing country Members in a position to do so should~~

~~(a) Provide duty free and quota free market access, for all products originating from all LDCs by [year XX] in a manner that ensures stability, and predictability.~~

~~Members facing difficulties at this time to provide duty free and quota free market access as set out above according to (a) shall provide duty-free and quota-free market access for at least [y%] [99%] of products originating from LDCs, defined at the tariff line level, by [year XX] above. In addition, these Members shall take steps to progressively achieve compliance with the obligations set out above under (a) within an additional period of [YY] years.~~

~~Developing country Members shall be permitted to phase in their commitments and shall enjoy appropriate flexibility in coverage.~~

For previous issues of this bulletin log on to www.unnayan.org

(b) Notwithstanding any measure necessary to prevent circumvention, **Members shall** ensure that rules of origin are transparent and simple, so as to improve the utilisation of preference schemes.

~~Members facing difficulties to provide duty free and quota free market access according to (a) shall provide duty free and quota free market access for [99%] of products originating from LDCs, defined at the tariff line level, by [year XX]. In addition, these Members shall take steps to progressively achieve compliance with the obligations set out under (a) within an additional period of [YY] years.~~

~~With the entering into force of the obligations, any Members shall have the possibility to designate those products for which they may take recourse to the provisions of Article 5 in the Agreement on Agriculture. Any additional duty imposed shall not exceed the level of duties for the same product in any other preferential market access schemes.~~

Members shall notify the implementation of the schemes adopted under this decision every year to the Committee on Trade and Development. The Committee on Trade and Development shall annually review the steps taken to provide duty free and quota free market access to the LDCs and report the General Council for appropriate action.

~~Furthermore, Tthe Ministerial Conference General Council urges all donors and relevant international institutions to increase financial and technical support aimed at diversification of LDC economies while providing **additional** financial and technical assistance through appropriate delivery mechanisms to meet their implementation obligations, including fulfilling SPS and TBT requirements, and to assist them in managing their adjustment processes, **including those necessary to face the results of MFN multilateral trade liberalisation.**~~

38) Decision on Measures in Favour of Least-Developed Countries

It is reaffirmed that least-developed country Members will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial or trade needs, or their administrative and institutional capacities.

Within the context of coherence arrangements with other international institutions, the General Council urges donors, multilateral agencies and international financial institutions to coordinate their work to ensure that LDCs are not subjected to conditionalities on loans, grants and official development assistance that are inconsistent with their rights and obligations under the WTO Agreements.

84) Agreement on Trade-Related Investment Measures

LDCs shall be allowed to maintain on a temporary basis existing measures that deviate from their obligations under the TRIMs Agreement. For this purpose, LDCs shall notify the CTG of such measures within one year, starting **30 days after the date of this declaration** ~~for~~. LDCs will be allowed to maintain these existing measures until the end of a new transition period, lasting 5 ~~for~~ years. This transition period may be extended by the CTG under the existing procedures set-out in the TRIMs Agreement, taking into account the individual financial, trade, and development needs of the Member in question ~~and possible effects on other Members~~.

LDCs shall also be allowed to introduce new measures that deviate from their obligations under the TRIMs Agreement. These new TRIMs shall be notified to the CTG no later than 6 ~~for~~ months ~~after~~ ~~prior to~~ their adoption. The CTG ~~shall~~ ~~should~~ give positive consideration to such ~~notifications~~ ~~requests~~, taking into account the individual financial, trade, and development needs of the Member in question ~~and possible effects on other Members~~, and take a decision within ~~for~~ months. The duration of these measures will not exceed 5 ~~for~~ years, renewable subject to review and decision by the CTG.

Any measures incompatible with the TRIMs Agreement and adopted under this decision shall be phased out by year [x].

88) Decision on Measures in Favour of Least-Developed Countries-Paragraph 1

Least-developed country Members, whilst reaffirming their commitment to the fundamental principles of the WTO and relevant provisions of GATT 1994, **and while complying with general rules set out in the aforesaid instruments, will** shall, only be required to **undertake** ~~comply with obligations or commitments and concessions~~ to the extent consistent with their individual development, financial ~~or~~ and trade needs, ~~and or~~ their administrative and institutional capabilities. **Should a least developed country Member find that it is not in a position to comply with a specific obligation or commitment on these grounds, it shall bring the matter to the attention of the General Council for examination and appropriate action.**

The General Council agrees that the implementation by LDCs of their obligations or commitments will require ~~adequate~~ further technical and financial support directly related to the nature and scope of such obligations or commitments, **and directs the WTO to coordinate its efforts with donors and relevant agencies to significantly increase aid for trade-related technical assistance and capacity building.**

OR

~~Members affirm their commitment to afford special consideration to those LDCs that, while endeavouring to comply with the fundamental principles and obligations of the WTO, experience difficulties with a specific obligation due to financial or institutional capacity constraints in a circumstance. Should a least developed country Member find that it is not in a position to comply with an obligation or commitment on these grounds, it should bring the matter to the attention of the General Council for examination and appropriate action.~~

The General Council agrees that the implementation by LDCs of any obligations or commitments may require further technical and financial support directly related to the nature and scope of such obligations or commitments and urges relevant donor agencies to coordinate their efforts in the delivery of such support.



Please send your comments, contribution and feedback to
info@unnayan.org

This daily bulletin is published during sixth WTO Ministerial Conference in Hong Kong jointly by Unnayan Onneshan and Third World Media Network

