

WTO'S MC8: SOME CRITICAL ISSUES FOR DEVELOPING COUNTRIES

EXECUTIVE SUMMARY

According to the Chairman of the General Council, there will be two parts to the outcome document of the WTO's Eighth Ministerial Conference (MC8) to be held from 15 - 17 December. This document - the Chairman's Statement - will have

- i) a consensus component and
- ii) a non-consensus component which will be a summary of Ministers' interventions during the Ministerial.

On 1 December, the Chair of the General Council concluded the drafting of the text for the 'consensus part of his statement'. This text, which has been titled 'Elements for Political Guidance' (WT/MIN(11)/W/2), will be transmitted to the Chairman of the Ministerial Conference.

The issues contained in this 'Elements' text will also be the subject of Ministerial discussions at MC8. Our paper provides an overview of the

- issues at stake in MC8 for developing countries
- the state of play including the main events that took place in the production of this text
- the legal status of the Chairman's Statement as the outcome document of the Ministerial
- important process issues to be mindful of during the Ministerial
- a detailed look at the issues in the 'Elements for Political Guidance' text
- a paragraph-by-paragraph analysis of the 'Elements' text

December 2011
Geneva, Switzerland

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I. INTRODUCTION

1. According to the Chairman of the General Council, there will be two parts to the outcome document of the WTO's Eighth Ministerial Conference (MC8) to be held from 15 - 17 December. This document - titled the Chairman's Statement - will have
 - i. a consensus component and
 - ii. a non-consensus component which will be a summary of Ministers' interventions during the Ministerial
2. On 1 December, the Chair of the General Council concluded the drafting of the text for the 'consensus part of his statement'. This text, which has been titled 'Elements for Political Guidance' (WT/MIN (11)/W/2), will be transmitted to the Chairman of the Ministerial Conference.
3. The issues contained in this 'Elements' text will also be the subject of Ministerial discussions at MC8.
4. Our paper provides an overview of the following:
 - issues at stake in MC8 for developing countries and key messages for Ministers
 - the state of play including the main events that took place in the production of this text
 - the legal status of the Chairman's Statement as the outcome document of the Ministerial
 - important process issues to be mindful of during the Ministerial
 - a detailed look at the issues in the 'Elements for Political Guidance' text
 - and a paragraph by paragraph analysis of the 'Elements' text

II. ISSUES AT STAKE FOR DEVELOPING COUNTRIES

5. Some very critical issues will be discussed at MC8. These and the Key Messages for Ministers (highlighted in bold) include:
 - i. The future of the Doha Work Programme: The Place of Development Issues - 'Different negotiating approaches' have been suggested in the last months of negotiations in directions that could very possibly undermine the development agenda of the Doha Work Programme. Some countries would like to 'Early Harvest' some issues (e.g. Trade Facilitation, non-tariff barriers; NAMA sectorals). Doing so will further marginalize the Development issues of Implementation (para 12 of the Doha mandate); and Special and Differential Treatment (S&D, para 44 of the Doha mandate) which, as envisaged in the Doha Declaration, were to be delivered as a priority. **Developing countries should make clear that in any Early Harvest approach, Development issues (Implementation; S&D and LDC package issues) must be prioritized for delivery according to the Doha Declaration.**

- ii. Future Treatment of Trade-related issues – What will be the treatment of ‘trade-related’ issues, particularly new trade-related issues? (See para 3, first section of ‘Elements for Political Guidance’, WT/MIN (11)/W/2). Arguments have been made especially by the EU that the WTO must keep up to date with the 21st century. Hence, according to them, new issues must be discussed, including investment, competition, energy, climate change, even before the Doha Round is concluded. Most developing countries take the position that this is not appropriate given the outstanding issues on the Doha Development Agenda, and especially their as yet unresolved development issues. African Trade Ministers in Accra have declared that they **‘Strongly object to any attempt to add “new issues” to the WTO’s DDA agenda before the issues of interest to LDCs, Special and Differential Treatment and implementation-related concerns are adequately delivered’** (Accra Declaration on WTO Issues, 2 December 2011).
- iii. The Treatment of the LDC Package Issues post-MC8 - The LDC Package includes Duty-free and Quota-Free (DFQF) market access; the cotton issue, with reference to the Hong Kong mandate (para 11 of Hong Kong Declaration); and the services waiver for LDCs. DFQF and the Services waiver are derived from the Implementation and S&D Doha mandates and therefore deserve early conclusion. Cotton has a mandate for ‘expeditious’ treatment. A decision will be taken at MC8 delivering the services waiver. However, this is a shell which needs to be filled. Will these issues be delivered as a matter of priority, ahead of other issues such as Trade Facilitation and non-tariff barriers in the Doha Work Programme? The ‘Elements’ paper WT/MIN(11)/W/2 provides only superficial deliverables for LDCs. **The LDC Package in its entirety should be delivered to LDCs as a priority issue. This is a moral imperative. Showing that the WTO can act in the interests of its most vulnerable Members will increase the credibility of the WTO.**
- iv. The WTO’s Multilateral Character – New negotiating approaches raised by some developed countries in recent weeks have included the possible proliferation of Plurilateral Agreements, even the conclusion of some Doha issues in a plurilateral manner. Pascal Lamy’s report to Ministers WT/MIN (11)/5 highlights the Information Technology Agreement (ITA) as a possible model for future agreements. Plurilateral agreements will severely erode the multilateral character of the institution. It will also create a 2-tier WTO – an inner and an outer group. **The unique multilateral character of the WTO must be preserved by ensuring that negotiations are concluded multilaterally, not plurilaterally.**
- v. Resisting Protectionism and Members’ Full Rights in the WTO – Whilst countries may resist protectionism (para 2, first section of ‘Elements’ document), it must be made clear that **“resisting protectionism” should not in any way impede developing countries from enjoying their full rights provided under the WTO Agreements and instruments, i.e. to increase applied tariffs up to the bound rates. Countries may find it necessary to do this for a variety of reasons, including in a recession, especially if their balance of payments comes under pressure.**
- vi. Legal Status of the ‘Elements for Political Guidance’ Text (WT/MIN(11)/W/2) – An issue affecting all of the above areas is the legal status of the ‘Elements’ text. This text is part of the Chairman’s Statement and is therefore not a legally binding document.

In terms of legal status, i) Ministerial Decisions ii) Ministerial Declarations and iii) General Council Decisions are recognized as WTO instruments that carry weight. Chairman's statements are usually the summary of what the Chair believes is the sense of the various views of the WTO membership, and is not a document adopted by the members.

III. STATE OF PLAY

6. Although the 'Elements' document has been agreed upon, at the time of writing just days before MC8, there remains a sense of discomfort amongst several developing country delegations with this text. Whilst underscoring the non-legally binding nature of a Chairman's Statement, delegations are nevertheless extremely wary that after MC8, the developed countries may use the text to undermine the Doha Work Programme and its mandate, and especially the development issues in that Work Programme.
7. The process leading up to the supposed agreement of this text at the General Council was far from transparent and inclusive. The language seems to have emerged from a very small drafting group of about 10 or 11 delegations. Periodically, this drafting group met with a bigger group of about 10 more Members.
8. This drafting process seems to have started in September 2011, sometime after the summer break, progressing until October when it broke down because the EU had reneged on the small group's agreement (in its 21 Oct TNC intervention) not to be specific about naming the issues to be prioritised in future negotiations. In its 21 October statement, EU had prioritised Trade Facilitation and S&D. Worryingly, it had also pointed to specific new issues it wanted to have new WTO rules on:

'The EU's position is that in addition to setting a way forward in the Doha Round, MC8 should also recognise that the current multilateral rulebook is not adequately equipped to deal with emerging global challenges such as energy, food security, competition and investment. We have noted with interest a proposal for the WTO to examine the relationship between trade and exchange rates, and we are open to consider also other issues that members might wish to raise for similar kind of open consideration'.
9. The drafting process however, did pick up again in November. It apparently gained momentum when the Director General (DG) Pascal Lamy had issued his report to Ministers (WT/MIN(11)/5) on 18 November without consulting with the Membership. Many delegations were reported to have been concerned and upset with this.. They found it objectionable that the DG should send his own report to Ministers without any consultations on the content or the process. Furthermore, the content of his report, according to some delegates, did not accurately represent the state of play in the negotiations, nor the real sentiments of the majority.
10. In order to have 'predictability' over the outcome of the Ministerial, most in the small drafting group decided then that they wanted the language for the first part of the Chair's Statement (the 'consensus' component) to be completed and agreed upon by 30th

November. This was to avoid a negotiating Ministerial which could end with an unpredictable outcome.

11. After discussions with the Chairs of the General Council and Trade Negotiations Committee, the small drafting group intensified their work and met daily days before 30th November, interspersed with meetings with the a bigger group of another 10 or so more Members to complete the 'Elements' paper.
12. Despite pronouncements early on regarding the fact that the FIT principle (Full Participation, Inclusiveness and Transparency) would be adhered to in this preparatory process, most delegations were given the 'Elements' text for the first time only on 29th of November. They were reportedly told that this was the least common denominator and that it should therefore not be reopened. The text was discussed formally in the General Council on the 30th of November and delegations were given till 6pm of 1 December to submit any changes.
13. Apart from Cuba's insertion of the word 'inclusiveness' in one of the paragraphs in the Doha section, and the title being changed from 'Possible Elements for Political Guidance' to 'Elements for Political Guidance' (it is not clear who had asked for that change) no other changes were made to the 3 sections of the paper that had been released on the 29th November. (The 1 December version is attached in Annex 1, with comments on where the language could have been improved).
14. Some small developing countries did not want to be blamed for the 'failure' of the Ministerial if they did not provide consensus, and hence did not propose changes to the text despite some of them having strong reservations in some parts. A sizable number of African delegations unfortunately were not even in Geneva at the time - they were in Ghana for the African Union's Trade Ministers Conference - and did not participate in this process. .

IV. LEGAL STATUS OF CHAIRMAN'S STATEMENT

15. Many questions have been raised since the release of the 'Elements' paper regarding the legal status of a Chairman's Statement. Clearly, it does not have legal weight, as compared to a Ministerial Decision or a Ministerial Declaration. But what does a 'consensus' portion of a Chair's Statement imply? This is a new feature in Chairman's statements. Past Chairs' summaries have not required consensus - they were simply statements made on the Chair's own responsibility.
16. There are differing views on the implications. Many are of the opinion that like all other Chairman's statements, this one too carries no legal force. It cannot in any way undo the Doha mandate contained in the Doha Ministerial Declaration (2001), the General Council Decision in the July Package (2004) or the Hong Kong Declaration (2005). The language in the 'Elements' paper is also 'declaratory'. They are, as the name states, simply 'Elements for Political Guidance'.

17. Others, however, are concerned about the 'persuasive force' that this document could have in charting the future work of the Doha Work Programme and the WTO itself.

Key Message: As with all Chairmans' Statements, this Chairman's Statement is not a legally binding document. The Doha Declaration and its mandate (2001); the July Package General Council Decision (2004); and the Hong Kong Declaration (2005) have precedence, legal value and weight over the content of the MC8 Chairman's statement.

V. IMPORTANT PROCESS ISSUES DURING THE MINISTERIAL

18. How the Chair crafts the second part of the Chairman's statement summing Ministers' interventions will be very important.
19. In writing this portion of his statement, the Chair should not assume that there is 'growing' or 'emerging' consensus on issues where the whole Membership has not yet fully engaged in a collective discussion. If there is consensus, it means that there is complete agreement. If there is not complete agreement, wording such as 'emerging consensus', if used, could create an artificial sense of 'consensus' when this does not exist. It would also put undue and unfair pressure on those who disagree with a particular view. It would be best for the Chair to simply note that some Members had said X and others Y.

Key Message: Unless all Ministers have unanimously voiced a particular view, the Chair should not use terms such as 'growing' or 'emerging' consensus. He should simply note that some Ministers have said X and others Y.

V. DETAILED LOOK AT THE ISSUES IN THE 'ELEMENTS FOR POLITICAL GUIDANCE' TEXT

20. There are 3 sections to the 'Elements' paper (see Annex 1):
- i. Importance of the Multilateral Trading System and the WTO
 - ii. Trade and Development
 - iii. Doha Development Agenda
21. The areas requiring most attention are sections iii) and i) which will be the focus of our analysis.

A. 'DIFFERENT NEGOTIATING APPROACHES' - EARLY HARVESTING SOME ISSUES

22. In recent months, the United States, which apparently wants a change to the Doha mandate, has been calling for 'fresh', 'new' or 'credible' approaches towards the Doha Work Programme. According to various sources, the idea they have is to dismantle the 'single-undertaking' of the Doha Round, without saying so directly. The strategy seems

to be centered on Paragraph 47 of the Doha Declaration on Early Harvest. Paragraph 47 of the Doha Declaration states

'The conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking. However, agreements reached at an early stage may be implemented on a provisional or a definitive basis. Early agreements shall be taken into account in assessing the overall balance of the negotiations.' (Para 47, Doha Ministerial Declaration).

23. It should be noted that in the Doha Declaration, there was the intention for development issues (implementation issues and Special and Differential Treatment issues) to be early-harvested. This is clear from a look at the timelines provided in that Declaration. The Round was supposed to be completed by 1 January 2005 (para 45). The timeline for the resolution of implementation issues was end 2002 (para 12). The timeline for Special and Differential Treatment (S&D) issues to be resolved was July 2002 (see para 12.1 of the Ministerial Decision on Implementation-Related Issues and Concerns).
24. The LDC Package issues should also be prioritized. In fact, this was agreed to by all except 1 delegation earlier on this year. The LDC Package consists of the following issues - duty-free and quota-free market access (DFQF); cotton; the services waiver.¹ DFQF comes from the S&D agenda and therefore should be early harvested. Cotton, too, has a mandate stating that it should be addressed 'expeditiously within the agriculture negotiations'.
25. The logic inherent in the single-undertaking is that it ensures all parties' issues would be resolved according to their respective mandates. It guarantees a certain 'balance'. Without this, it could be possible that the development issues are set-aside, whilst market access issues of more interest to developed countries are being pushed for conclusion. This is therefore the danger of elevating Para 47 and inappropriately making use of it in an unbalanced manner.
26. If paragraph 47 is used to break the deadlock in the Doha Work Programme, it must therefore be reinforced that development issues, as was the intention in the Doha Declaration, must be the priority.
27. Following the delivery of these development issues, there are also issues for negotiations which are in the built-in agenda of the Uruguay Round agreements - namely in Agriculture and Services. These can also then be prioritized. In particular, it is in developing countries' interest to have stricter and better rules on agricultural subsidies and export competition. The greatest trade distortions in the international trading system exist in agriculture, particularly in the continuing high subsidies and high tariffs in developed countries and the highest priority had been given to this issue for most of the active negotiating period of the Doha work programme. There is now a danger of

¹ The services waiver has been provided to LDCs in the 'Elements' paper. However, it remains an empty shell until Members provide actual preferences and real market access to LDCs in areas of export interest to them, including in Mode 4.

agriculture dropping from its high-priority status, together with SDT and implementation issues.

28. In contrast, it is already clear from developed countries' statements in the past weeks that most of the areas they would like early harvested do not coincide with the development priorities of developing countries e.g. Trade Facilitation; Non-Agricultural Market Access (NAMA) sectoral negotiations; non-tariff barriers negotiations (see EU's TNC statement of 21 October 2011). There is thus a danger that the Doha outcome will comprise issues and decisions that are not in the interest of developing countries, while their priority issues are further marginalized. This would make the existing imbalances in the WTO rules even more imbalanced.
29. The African Union's Trade Ministers' Accra Declaration on WTO Issues (2 December 2011) states:

'Underscore that any new approaches canvassed by WTO members to unlock the current impasse must be multilaterally acceptable and in keeping with the basic principles of Most Favoured Nation (MFN) and must first deliver on the development issues including the LDC package, Special and Differential Treatment and implementation issues.'

Key Message: Given the reaffirmation in the 'Elements' paper of the Doha Work Programme, Development must therefore remain at the 'heart' of the Doha negotiations. Para 2 of the Doha Declaration states that

'The majority of WTO members are developing countries. We seek to place their needs and interests at the heart of the Work Programme adopted in this Declaration.' (para 2, Doha Declaration).

Those issues prioritized in the Doha Declaration – Implementation Issues and S&D, as well as the LDC Package issues - must be delivered before other issues are concluded.

B. 'DIFFERENT NEGOTIATING APPROACHES' - PLURILATERAL AGREEMENTS

30. In the recent weeks of negotiations, developed countries have also suggested that another one of the 'different approaches' to advance the Doha Round would be to have more plurilateral agreements in the WTO. Two types of plurilateral agreements have been highlighted as models that can be followed in future – the Information Technology Agreement (ITA) model and the Government Procurement Agreement (GPA) model. In his report to Ministers, WT/MIN(11)/5 on 18 November, the Director General Pascal Lamy also highlighted having more negotiations in other sectors using this ITA model.

a. The Information Technology Agreement as a Model?

31. The Information Technology Agreement (ITA) is an 'open plurilateral agreement'. A critical mass of countries are signatories. The participants agree basically to eliminate their tariffs on products within the scope of the agreement. What they offer each other is

then offered to all the Members. In Pascal Lamy's report to members (18 Nov WT/MIN(11)/5), he says:

'...There has been suggestion to transform the ITA into an International Digital economy Agreement. These are interesting developments aimed at keeping the ITA rule book up to date with rapidly developing technological developments. This is in my view a promising area for future work. The question ahead of Ministers is whether the ITA can serve as an example to be emulated in other sectors' (our emphasis).

32. The ITA should not be used as a model for harvesting outstanding Doha issues because
 - i. It is a plurilateral agreement and will encourage a two-tier WTO system, even if the results are multilateralised. This will require changing the mandate of the multilateral Doha negotiations.
 - ii. It does not take into account Special and Differential Treatment for developing countries. It is a 0 for 0 tariff cutting model along the lines of the NAMA sectoral negotiations in which the developed countries demanded that tariffs in whole sectors be eliminated and which developing countries had opposed in March / April 2011, since this way of conducting NAMA sectoral negotiations did not take into account the 'less than full reciprocity' principle in the NAMA negotiations mandate – the idea that developed countries have to do more tariff cutting, and developing countries less. The developing countries were also concerned that elimination or drastic lowering of tariffs in a sector would damage the prospects of their domestic industries.
33. It should be noted that moving to such a modality within the Doha negotiations will also require a consensus decision by the entire WTO membership, not only the members of such a plurilateral, because of the change required to parts of the Doha mandate.
34. If the ITA model is pursued, many developing countries will come under considerable pressure to be members. The emerging economies will be the main targets for liberalization and they will provide most if not nearly all the liberalization that will have to be done. Most developed countries already have very low applied tariffs on industrial products - an average of 2.7% for developed countries as a whole. This compares with the average of 9.1% for developing countries. This means that the proliferation of such agreements would mainly lead to the cutting of tariffs of participating developing countries. This can have very damaging effects on countries' domestic industries or the prospects for future industries. . Furthermore, the other smaller economies which are not participating will end up as 'outsiders'.
35. The ITA has had mixed results. There have been some successes e.g. in Vietnam, where foreign investors went to the country to establish manufacturing centers but in other countries e.g. India, the results have reportedly not been so successful. In India, some of the domestic industries reportedly went out of business as a result of the ITA liberalization and the competition from imports, and India at present lacks a significant domestic IT hardware industry. It cannot therefore be assumed that liberalization will automatically bring about gains. How a sector performs under liberalization depends on the specificities of the sector; and conditions within a country (e.g. investment climate;

level of education in the work force) and whether the necessary accompanying policies such as government supports are available.

b. The Government Procurement Agreement Model

36. Pascal Lamy's report of 18 November 2011 (WT/MIN(11)/5) also notes that the Government Procurement Agreement (GPA) 'is another example of a plurilateral agreement'. Unlike the ITA model, commitments made by members of the GPA are not offered to others.
37. It has been suggested by some in recent weeks that this form of plurilateral agreement could be another way of tackling some of the outstanding Doha issues.
38. The WTO should not have a proliferation of GPA-type agreements. This means that there will be an inner group and an outer group of WTO members i.e. the WTO would be headed towards a two-tier system. Plurilateral agreements can already be concluded outside the WTO e.g. free trade agreements; or sectoral agreements such as the Energy Charter Treaty. Bringing plurilaterals into the WTO will create a situation where some countries will find that they will come under considerable pressure to join a sectoral agreement. This pressure could come from both trading partners but also investors operating within a country. The multilateral character of the WTO is best preserved by the conclusion of multilateral agreements. Several years ago, the developed countries also proposed that some of the Singapore issues (investment and competition) could be negotiated at the WTO as plurilateral agreements among countries that are willing. However this proposal was rejected by the developing countries, which believed that such a type of negotiation format would eventually pressurize countries that are not in favour of the Singapore issues to sign on for fear of being left out in the end. Since government procurement is also a Singapore issue, there is a danger that the GPA model may be put forward as a new negotiating format for investment and competition.

Key Message: It is our understanding that in reaffirming the Doha Development Agenda (DDA) in the 'Elements' document, the Membership will continue pursuing all parts of the Doha negotiations in a multilateral fora as provided for in the mandate of the DDA.

We do not support the adoption of a plurilateral approach in concluding the Round or parts of it. Such an approach would have serious systemic implications on the multilateral nature of the WTO. The best way to reinforce the multilateral trading system is to have multilateral agreements.

C. 'Trade-Related' Issues

39. In the preparatory negotiations, it became clear that the EU, Australia and some others want new issues to be brought into the WTO negotiating agenda, even before the Doha Round is concluded. As noted earlier, EU has already mentioned Investment, Competition, Energy Security, Food Security (defined in a very narrow way). Climate Change is also an issue that has been raised.

40. Paragraph 3 of the first section of the 'Elements' document reads,

'Ministers underline the importance of the work of regular WTO bodies including their role in the oversight of implementing existing Agreements.... and as a forum for the consideration of trade-related issues raised by Members. Ministers call for strengthening and improving their functioning' (WT/MIN(11)/W/2, 1 December 2011).

41. It is important to avoid the introduction of new issues in the WTO while the Doha negotiations are still taking place. This would divert attention and time from concluding the Doha talks. Moreover, the new issues being proposed are mainly in the interests of developed countries, and can lead to further imbalance in the WTO rules.

42. It is important to note that the WTO General Council decided to withdraw the three Singapore issues of investment, competition and transparency in government procurement from the Doha agenda. Para 1g in the General Council Decision of 1 August 2004 (commonly known as the July Package) contained specific language that investment and competition can no longer be the subject of negotiations in the WTO during the Doha Round period. Since the Doha Round is still in progress, these three issues cannot be re-introduced.

'The Council agrees that these issues, mentioned in the Doha Ministerial Declaration in paragraphs 20-22, 23-25 and 26 respectively, will not form part of the Work Programme set out in that Declaration and therefore no work towards negotiations on any of these issues will take place within the WTO during the Doha Round.' (Para 1g, WT/L/579, 1 Aug 2004).

43. The reason that developing countries asked for the three issues (investment, competition and procurement) to be withdrawn is that they were of the opinion that the opening up of market access to foreign firms in such an extreme way, and the prohibition or restriction of government assistance to local firms, would have negative repercussions for the growth of the domestic economies of the developing countries. These reasons remain valid. Therefore these issues should not be re-introduced.

44. Climate Change and trade should best be dealt with in the United Nations Framework Convention on Climate Change (UNFCCC), where there is the mandate to deal with climate issues and also in the context of equity and common but differentiated responsibility. Developing countries stress the need to avoid trade protectionism in the name of climate change actions, while developed countries may like to have the WTO rules clarified or changed to allow them to introduce unilateral trade measures in addressing climate change. It is best that there not be a decision or conclusion on this issue at the MC8.

45. The African Union's Trade Ministers' Accra Declaration on WTO Issues (2 December 2011) states:

'Strongly object to any attempt to add "new issues" to the WTO DDA agenda before the issues of interest to LDCs, Special and Differential Treatment and implementation related concerns are adequately delivered'.

Key Message: Our understanding of para 3 in the section ‘Importance of the Multilateral Trading System and the WTO’ is that trade-related issues to be considered are those within the mandate of the relevant regular bodies.

The Decision in 1g of the July Package (2004) is reiterated. There will be no work towards negotiations on investment, competition and transparency in government procurement in the WTO during the period of the Doha Round.

No new issues for which there is no existing mandate should be brought into the WTO for negotiations before the Doha Work Programme has been completed. Doing so would take the emphasis away from the DDA’s completion which requires all our concerted efforts.

D. RESISTING PROTECTIONISM

46. In the course of the negotiations, Australia and other countries have been strongly pushing for the G20 Summit language on protectionism to be brought directly into the WTO. This was stringently opposed by the emerging economies.
47. The intention of the proponents was to have WTO members agree to install a standstill in applied tariff levels. i.e. countries would not be able to increase their applied tariff rates. If this language had been adopted, it would have been equivalent to heavier liberalization commitments than what is in the Agricultural modalities and NAMA modalities for developing countries. In fact, it would have undermined all the proposals by developing countries for flexibilities and S&D in the Doha negotiations of the last 10 years. (See Annex 2 for the Implications of a Standstill in the WTO: Bound and Applied Tariffs of Developed and Developing Countries).
48. Furthermore, the proponents were not interested in a standstill on agricultural subsidies! The cotton-4 countries, for instance, had asked for a standstill in cotton subsidies and even this was rejected.
49. As a result of the developing countries’ strong resistance in the small drafting group, the language in the ‘Elements’ text on protectionism is more declaratory, and does not stop countries from enjoying their full rights under the WTO Agreements. i.e., countries will be able to raise their tariffs up to their bound rates if they so desire.
50. Nevertheless, there could be renewed attempts by some developed countries to install a standstill on applied tariffs during the MC8. It would thus be useful for developing countries to underscore that they continue and must continue to enjoy their full rights and policy space.

Key Message: Developing countries should resist any attempt to install a standstill on applied tariffs in the name of resisting protectionism. They can commit to resist protectionism but **in the context** of maintaining Members’ full rights under the WTO Agreements and Instruments, i.e. to have the policy space to raise applied tariffs to the bound rates.

ANNEX I: PARAGRAPH-BY-PARAGRAPH ANALYSIS OF THE “ELEMENTS FOR POLITICAL GUIDANCE” TEXT

WORLD TRADE ORGANIZATION

WT/MIN(11)/W/2
1 December 2011

(11-6283)

MINISTERIAL CONFERENCE
Eighth Session
Geneva, 15 - 17 December 2011

ELEMENTS FOR POLITICAL GUIDANCE

In line with the procedure agreed at the General Council meeting on 30 November 2011, the following document is being circulated to Members and will be forwarded to the Chairman of the Ministerial Conference for inclusion as the consensus part of his statement.

Importance of the Multilateral Trading System and the WTO

1. Ministers emphasize the value of the rules-based multilateral trading system and agree to strengthen it and make it more responsive to the needs of Members, especially in the current challenging global economic environment, in order to stimulate economic growth, employment and development.

2. Ministers underscore that the WTO's role in keeping markets open is particularly critical in light of the challenging global economic environment. The WTO has a vital role to play in the fight against all forms of protectionism and in promoting economic growth and development. Ministers also acknowledge that experience has shown that protectionism tends to deepen global economic downturns. Ministers fully recognize WTO rights and obligations of Members and affirm their commitment to firmly resist protectionism in all its forms.

Comment: Developed countries managed to fight off a standstill – freezing of applied tariffs – in this language. The present language is understood to mean that countries will enjoy their full rights under WTO Agreements i.e. they can increase their tariffs up to their WTO bound levels. However, the language could in any case have been improved further for developing countries if we could have said that ‘Ministers commit to resist protectionism in the context of the full recognition of Members’ WTO rights and obligations’ (i.e. reversing the order of the last sentence).

3. Ministers underline the importance of the work of regular WTO bodies including their role in the oversight of implementing existing Agreements; dispute avoidance; transparency through

monitoring and reporting and as a forum for the consideration of trade-related issues raised by Members. Ministers call for strengthening and improving their functioning.

Comment: The EU and others wanted this text to already call for certain trade-related issues to be inserted into the WTO for discussions with a view towards having negotiations, in order to keep the WTO rulebook 'up to date'. The compromise was to allow issues to be discussed within the regular bodies of the WTO, following the due process of the committees.

This language could be problematic in the sense that attention could get distracted from the completion of the Doha Round, if more focus is given to the new trade-related issues. Developing countries will also have to be very watchful of 'mandate-creep' – the expansion of the mandate of the existing regular committees.

Ministers at MC8 should make it very clear that in any case, the General Council Decision of 1 Aug 2004 (July Package) holds. On the issues of investment, competition and transparency in government procurement, 'no work towards negotiations on any of these issues will take place within the WTO during the Doha Round'.

4. Ministers recognize the important asset that the WTO Dispute Settlement system represents and commit themselves to strengthen it, including through concluding the DSU review negotiations.

5. Ministers welcome the accessions of Vanuatu, Samoa, and the Russian Federation to the WTO and recognize the contribution of accession to strengthening the multilateral trading system. Ministers remain committed to efforts to facilitate accessions, in particular of least-developed countries (LDCs).

Trade and Development

1. Ministers reaffirm that development is a core element of the WTO's work. They also reaffirm the positive link between trade and development and call for focused work in the Committee on Trade and Development (CTD) which is to conduct this work in accordance with its mandate and report the results achieved to Ministers at the Ninth Session. Ministers call on WTO Members to fully operationalize the mandate of the CTD as a focal point for development work.

2. Ministers reaffirm the need for the WTO to assist in further integrating developing countries, particularly LDCs and, without creating a sub-category of WTO Members, small, vulnerable economies, into the multilateral trading system.

3. Ministers acknowledge the needs of LDCs and commit themselves to ensure that LDCs' interests are given due priority in the future work of the WTO. In this regard, they have taken decisions concerning LDC accession in document WT/COMTD/LDC/19, extension of the LDC transition period under Article 66.1 of the TRIPS Agreement in document IP/C/59/Add.2, and LDCs services waiver in document TN/S/37. Ministers also urge the full implementation of Decision 36 of Annex F of the Hong Kong Ministerial Declaration of 2005 on measures in favour of LDCs. Ministers also welcome the Istanbul Programme of Action for LDCs for the decade 2011-2020.

4. Ministers confirm their commitment to on-going dialogue and engagement to progress the mandate in paragraph 11 of the Hong Kong Ministerial Declaration to address cotton "ambitiously, expeditiously and specifically", within the agriculture negotiations. Ministers highlight the value of on-going reporting on cotton, and invite the Director-General to continue furnishing periodic reports

on the development assistance aspects of cotton to each Ministerial Conference. Ministers commend the work being undertaken within the Director-General's Consultative Process to advance developmental assistance aspects of cotton.

5. Ministers reaffirm the integrality of special and differential treatment provisions to the WTO agreements and their determination to fulfil the Doha mandate to review them with a view to strengthening them and making them more precise, effective and operational. Ministers agree to expedite work towards finalizing the Monitoring Mechanism for special and differential treatment. They also agree to take stock of the 28 Agreement-specific proposals in Annex C of the draft Cancún text with a view to formal adoption of those agreed.

Comment: The Special and Differential Treatment provisions need to be expedited and delivered, in fact before the Monitoring Mechanism is finalised. Failing this, the Monitoring Mechanism may not be as useful.

Comment: The language in this text could have been improved if there is a similar paragraph as the one above for Implementation-related issues and concerns. Nevertheless, the Implementation agenda is already reflected in the Doha mandate (para 12), where together with Special and Differential Treatment (S&D) issues, they was supposed to be concluded earlier than the other areas of negotiations (using para 47 on early harvest). The Implementation agenda is about rebalancing the Uruguay Round rulebook in order to make the rules more balanced for developing countries (e.g. making it easier for developing countries to use the Trade Remedy Agreements). This is still an important set of issues and should be pursued with renewed vigour.

6. Ministers take note of the progress achieved on Aid for Trade and of the Third Global Aid for Trade Review. They agree to maintain, beyond 2011, Aid for Trade levels that at least reflect the average of the period 2006-2008 and to work with development banks to ensure the availability of trade finance to low income countries. Ministers reiterate their commitment to funding the WTO Global Trust Fund in a predictable and timely manner to enable the Secretariat to continue to provide the Technical Assistance and Capacity Building required.

7. Ministers acknowledge WTO's co-operation with other development-related organizations, in particular, the International Trade Centre (ITC). Ministers reaffirm the ITC's role in improving and enhancing trade support institutions and policies for the benefit of exporting efforts; and in strengthening the export capacity of enterprises to respond to market opportunities. Ministers encourage the ITC to support and assist developing countries to address business environment and market access issues affecting the private sector.

Doha Development Agenda

1. Ministers deeply regret that, despite full engagement and intensified efforts to conclude the Doha Development Agenda single undertaking since the last Ministerial Conference, the negotiations are at an impasse.

2. Ministers acknowledge that there are significantly different perspectives on the possible results that Members can achieve in certain areas of the single undertaking. In this context, it is unlikely that all elements of the Doha Development Round could be concluded simultaneously in the near future.

3. Despite this situation, Ministers remain committed to work actively, in a transparent and inclusive manner, towards a successful multilateral conclusion of the Doha Development Agenda in accordance with its mandate.

4. In order to achieve this end and to facilitate swifter progress, Ministers recognize that Members need to more fully explore different negotiating approaches while respecting the principles of transparency and inclusiveness.

Comment: This language could have been much improved by stating that these 'different negotiating approaches' must prioritise the development issues (S&D; Implementation issues; LDC Package).

The African Ministers declared in Accra: 'Underscore that any new approaches canvassed by WTO members to unlock the current impasse must be multilaterally acceptable and in keeping with the basic principles of Most Favoured Nation (MFN) and must first deliver on the development issues including the LDC package, Special and Differential Treatment and implementation issues' (African Union Trade Ministers Accra Declaration, 2 December 2011).

5. In this context, Ministers commit to advance negotiations, where progress can be achieved, including focusing on the elements of the Doha Declaration that allow Members to reach provisional or definitive agreements based on consensus earlier than the full conclusion of the single undertaking.

Comment: Once again, it would have been preferable if this paragraph had elaborated that Implementation issues; S&D and LDC Package issues would have priority ahead of the other issues.

6. Ministers also stress that they will intensify their efforts to look into ways that may allow Members to overcome the most critical and fundamental stalemates in the areas where multilateral convergence has proven to be especially challenging.

Comment: Some developed countries would have wanted to add in plurilateral agreements or approaches in this paragraph – along the lines of the Information Technology Agreement (ITA) or the Government Procurement Agreement (GPA). Developing countries should be on guard that renewed attempts may be made on this, including in the additional part of the Chair's summary of Ministerial discussions. Developing countries should ensure that in the WTO, the multilateral format is retained.

Comment: No New Issues: It would also have been good if the language could have captured the African Group position on 'no new issues':

'Strongly object to any attempt to add 'new issues' to the WTO's DDA agenda before the issues of interest to LDCs, Special and Differential Treatment and implementation related concerns are adequately delivered' (African Union Trade Ministers, Accra Declaration 2 December 2011).

7. Ministers maintain that, in their negotiations, they will continue their work based on the progress already made. Ministers affirm that any agreements reached, at any time, have to respect fully the development component of the mandate.

Comment: This paragraph calls for respecting fully the development component of the mandate. Through this, developing countries will have to continue insisting on

- i) The prioritisation of development issues ahead other issues*
- ii) The delivery of development in each area of negotiations in the DDA*
- iii) That in terms of the overall balance in the outcome of the Doha negotiations, the development outcomes must be very concrete and central.*

ANNEX II: IMPLICATIONS OF A STANDSTILL ON APPLIED TARIFFS IN THE WTO: BOUND AND APPLIED TARIFFS OF DEVELOPED AND DEVELOPING COUNTRIES

WTO Member	Ag			NAMA			Total		
	Bound	Applied	Diff.	Bound	Applied	Diff.	Bound	Applied	Diff.
Developed members	39.3	17.9	21.4	5.7	2.7	3.1	10.2	4.7	5.6
Australia	3.4	1.3	2.1	11	3.8	7.2	10	3.5	6.5
Canada	15.4	10.7	4.7	5.3	3.5	1.8	6.7	4.5	2.2
European Union	13.5	13.5	0	3.9	4	-0.1	5.2	5.3	-0.1
Iceland	109	28.6	80.4	9.6	2.3	7.3	23.5	5.8	17.7
Japan	22.2	21	1.2	2.5	2.5	0	5.1	4.9	0.2
New Zealand	5.9	1.4	4.5	10.8	2.2	8.6	10.1	2.1	8
Norway	130.9	43.2	87.7	3.2	0.5	2.7	20.1	6.1	14
Switzerland	48	36.9	11.1	2	1.9	0.1	8	6.5	1.5
United States	5.2	4.7	0.5	3.3	3.3	0	3.5	3.5	0
Developing members (non-developed)	58.0	15.1	43.0	31.3	9.1	22.2	42.0	9.9	32.1
Albania	9.5	7.9	1.6	6.6	4.5	2.1	7	5	2
Angola	52.9	10	42.9	60.1	6.9	53.2	59.2	7.3	51.9
Antigua and Barbuda	104.7	14.7	90	51.5	9	42.5	58.7	9.8	48.9
Argentina	32.4	10.3	22.1	31.8	13	18.8	31.9	12.6	19.3
Armenia	14.7	6.8	7.9	7.6	2.2	5.4	8.5	2.8	5.7
Bahrain	38.9	8.5	30.4	33.5	4.7	28.8	34.4	5.2	29.2
Bangladesh	192	17.6	174.4	34.4	14.3	20.1	169.2	14.7	154.5
Barbados	110.8		110.8	73	0	73	78.1	0	78.1
Belize	101.1	21.7	79.4	51.5	9.3	42.2	58.2	11	47.2
Benin	61.8	14.5	47.3	11.4	11.5	-0.1	28.5	11.9	16.6
Venezuela	55.7	15	40.7	33.6	12.1	21.5	36.5	12.5	24
Bolivia	40	12.4	27.6	40	10	30	40	10.3	29.7
Botswana	37.2	9	28.2	15.8	7.5	8.3	18.7	7.7	11
Brazil	35.4	10.2	25.2	30.7	14.1	16.6	31.4	13.6	17.8
Brunei Darussalam	31.6	0.1	31.5	24.5	2.9	21.6	25.4	2.5	22.9
Burkina Faso	98.2	14.5	83.7	13.2	11.5	1.7	42.1	11.9	30.2
Burundi	94.7	10.5	84.2	26.6	13.1	13.5	67.6	12.7	54.9
Cambodia	28.1	18.1	10	17.7	13.6	4.1	19.1	14.2	4.9
Cameroon	80	22.3	57.7	57.5	17.1	40.4	79.9	17.8	62.1
Cape Verde	19.3	12.2	7.1	15.2	10.2	5	15.8	10.4	5.4
Central African Republic	30	21.9	8.1	37.9	17.2	20.7	36.2	17.8	18.4
Chad	80	21.9	58.1	75.4	17.2	58.2	79.9	17.9	62
Chile	26	6	20	25	6	19	25.1	6	19.1
China	15.7	15.6	0.1	9.2	8.7	0.5	10	9.6	0.4
Colombia	91.4	16.8	74.6	35.4	11.8	23.6	42.8	12.5	30.3
Congo	30		30	14.8	0	14.8	27.3	0	27.3

WTO Member	Ag			NAMA			Total		
	Bound	Applied	Diff.	Bound	Applied	Diff.	Bound	Applied	Diff.
Costa Rica	42.7	11.7	31	42.9	4.5	38.4	42.9	5.4	37.5
Côte d'Ivoire	14.9	14.5	0.4	8.6	11.5	-2.9	11.1	11.9	-0.8
Croatia	11.4	10.7	0.7	5.5	4	1.5	6.2	4.9	1.3
Cuba	37	10.9	26.1	9.4	10.7	-1.3	21.3	10.7	10.6
DR Congo	98.2	12.8	85.4	95.9	11.9	84	96.2	12	84.2
Djibouti	49.9	14.2	35.7	40	21.9	18.1	41.3	20.9	20.4
Dominica	112.2		112.2	50	0	50	58.7	0	58.7
Dominican Republic	39.5	12.8	26.7	33.2	6.2	27	34	7.1	26.9
Ecuador	25.7	18.4	7.3	21.2	10.1	11.1	21.8	11.2	10.6
Egypt	95.4	70.7	24.7	27.7	9.2	18.5	36.7	17.3	19.4
El Salvador	42.5	12.3	30.2	35.7	4.9	30.8	36.6	5.9	30.7
Fiji	46	23.9	22.1	40	10.2	29.8	41.5	12	29.5
FYROM	13	13.4	-0.4	6.3	6.4	-0.1	7.2	7.3	-0.1
Gabon	59.7	21.8	37.9	15.5	17.1	-1.6	21.4	17.8	3.6
Gambia	104.3	17.4	86.9	57.6	18.9	38.7	102.6	18.7	83.9
Georgia	13.1	7.7	5.4	6.5	0.3	6.2	7.4	1.3	6.1
Ghana	97.2	17.4	79.8	36.1	12.3	23.8	92.5	13	79.5
Grenada	100.8	16.9	83.9	50	9.2	40.8	56.7	10.2	46.5
Guatemala	51	9.9	41.1	39.7	4.9	34.8	41.2	5.6	35.6
Guinea	39.7	14.2	25.5	10.1	11.5	-1.4	20.3	11.8	8.5
Guinea Bissau	40.1	14.5	25.6	50	11.5	38.5	48.7	11.9	36.8
Guyana	99.7	21.7	78	50	9.3	40.7	56.6	10.9	45.7
Haiti	21.1	5.9	15.2	18.2	2.3	15.9	18.7	2.8	15.9
Honduras	32.4	10.5	21.9	31.7	4.8	26.9	31.8	5.6	26.2
Hong Kong, China	0	0	0	0	0	0	0	0	0
India	113.1	31.8	81.3	34.4	10.1	24.3	48.5	12.9	35.6
Indonesia	47.1	8.4	38.7	35.5	6.6	28.9	37.1	6.8	30.3
Israel	73.3	16.5	56.8	11.5	5	6.5	22.3	6.5	15.8
Jamaica	97	17.9	79.1	42.4	5.9	36.5	49.6	7.5	42.1
Jordan	23.6	18.6	5	15.2	9	6.2	16.3	10.2	6.1
Kenya	100	19.9	80.1	55.1	11.5	43.6	95.4	12.6	82.8
Korea, Republic of	56.1	48.6	7.5	10.2	6.6	3.6	16.6	12.1	4.5
Kuwait	100	5.2	94.8	100	4.7	95.3	100	4.7	95.3
Kyrgyz Republic	12.7	7.7	5	6.7	4.2	2.5	7.5	4.6	2.9
Lesotho	199.1	9	190.1	60	7.5	52.5	78.4	7.7	70.7
Macao, China	0	0	0	0	0	0	0	0	0
Madagascar	30	14.6	15.4	25.4	11.3	14.1	27.4	11.8	15.6
Malawi	121.2	17.1	104.1	42.3	12.4	29.9	75.4	13	62.4
Malaysia	73	13.5	59.5	14.9	7.6	7.3	24	8.4	15.6
Maldives	48	18.3	29.7	35.1	20.7	14.4	36.9	20.4	16.5
Mali	59.2	14.5	44.7	14.1	11.5	2.6	29	11.9	17.1

WTO Member	Ag			NAMA			Total		
	Bound	Applied	Diff.	Bound	Applied	Diff.	Bound	Applied	Diff.
Mauritania	37.8		37.8	10.7	0	10.7	19.9	0	19.9
Mauritius	119.7	1	118.7	21.3	1.4	19.9	94	1.4	92.6
Mexico	44.2	22.1	22.1	34.9	9.9	25	36.1	11.5	24.6
Moldova	13.9	10.7	3.2	5.9	3.7	2.2	7	4.6	2.4
Mongolia	18.9	5.1	13.8	17.3	5	12.3	17.5	5	12.5
Morocco	54.4	42.1	12.3	39.3	14.4	24.9	41.3	18.1	23.2
Mozambique	100	13.5	86.5	11.3	9.8	1.5	97.5	10.3	87.2
Myanmar	103.7	8.7	95	21.5	5.1	16.4	83.4	5.6	77.8
Namibia	39.5	9	30.5	15.8	7.5	8.3	19	7.7	11.3
Nepal	41.4	14.3	27.1	23.7	12.1	11.6	26	12.4	13.6
Nicaragua	43.4	11	32.4	40.3	4.8	35.5	40.7	5.6	35.1
Niger	84.2	14.5	69.7	38.3	11.5	26.8	44.6	11.9	32.7
Nigeria	150	15.5	134.5	48.6	10.5	38.1	119.1	11.2	107.9
Oman	27.7	12.2	15.5	11.6	4.7	6.9	13.7	5.7	8
Pakistan	95.6	17.1	78.5	54.6	13.4	41.2	59.9	13.9	46
Panama	27.7	13.4	14.3	22.9	6.2	16.7	23.5	7.1	16.4
Papua New Guinea	45.8	14.2	31.6	30	3.6	26.4	32.1	5	27.1
Paraguay	33.2	10.3	22.9	33.5	10.3	23.2	33.5	10.3	23.2
Peru	30.8	6.2	24.6	29.1	5.4	23.7	29.3	5.5	23.8
Philippines	35	9.8	25.2	23.4	5.8	17.6	25.7	6.3	19.4
Qatar	25.7	8	17.7	14.5	4.6	9.9	15.9	5.1	10.8
Rwanda	74.1	15.1	59	91.7	19.2	72.5	89.4	18.7	70.7
Saint Kitts and Nevis	108.6	13.2	95.4	70.8	8.6	62.2	75.9	9.2	66.7
Saint Lucia	114.6		114.6	54	0	54	62	0	62
Saint VG	114.6		114.6	54.6	0	54.6	62.6	0	62.6
Saudi Arabia	15.9	5.9	10	10.5	4.7	5.8	11.2	4.8	6.4
Senegal	29.8	14.5	15.3	30	11.5	18.5	30	11.9	18.1
Sierra Leone	40.4		40.4	48.5	0	48.5	47.4	0	47.4
Singapore	27.3	0.2	27.1	6.4	0	6.4	10.4	0	10.4
Solomon Islands	73.5	14.6	58.9	79.4	9.2	70.2	78.6	9.9	68.7
South Africa	39.5	8.9	30.6	15.8	7.5	8.3	19	7.7	11.3
Sri Lanka	50.1	24.8	25.3	19.6	9.2	10.4	30.2	11.2	19
Suriname	19.8		19.8	16.5	0	16.5	18.2	0	18.2
Swaziland	39.5	9	30.5	15.8	7.5	8.3	19	7.7	11.3
Chinese Taipei	17.4	16.6	0.8	4.7	4.5	0.2	6.4	6.1	0.3
Tanzania	120	19.9	100.1	120	11.5	108.5	120	12.6	107.4
Thailand	40.6	22.6	18	25.5	8	17.5	28.2	9.9	18.3
Togo	80	14.5	65.5	80	11.5	68.5	80	11.9	68.1
Tonga	19.2	11.7	7.5	17.3	11.7	5.6	17.6	11.7	5.9
Trinidad and Tobago	90	18.1	71.9	50.6	5.9	44.7	55.8	7.5	48.3
Tunisia	116.1	40.9	75.2	40.7	18.6	22.1	57.9	21.5	36.4

WTO Member	Ag			NAMA			Total		
	Bound	Applied	Diff.	Bound	Applied	Diff.	Bound	Applied	Diff.
Turkey	60.8	42.9	17.9	17	4.8	12.2	28.6	9.7	18.9
Uganda	77.6	19.8	57.8	50.8	11.5	39.3	73.4	12.6	60.8
Ukraine	11	9.7	1.3	5	3.8	1.2	5.8	4.6	1.2
United Arab Emirates	25.2	6.8	18.4	12.6	4.7	7.9	14.3	4.9	9.4
Uruguay	33.9	10.1	23.8	31.2	10.6	20.6	31.6	10.5	21.1
Viet Nam	18.5	18.9	-0.4	10.4	9.7	0.7	11.4	10.9	0.5
Zambia	123.4	19.1	104.3	42.7	12.8	29.9	106.5	13.6	92.9
Zimbabwe	140.1	25.3	114.8	11	25.6	-14.6	89.2	25.6	63.6

SUMMARY

		Developed countries	Other
Agriculture	Average Bound Tariffs	39.3	58.0
	Average Applied Tariffs	17.9	15.1
	Difference	21.4	43.0
NAMA	Average Bound Tariffs	5.7	31.3
	Average Applied Tariffs	2.7	9.1
	Difference	3.1	22.2
Total	Average Bound Tariffs	10.2	42.0
	Average Applied Tariffs	4.7	9.9
	Difference	5.6	32.1

Source: WTO Tariff Profiles Summary Tables (WTO website)

Note 1: Data for applied tariffs are for 2008 or 2009.

Note 2: Averages for developed and developing countries' tariffs are simple averages and calculated by the South Centre, based on data in the rest of the table.

READERSHIP SURVEY QUESTIONNAIRE
South Centre Analytical Note

WTO'S MC8: SOME CRITICAL ISSUES FOR DEVELOPING COUNTRIES

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