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WTO HONG KONG MINISTERIAL SPECIAL REPORT

MODEST RESULTS IN HONG KONG RAISE RISK OF DOHA ROUND FAILURE

The low expectations for the Dec. 13-18 World Trade Organization (WTO) Ministerial meeting in Hong Kong were not exceeded, nor was anything produced that provides any greater assurance that the Doha Development Agenda, the Doha Round's formal name, can be completed by the end of 2006. As one former U.S. trade official told WTTL, the meeting was "hijacked" by developing countries whose agenda calls for broad exceptions from full trade liberalization for themselves while putting pressure on developed countries, mainly the U.S. and European Union (EU), to make the major concessions in the round.

> For the round's key issues – agriculture, non-agriculture market access (NAMA), and services – negotiators put off even further than expected the deadline for making crucial decisions on the numerical targets, or "modalities" in WTO jargon, that are suppose to steer the talks through 2006. The final ministerial declaration calls for those numbers to be decided by April 30, leaving just eight months, including Europe's long summer vacation, to complete all negotiations.

Even WTO Director General Pascal Lamy conceded the ministerial produced "modest progress." Applying a score card to the meeting, he said the ministers arrived in Hong Kong 55% of the way toward the round's completion and left having moved the talks to the 60% point.

EU Trade Commissioner Peter Mandelson agreed with Lamy's assessment. "I think that the agreement that we reached, if it didn't make the conference a success, it certainly saved it from failure," he said. Mandelson viewed the declaration as moving the round just slightly further than the framework agreement that ministers approved in July 2004. He also questioned whether negotiators and political leaders can maintain enthusiasm for the talks if they continue to crawl at the slow pace they have. "My hunch is that the Doha Development Agenda has about a year's energy left in it," he said.

Given the meeting's low expectations, U.S. Trade Representative (USTR) Rob Portman said he was concerned "that we might move backwards this week. We did not. We moved forward." Still, he admitted the talks didn't go as far as they could have. He said agriculture remains the key. "I just don't see us being able to make progress in NAMA and services unless those countries who care most about agriculture see that they have true benefits in this round and

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[will be] willing to make what they view as some trade offs in the area of NAMA and services," Portman said. "That's the ultimate bargain in my view," he added.

> If the Hong Kong declaration "becomes a platform for negotiated increases in trade liberalization, it is worth doing," said Gary Horlick, a lawyer with Wilmer Hale (formerly Wilmer, Cutler, Pickering, Hale and Dorr). "If this becomes an excuse for countries to agree not to liberalize, we are going to wind up regretting the end of mercantalistic trade bargaining," he told WTTL.

"Everyone always attacks trade bargainers for being mercantalistic. 'I will only open my market, if you'll open yours.' What we're sitting here watching is the reverse: 'I'll agree you don't have to open your market and I won't open mine,'" he said. While he cautioned against prejudging the outcome of the talks, he said adoption of the 2013 deadline for ending farm export subsidies was a bad indicator (see story page 4)

U.S. PROMISE OF MONEY FOR AFRICA SAVES COTTON DEAL AND MINISTERIAL

A last-minute U.S. offer to increase financial aid to five West and Central African cotton-producing countries over the next two years, averted an 11th hour blow up of the Hong Kong Ministerial, according to sources close to the talks. After six days of negotiations, U.S. trade officials Sunday morning, Dec. 18, thought they had a tentative deal with representatives of the African countries known as the C-4 Plus 1 on a six-point cotton package in the ministerial declaration. When all the cotton countries looked at that offer Sunday afternoon, they were nearly ready to reject it. A late meeting was called between U.S. and African officials Sunday evening just as the final session of the WTO Heads of Delegations was about to start.

> The U.S. gave the Africans "an oral commitment" to provide more money, Benin's ambassador to the WTO, Samuel Amehou, told WTTL. While the cotton package urges creation of an Emergency Fund for the region, the money is needed sooner because those nations pay their cotton farmers a subsidy to cover the difference between their production costs and market prices, which are usually lower, Amehou explained.

As part of the six-point package, the U.S. agreed to eliminate cotton export subsidies in 2006, a deadline it is already obliged to meet since losing a WTO dispute-settlement panel ruling that said the U.S. program violates WTO rules. Congress is now considering legislation which would repeal the "Step 2" export program that was the target of the panel decision.

Amehou said the C-4 countries had to lower their expectations on what they could get in the package. What they got was "very little," he said. The Africans relied on assurances from U.S. officials that "they will do more." They also recognize that the U.S. can't move now because of the farm bill and that it will need concessions on agriculture from the EU to convince American cotton growers to give up their subsidies, Amehou said. The cotton package promises that future cuts in other export subsidies and domestic support for cotton will be "reduced more ambitiously than under whatever general formula is agreed and that it should be implemented over a shorter period of time than generally applicable."

CHINA: SILENT SHADOW OVER WTO TALKS PLAYS LOW-KEY ROLE

One of the most important but unspoken factors shaping the WTO Hong Kong Ministerial was China's looming dominance as a global exporter and potential market. China is already the subject of concern in both developed and developing countries, but it appears that nothing in the Doha Round agenda will deal with the problems China poses for the world trading system. The resistance of many emerging countries to broad tariff cutting agreements can be linked to their fear that cheap Chinese goods will flood their markets and kill small local manufacturers. That is happening in some markets, especially in Latin America and Africa. Early in the negotiations, Beijing won agreement in the declaration for language recognizing the commitments that new WTO members have made as part of their accession protocols. "This situation will be taken into account in the negotiations," the declaration promises. While most major participants at the conference held press conferences or issued regular statements on the progress of the talks, China remained silent and invisible. Although it is a member of the G-20 group of developing nations, it did not appear with other G-20 members at their press briefings.

U.S. INDUSTRIES SEE BEST CHANCES FOR PROGRESS IN SECTORS

The traditional request-offer approach to seeking and granting trade concessions in multilateral trade negotiations along with broad tariff-cutting formulas – the primary goal of trade rounds dating back to 1948 – may have seen its practical demise in Hong Kong. The final WTO ministerial declaration adopted at the end of the conference Dec. 18, 2005, retained a mandate for the negotiation of plurilateral agreements for specific service sectors and for the first time added language in the NAMA text instructing negotiators to identify industrial sectors that could be the subject of non-mandatory sectoral agreements.

> There was no formal abandonment of the mandate for the request-offer approach or the goal of achieving across the board trade liberalization in all countries on all products and services, but U.S. industry has become reconciled to the fact that there is too little time left in the round to seek country-by-country, product-by-product concessions. Moreover, the wide flexibilities offered to developing countries in the final declaration on NAMA could see countries such as India, Brazil and China avoiding deep and meaningful cuts in tariffs.

As hoped by U.S. service industries, negotiators in Hong Kong beat back an effort by developing countries in Africa and Asia, as well as Venezuela, to water down the text's endorsement of sectoral talks in services in Annex C of the declaration (see **WTTL**, Dec. 12, page 2). Some wording was eliminated from the declaration to give those countries assurance that the sectoral talks are voluntary and that they won't be coerced into joining them.

Representatives of the U.S. services industry said they considered these changes acceptable. The struggle over the language, however, underscored the improbability of getting much services liberalization outside the sectoral talks.

Although the NAMA provisions adopt the idea of a Swiss Formula to cutting tariffs – cutting higher tariffs more than lower tariffs – the U.S. failed to get ministers to support the concept of applying just two coefficients to those cuts. The coefficients are the required amount of the cut in each tariff. The U.S. wants one percentage number for developed countries and a second, lower one for developing or poor countries. Unless the U.S., with support from the EU and Japan, can get this two-coefficient approach mandated, it will be difficult to force advance developing countries to commit themselves to broad market opening.

Instead of two coefficients, the declaration says the level of cuts could vary based on several different factors. The amount of tariff reduction will "take fully into account the special needs and interests of developing countries, including through less than full reciprocity in reduction commitments." One such formula backed by Argentina, Brazil and India, hence called the ABI approach, would base reductions on the average of bound tariffs in a country. This would result in smaller tariffs reductions or, in some cases, no reductions at all.

Keeping specific coefficients off the Swiss Formula was an important goal for India and several advanced developing countries. "We dont't want a formula that leads to harmonization of tariffs," Indian Commerce Minister Kamal Nath told WTTL. "NAMA has several coefficients. The ABI formula has several coefficients," he said. The NAMA text "means that Swiss 2 is not necessarily on board as such or as much as the ABI is on board," Nath said. He noted that the declaration still calls for cutting tariff peaks and escalations. On sectoral negotiations, India will join some on a voluntary basis "at times that suit us," he told WTTL. "The developed countries will need us more for sectorals then we will need them in the next 10 years," he said. Although India's bound tariffs average about 40%, Nath emphasized that its applied rates average 15% and the country intends to bring them down further to the ASEAN level of 5-to-10%. "That's been announced by the prime minister," he told WTTL.

> The sectoral approach in NAMA would try to get 15 to 20 of the countries with the largest markets in a specific product category to agree to cut duties on those products to zero or at least to a low harmonized number. Once countries representing about 90% of the global market agreed to join the deal and formed a "critical mass" of the market, the zero tariffs would be applied on a most-favored-nation (MFN) basis to all WTO members. Among the industries seeking sectoral deals are medical devices, wood products, chemicals, footwear, environmental products, electronics, information technology and paper.

The National Association of Manufacturers (NAM), which has been the prime proponent of a major tariff-cutting exercise for industrial goods in the Doha Round, had significant complaints about the first revised draft declaration that appeared on Saturday, Dec. 17. Changes made in the final text eased some of those concerns and the explicit recognition of sectoral negotiations was an important late addition, according NAM Vice President Frank Vargo. "The rest of the text just kicks the can down the road," he said. "All the battles that were fought will be fought again," Vargo told WTTL.

EU'S CAP COULD CAP AMBITION IN DOHA ROUND FARM TALKS

The most highly hailed achievement of the WTO Kong Kong Ministerial was the setting of 2013 as the deadline for phasing out all agriculture export subsidies. The decision came only after the EU fought for a week against fixing the date at 2010 and proposed 2013 instead. For some observers, however, rather than marking a great step forward, the 2013 deadline means the WTO may have conceded that the EU's current Common Agriculture Policy (CAP), which runs through the end of 2013, marks the outer limit of ambition for a Doha Round agriculture agreement. That level of trade liberalization is not likely to be acceptable to the U.S. farm community, Congress or developing countries that belong to the G-20 group.

> The WTO acceptance of 2013 "may be a lesson on how the CAP will determine the outcome of what can be expected in agriculture," said Jon Huenemann, an attorney will Miller & Chevalier who represents the U.S. dairy processing industry. The EU's agreement to the 2013 deadline was not a real concession, because that is what they would do anyway under the CAP, Huenemann told WTTL.

Admitting it is too early to tell what the EU's final position will be in the negotiations, he said, "It will be difficult for the EU to move beyond that mandate." If the EU insists on limiting the Doha Round to the CAP, "it will be a difficult round and the obstacles to an agreement will be significant," Huenemann said.

While insisting on the 2013 date, which they probably had in their back pocket all along, EU Trade Commissioner Peter Mandelson and Farm Commissioner Mariann Fischer-Boels accepted a modification added to the declaration. The sentence said the end of export subsidies "will be achieved in a progressive and parallel manner, to be specified in the modalities, so that a substantial part is realized by the end of the first half of the implementation period."

If a Doha deal is reached in December 2006 and adopted by members in 2007, it would go into force on Jan. 1, 2008. A five-year implementation plan would make the half-way point 2010. Mandelson said that date was acceptable because many current EU export subsidy programs are scheduled to be phased out during that time under the CAP. The current CAP, which started to be implement in 2003, is the second major reform of the program and is aimed at decoupling payments to European farmers from production. Each of the changes in the program came only after intense internecine battles, which EU make adoption of any new reforms before 2013 problematic. "We have a very tough and precise mandate from the Council," one EU official told WTTL, referring to the Councils of Trade and Agriculture ministers who set EU trade and farm policy. "It is linked to the reforms we have implemented and also to the basic treaty rules that we have to secure incomes for farmers and in the articles of our constitution," he added. "So that is determining the outer scope of what we can do," he said. "Right now there is no flexibility whatsoever because the social-economic affects are pretty serious," the official said.

> For the EU to consider earlier changes to the CAP, major concessions would be needed from the U.S., especially on counter-cyclical payments to farmers, and from developing nations, notably Brazil and India, on NAMA and services. "Obviously if there were vast movement from other countries that improve the situation worldwide on agriculture markets, that would also give us air inside our mandate – not much, because we have to look at it case by case," he explained.

WTO "TILTING" TOWARD DEVELOPING COUNTRIES, LAMY BOASTS

The WTO's shift toward the interests of developing countries, which began at the Seattle Ministerial in 1999 and scuttled the Cancun meeting in 2003, was confirmed at the end of the Hong Kong conference. This change raises serious questions about the ability of the WTO, which now has 150 members as of Dec. 15 with the accession of Tonga, to provide developed nations with the level of ambition they say they must have in the Doha Round.

> "We are tilting the balance in the WTO firmly and steadily in favor of developing countries," WTO Director General Pascal Lamy told the closing session of the conference. "You are taking home a new balance," he told ministers. "It is not a perfect balance, but the perfect is the enemy of the good."

Under the expert orchestration of Brazilian Foreign Minister Celso Amorim, the developing country group known as the G-20 Dec. 16 joined a coalition of less and least developed nations, including countries belonging to the Africa, Caribbean and Pacific (ACP) group, the Least Developed (LDC) group, the G-33, and the broad group known as the G-90, to form the G-110. This new grouping represents more than two-thirds of the WTO membership.

Its agenda calls for a less ambitious trade agreement than the U.S. and EU want. It stresses the need for special and differential treatment for LDCs, wide flexibility in opening markets for goods and services in less than developed countries, and exemptions from trade liberalization requirements, include rules on Trade Related Intellectual Property Rights (TRIPs).

Even as it was being formed, however, the G-110 began showing internal divisions. Countries such as India, for example, supported negotiations in services where it has become a major international player, while other developing countries tried to restrict services talks. Some marginally more advanced developing countries also objected to a developed country proposal for a package of benefits for least developed countries, including duty-free/quota-free (DF/QF) access to developed nation markets (see **WTTL**, Dec. 12, page 2).

These countries were concerned that they would be put at disadvantage in product categories were they compete closely with LDCs. In the end, the development package gave developed countries the right to exclude up to 3% of their tariff lines from a DF/QF commitment. The exclusion will mostly protect domestic industries, such as textiles and sugar in the U.S., rice in Japan and sugar in the EU, but it also may allow the exemption of products competing with those from other LDCs, such as bananas.

Deputy USTR Susan Schwab said the dynamics in the negotiations in the closed-door "Green Room," where final deals were hammered out among groups of ministers, also showed that creation of the G-110 didn't necessarily resurrect the old North-South divide over trade. "The most interesting thing for me coming out of this round is the very different dynamic between and among developed and developing countries," Schwab said in an exclusive interview with

WTTL. "This was not a Cancun kind of us versus them experience with the developing countries on one side and the developed countries on the other," she said.

> "You had developing countries up against developing countries on some trade issues. You had developed countries up against developed countries on some trade issues," said Schwab, who served on the USTR negotiation staff during the Tokyo Round and was a Senate trade aide during the Uruguay Round. "There were Issues like benefits for the least developed countries, where you had developing countries that are not considered among the least developed countries saying, 'Wait a minute what am I?'" she pointed out.

Although the G-20 joined the G-90 to form the G-110, "it wasn't a monolith," Schwab said. "They had a press conference, but it wasn't a monolith." Their united front at the press conference didn't hold over into the private Green Room negotiations. "They were there negotiating their individual interests and their small group interests, but not some homogeneous, monolithic developing country enterprise," she told WTTL.

CONGRESSIONAL REACTION ADDS TO UNCERTAINTY OF FINAL ACCORD

It is sometimes hard to gauge the seriousness of congressional reaction to trade negotiations, because lawmakers often take a harder line than administration officials in order to give U.S. negotiators more leverage in the talks. Initial comments from Capitol Hill on the final declaration from the Hong Kong Ministerial reflect expected skepticism and concerns, but also show why a modest Doha Round agreement will be hard to sell to Congress.

> Senate Finance Committee Chairman Charles Grassley (R-Iowa) said it was good that the ministerial declaration will lead to more negotiations because a lot more work needs to be done. "Congress has high expectations, and if we don't see progress, there won't be a final agreement in the round," he warned. "I can tell you right now that without substantial improvement over the next few months, this framework will go over like a lead balloon," he said in a statement.

Sen. Max Baucus (D-Mont.) echoed Grassley's skepticism. "To be frank, the deal in Hong Kong does very little to advance key U.S. interests in agriculture, manufacturing, and services," he said. "Certain aspects of the agreed text also leave me very concerned," he added.

A successful round will require more from U.S. trading partners, Baucus asserted. "For instance, the EU will have to reduce its agricultural tariffs and domestic support payments. Canada and Australia will have to reform their state-trading enterprises. Brazil and India will have to make deep reductions in their industrial tariffs. And developing world economies will have to provide meaningful market access in the services sector," he declared. "Unless the dynamics of the Doha Round change soon, members of Congress may find it difficult to continue offering their support," he added; concluding: "I'm not optimistic."

The lack of progress in agriculture talks and commitments made to African cotton-producing countries drew cautionary comments from Senate Agriculture Committee Chairman Saxby Chambliss (R-Ga.). The cotton package "unfairly and disproportionately targets farmers in my home state of Georgia and across the United States," he said in a statement. This development greatly complicates the negotiations and the support an eventual agreement may enjoy in Congress, he noted. Aid for LDCs "should not happen by singling out cotton growers in the United States and placing their futures in jeopardy," he said. A similar reaction is expected from House Ways and Means Committee Chairman Bill Thomas (R-Calif.), who represents a major agriculture and cotton growing district in central California.

EDITOR'S NOTE: In keeping with our regular schedule, there will be no issue of ***Washington Tariff & Trade Letter*** on Dec. 26, 2005. Our next issue will be Jan. 2, 2006. Until then we wish all our subscribers a HAPPY HOLIDAY and a HEALTHY AND PROSPEROUS NEW YEAR.