

LEGISLATIVE COUNCIL BRIEF

WORLD TRADE ORGANIZATION – HONG KONG MINISTERIAL CONFERENCE AND FURTHER MULTILATERAL TRADE NEGOTIATIONS

INTRODUCTION

The Executive Council has taken note of the progress of the negotiations under the Doha Development Agenda (“DDA”), the position of Hong Kong, China (“HKC”) on the major negotiating areas to be discussed at the Sixth Ministerial Conference (“MC6”) of the World Trade Organization (“WTO”) to be held from 13 to 18 December 2005 in Hong Kong, and our expected outcome of MC6.

PROGRESS OF THE NEGOTIATIONS AND HKC’S POSITION

(A) Major Developments after MC5

2. We informed this Council on 12 November 2003 that Ministers were unable to reach consensus on the direction of the negotiations under the DDA at the fifth Ministerial Conference held from 10 to 14 September 2003 in Cancun, Mexico. Breakthrough only came on 1 August 2004 when the General Council of the WTO (“GC”) adopted a framework for major negotiating areas (the “July Package”) and launched negotiations on trade facilitation. The GC also agreed to an open-ended extension of the DDA negotiations deadline beyond the original timeframe of 1 January 2005.

3. A common understanding that the DDA negotiations should be concluded by end 2006 emerged among WTO Members in early 2005. To achieve this, WTO Members generally agreed that substantial outcomes should be delivered in five key areas at MC6, namely: (a) modalities (i.e. framework agreement including formula and numbers) for agriculture; (b) modalities for market access of non-agricultural (or industrial) products; (c) means to intensify the services negotiations; (d) significant progress in the rules negotiations including trade facilitation; and (e) a proper reflection of

the development dimension in the outcome of the negotiations. MC6 is generally considered as a key staging post towards the conclusion of the DDA negotiations.

4. An account on the progress of the five key negotiating areas¹, HKC's position on these issues, and our expectations of the outcomes of MC6 are set out below.

(B) Major Negotiating Areas

(a) Agriculture

5. Agriculture is the linchpin, and the most difficult area, of the DDA negotiations. Agricultural trade is highly protected. It is also politically sensitive. For some Members, it has a significant impact on various aspects, from economic development, food security, livelihood security, poverty alleviation, rural development, to protection of the environment. The inception of the WTO in 1995 brought the agricultural sector into the remit of the multilateral trading system. However, high trade barriers against imports and/or heavy subsidies to domestic farmers are still common among many developed and developing countries. Such trade-distorting measures hindered many developing countries from exporting their agricultural products, which in turn hampered their economic development.

6. The DDA negotiations aim at **phasing out export subsidies**, as well as substantial improvements in **market access** (mainly in the form of reducing tariffs) and substantial reductions in trade-distorting **domestic support** in the farm sector.

7. Some progress has been made on export competition and domestic support in recent months but Members' positions on market access remain wide apart. Countries with export interests in agriculture, including the US, Australia, Brazil, and Argentina, strongly advocate for the sharp and real reduction of tariffs, particularly by the European Union ("EU") and other developed countries including Japan, Switzerland and Norway. The EU and

¹ There are other negotiating areas under the DDA, e.g. trade and environment, review of the Dispute Settlement Understanding, and the development of a multilateral register for Geographical Indications. No significant decision is expected for these areas at MC6.

importing countries like Japan and Switzerland have put forward offers on tariff reduction that fall considerably short of the expectations of the US and other *demandeurs*. Meanwhile, a number of developing countries with defensive interests in agriculture or are enjoying preferential access to the EU market argue for low tariff cuts and special and differential treatment (e.g. lesser tariff cuts in certain tariff lines) for developing countries. Some developing countries, such as the G33 countries led by Indonesia, demand the creation of a category of “Special Products” for developing countries. Tariff reduction for such products would take a more moderate pace. While breakthrough on modalities is unlikely to be achieved at MC6, intensive negotiations on some issues are expected to continue all the way up to the MC.

(b) Non-agricultural Market Access

8. This is a priority area for HKC. As an export-oriented economy without any customs tariffs, HKC stands to gain from any tariff concessions made by other WTO Members on non-agricultural products. We therefore take a proactive stance on the subject. At present, WTO Members are negotiating on key issues like the parameters of a tariff-reduction formula that applies to all products, the type and extent of special and differential treatment (e.g. lesser tariff cuts and longer implementation period) that should be accorded to developing Members, and ways to address non-tariff barriers. Some WTO Members, including HKC, are also pursuing additional tariff reduction/elimination in specific sectors on top of formula reduction. MC6 may give an indication on the shape of the tariff reduction formula and the parameters of the relevant special and differential treatment for developing countries.

(c) Services

9. Services is a key priority area for HKC as about 90% of our GDP comes from the services sector. HKC stands to gain from commercially meaningful commitments by other WTO Members that carry new business opportunities. The on-going negotiations on trade in services cover both improved market access and rule-making. On the market access front, the negotiations have proceeded mainly by way of bilateral request-and-offer. Accordingly, WTO Members were required to submit two rounds of offers pursuant to the timelines set in the DDA and the July Package, in response to

bilateral requests from their trading partners. Up to now, only 72 WTO Members have tabled their initial offers, and 30 Members among them (including HKC) have tabled revised offers. Apart from the fact that a large number of Members have yet to make initial and revised offers, it is also widely recognized that the overall quality of the offers currently on table is far from satisfactory. They largely fail to meet the expectations of Members and create no new business opportunities for services suppliers.

10. To uplift the level of ambition, Members are considering means to spell out the objective of the services negotiations in clear and specific terms using, *inter alia*, qualitative parameters for offers, and to intensify the negotiations including plurilateral request/offer negotiations by individual sectors and modes of supply. MC6 may also provide some guidance on rule-making, such as agreeing to commence text-based negotiations on and deliver by end of the round multilateral disciplines for domestic regulations².

11. In recent months, some local non-governmental organizations (“NGOs”) and civil service unions have expressed concern as to whether the WTO services negotiations would lead to more outsourcing or privatization of public services by the Government. On this, there is nothing in the WTO General Agreement on Trade in Services (“GATS”) that requires outsourcing or privatization of public services. Public services provided by the government, or “services supplied in the exercise of governmental authority”³, are outside the ambit of the GATS.

12. For those services covered by the GATS, it remains the policy choice of individual WTO Members to decide whether or not to liberalise, and if so, the extent and timetable of liberalization; and whether to make commitments on the relevant services under the GATS. Given that Hong Kong’s services regime is generally liberal and open, our offers in services will not exceed the current level of openness or require us to introduce any new liberalization measures. The Administration will, as we did in the past,

² Pursuant to GATS Article VI:4, WTO Members are mandated to develop disciplines for domestic regulations affecting trade in services. The disciplines aim at ensuring that commercial value of a Member’s commitment would not be undermined by opaque and /or unnecessarily trade-restrictive domestic regulations.

³ Defined under the GATS as services that are neither supplied on commercial basis nor in competition with one or more services suppliers. Such services are excluded from the coverage of the GATS.

continue to exercise prudence in formulating our services commitments by giving due regard to Hong Kong's economic and social conditions.

(d) Rules (including Trade Facilitation)

13. The rules negotiations under the DDA covers several areas, including those governing anti-dumping, subsidies (including fisheries subsidies), and regional trade agreements. The negotiations on trade facilitation will also result in new trade rules.

Anti-dumping and subsidies

14. Since the launch of the negotiations on **anti-dumping** and **subsidies and countervailing measures**, WTO Members have put forward numerous proposals for clarifying the application of the existing rules and identifying new areas for improvements. With regard to anti-dumping, while there have been intensive discussions on the technical details of the numerous proposals, differences between WTO Members, particularly between frequent users of anti-dumping measures and those having strong export interests, remain wide.

15. With regard to subsidies and countervailing measures, there are fewer issues on the table, and the differences between Members are generally not as divergent as in the case of anti-dumping. On fisheries subsidies, while Members are gradually building consensus on the need for more effective disciplines against some forms of trade distorting fishing subsidies, they have yet to intensify the technical discussions on the form and scope of the new disciplines to be introduced, and on appropriate exceptions especially for developing country members.

16. At MC6, Ministers may give political direction to and set timelines for the negotiations to ensure a timely outcome on all the Rules areas by end 2006. On HKC's part, we will continue to participate actively and constructively in the negotiations in order to improve and tighten the rules in a way that would help reduce the risk of protectionist or abusive use of anti-dumping and countervailing measures and trade-distortive subsidies. We will also guard against any changes in existing rules or introduction of new

disciplines that may adversely and unfairly affect our trade interests and the interests of our fisheries sector.

Regional Trade Agreements

17. Negotiations on **Regional Trade Agreement (“RTAs”)** aim at clarifying and improving disciplines and procedures under the existing WTO provisions applying to RTAs. The negotiations shall take into account the development aspects of RTAs. So far, Members have been discussing possible ways to enhance RTAs’ transparency and to improve existing RTA rules. More deliberations are needed before Members could come up with a concerted position. It is unlikely that consensus could be reached on any proposals that require substantive change of existing rules at MC6.

Trade Facilitation

18. Negotiations on **trade facilitation** commenced in October 2004. WTO Members agreed that the negotiations should aim to clarify and improve existing WTO provisions in relation to freedom of transit, import and export formalities, and transparency of trade regulations. The main objective is to further expedite the movement, release and clearance of goods, including goods in transit.

19. HKC believes that improved rules on trade facilitation will streamline customs and trade procedures, thereby reducing the operating costs and enhancing efficiency for businesses and governments.

20. The negotiations on trade facilitation are making good progress. Members have submitted a good number of proposals identifying areas for improvement. MC6 may give some political guidance, including on when to move to text-based negotiations.

(e) Development

21. Many developing countries, especially the least-developed ones, have complained that they have not been able to secure a meaningful share in the growth of world trade from the multilateral trading system. The greatest

gains for developing countries in the DDA will stem from improved market access and trade rules in the above areas. The DDA also mandates a review of the special and differential treatment provisions in existing WTO Agreements to make them more precise, effective and operational. Outside the remit of negotiations, the WTO also examines specific issues of concern to the developing countries, including, the relationship of trade and transfer of technology, the relationship of trade, debt and finance, and issues relating to the trade of small economies. Emphasis has been put on enhancing technical cooperation and capacity building, and making special efforts to assist the integration of the least-developed countries into the multilateral trading system.

22. As Chair of MC6, we consider that commitment to a more clearly articulated development package would help create an atmosphere of confidence and comfort among developing countries, which would be conducive to the success of MC6 and the DDA negotiations as a whole. Possible components of such a package may include-

- (a) commitment by developed countries to tariff free/quota free market access for products of the least-developed countries;
- (b) agreement on various special and differential proposals;
- (c) agreement on a longer transition period for least-developed countries to take on obligations in respect of trade-related aspects of intellectual property and trade-related investment measures;
- (d) commitment to an Aid for Trade programme; and
- (e) making permanent the current temporary waiver to the Trade-related Intellectual Property Rights Agreement that facilitates access by developing countries to essential medicines.

(C) Latest Development and Expectation

(a) Asia Pacific Economic Cooperation (“APEC”) Leaders’ and Ministers’ Meeting

23. At the APEC Annual Ministerial Meeting which took place on 15 and 16 November 2005, Ministers had an in-depth discussion on the latest state of play of DDA negotiations. Ministers agreed that the DDA negotiations have reached a critical stage and that APEC leaders should show their strong support for the multilateral trading system and collective resolve to provide strong political leadership and the commitment necessary to produce at MC6 a sound platform for successfully concluding the DDA negotiations. For the first time, APEC Leaders issued a standalone statement on DDA negotiations to reflect this resolve. A copy of the statement is at Annex A.

(b) Prospects of the Hong Kong Ministerial Conference

24. The first draft of the Hong Kong Ministerial Declaration was issued by the Director-General of WTO on 26 November 2005⁴. The overall progress on the negotiations is being held up by the current deadlock on the agricultural front. In recent days, while maintaining the level of ambition of the DDA as a whole, WTO Members agree that it would not be possible to achieve full modalities for agriculture and non-agricultural market access at MC6. Nevertheless, many Members, including HKC still aim to use MC6 to capture as much as possible the progress already made and to set out a clear roadmap for the negotiations in 2006. This will be vital to ensure that the negotiations can be concluded by end of next year. We do not expect the signing of any agreement at MC6.

IMPLICATIONS OF THE DDA NEGOTIATIONS

25. The Hong Kong Special Administrative Region (“HKSAR”)’s participation in the DDA negotiations and in the MC6 has financial and civil service, economic, environmental and sustainability implications as set out at Annex B. The HKSAR’s continued participation in the WTO and international trade agreements in the name of “Hong Kong, China” is in conformity with Articles 116 and 151 of the Basic Law.

⁴ The draft Declaration is available at the WTO website :
http://www.wto.org/english/thewto_e/minist_e/min05_e/draft_min05_text_e.doc

PUBLIC CONSULTATION

26. The Trade and Industry Department has consulted major trade organizations in formulating our negotiating strategy in non-agricultural market access from July to August 2002. We have also conducted two large-scale public consultation exercises, one from May to June 2002 and another from February to March 2005, to prepare for the services negotiations. On both occasions, about 400 organizations (including chambers of commerce, major trade and industrial organizations, academic institutions and civil society groups) and the general public were invited to express their views on HKC's objectives and priorities in the services negotiations. In parallel, we have also consulted bureaux and departments who have in turn sought views from the major stakeholders in individual services sectors where appropriate. The Administration will continue to keep the community informed about the latest progress of the DDA negotiations, and seek their views as and when appropriate.

PUBLICITY

27. To enhance the community's understanding of the WTO, the Government has been explaining to the public, through various channels and activities, the importance of WTO and free trade to global economic development, the substance of the trade negotiations under the DDA, as well as the objectives of MC6.

28. In the coming few weeks, we will step up publicity to keep the public abreast of the special transport and other arrangements during the MC6 period. During the MC, daily press conferences will be organized to keep the community abreast of developments.

BACKGROUND

29. The DDA negotiations were launched at the fourth Ministerial Conference of the WTO held on 9-13 November 2001 in Doha, Qatar. The negotiations cover a broad and balanced agenda, and aim at achieving liberalization in the trade of agricultural products, industrial goods and services, clarifying and improving trade rules and making new rules, as well as addressing properly the concerns of developing countries. A higher degree of trade liberalization will serve as a key engine for economic growth

and improved welfare, and allow better integration of all countries, including the developing and least-developed countries, into the world economy. A substantive outcome at MC6 will help bring the DDA negotiations to a successful conclusion.

Trade and Industry Department
29 November 2005

Annex A

13th APEC ECONOMIC LEADERS MEETING

BUSAN, REPUBLIC OF KOREA

18-19 NOVEMBER 2005

APEC ECONOMIC LEADERS STATEMENT

ON DOHA DEVELOPMENT AGENDA (DDA) NEGOTIATIONS

1. We, the APEC Economic Leaders, believe that the WTO Doha Development Agenda (DDA) negotiations have an unmatched potential to strengthen the multilateral trading system, promote global economic growth and, in particular, improve economic development opportunities for developing countries. Achieving the DDA is a crucial component of the global partnership to achieve the Millennium Development Goals. For this reason, the Doha Round must be carried to a successful conclusion - at the high level of ambition established in the Doha Declaration - by the end of 2006.
2. APEC economies, which represent close to 50 per cent of world trade and almost 60 per cent of global GDP, have benefited greatly from an open trading system. Average tariffs of APEC economies have been reduced by two-thirds in the last 15 years. This has been a period of rapid economic growth, particularly for APEC's lower income economies. The Doha Round is essential to keeping APEC economies on this path of growth and development. It is also essential for all WTO Members.
3. The Hong Kong Ministerial will be a critical step in achieving this goal. Significant progress must be made in Hong Kong in resolving still remaining considerable divergences and a clear roadmap for completion of the Round in 2006 must be established. There is more at stake here than just another phase of economic liberalization. A successful conclusion of the Doha Round is crucial for the future credibility of the WTO and the rules-based multilateral trading system.
4. All WTO Members must achieve an ambitious and overall balanced outcome at the end of the Round, which include, among others: a comprehensive package in agriculture to ensure substantial reductions in trade distorting domestic support, substantial improvements in market access by significantly lowering tariffs and reducing quantitative restrictions, and the elimination of all forms of export subsidies of developed Members by 2010; an agreement on non-agricultural market

access through a Swiss formula with ambitious coefficients and sectoral agreements on a voluntary basis that will ensure real market access improvements for all WTO Members; an agreement in services that will create commercially meaningful and real market access opportunities in all WTO Members; clarification and improvement of the WTO rules for securing and enhancing benefits in market access that will ensure clearer and more predictable trade disciplines; and clearer and improved WTO rules for trade facilitation that will contribute to further expediting the movement, release and clearance of goods.

5. We call for breaking the current impasse in agricultural negotiations, in particular in market access, which will unblock other key areas, including non-agricultural products and services. Unless progress is made in this area, we cannot make progress in the Round as a whole. Avoiding or compromising our ambition on this issue would mean that we would lower expectations for the Round as a whole.

6. We must ensure that the DDA reflects the development dimension in all negotiating areas and delivers real development benefits. The DDA should also take into account the needs and interest of developing Members and, in particular, the special needs of the least developed countries (LDCs). We look forward to a considerable progress on the LDC issues at the Hong Kong Ministerial.

7. We, the APEC Leaders, are committed to face up to the political challenges associated with the DDA. We are ready to provide strong political leadership and the commitment necessary to produce in Hong Kong a sound platform for successfully concluding the negotiations. We urge all other WTO members, and especially those that have the largest stake in the global trading system and derive the biggest benefits therefrom, to show the flexibilities needed to move the negotiations forward by and beyond Hong Kong.

Annex B

FINANCIAL AND CIVIL SERVICE IMPLICATIONS

MC6 will lay down the roadmap for concluding the Doha Development Agenda (“DDA”) negotiations in 2006. The Administration will have to intensify its negotiating efforts in this final stage of the negotiations so as to promote and safeguard the trade interests of Hong Kong Special Administrative Region. Any additional financial and civil service implications arising from the continued DDA negotiations will be absorbed through redeployment of existing resources.

The negotiations at MC6 will not impact upon the Administration’s existing policy on outsourcing and privatization.

ECONOMIC IMPLICATIONS

Hong Kong will benefit from positive outcomes of the DDA negotiations. Particularly, further liberalization in services and industrial tariffs will bring about more business opportunities for our service, trading and manufacturing industries. The review of existing WTO rules and the establishment of new trade rules in such areas as anti-dumping, trade facilitation and regional trade agreements will provide a more predictable and conducive environment for international trade and investment.

ENVIRONMENTAL IMPLICATIONS

The DDA mandates the identification and debate of the environmental aspects of the multilateral negotiations in view of the importance attached to environmental protection by some major WTO players. Emphasis in this area will bring out better coordination between policies and practices in the fields of international trade and environment, for the purpose of promoting sustainable development. We have been keeping relevant bureaux and departments informed of the progress of the negotiations.

SUSTAINABILITY IMPLICATIONS

WTO Members are committed to the objective of sustainable development. The DDA negotiations' aim of upholding and safeguarding an open and non-discriminatory multilateral trading system and the aim of protecting the environment are mutually supportive. A more liberalized international trading environment is conducive to the sustainability principle of achieving a competitive and prosperous market-based economy. Enhanced trade and economic development will lead to the creation of more job opportunities and help foster a stable and progressive society in Hong Kong.