

Civil Society Groups Submit Open Letter to Lamy Slamming WTO Procedural Irregularities in GATS Negotiations

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Civil society groups today are sending the WTO Director General Pascal Lamy an open letter (attached) slamming the highly undemocratic and deceptive process used to manufacture the services section of the draft Ministerial Declaration for Hong Kong.

The process used has completely redefined the “consensus” mode of decision-making. Rather than having a consensus before an item is included in a negotiating text, it now appears that the Chair of the Council for Trade in Services (CTS), Mexican Ambassador Fernando de Mateo can include items he deems appropriate. No consensus is needed. However, when asked by Members to remove certain text, his response has been that he requires consensus to do so!

On 13 October, Mateo had released a “Note by the Chairman” on “Possible Elements for a Draft Ministerial Text on Services”. The text listed the controversial elements - without brackets - of “sectoral and modal objectives”, “plurilateral” and “multilateral” approaches, and “numerical targets and indicators”. These were elements the majority had already voiced opposition to. (See Annex for countries’ opposition). He ignored the opposition expressed, and these elements were reiterated and elaborated upon in his second draft, and further fleshed out in the 26 October draft text for the Hong Kong Ministerial. A revised version of the draft is expected to be released this morning, also with the same elements included.

This process sidelines the positions that the majority of developing countries have articulated, and their opposition to the introduction of “complementary approaches”. These approaches would eliminate the current flexibilities developing countries have enshrined in the GATS negotiations. The flexibilities are an acknowledgement that in order to meet national development objectives, countries require time and must selectively and strategically regulate their liberalization process.

The WTO prides itself on being a rules-based organization. Yet here we have another example of the old saying: The rules of the game, known only to us, are subject to change without notification. And, according to Mike Waghorne from Public Services International, “we all know who the ‘us’ in that power-play is and in whose interests they are playing: playing with our services and futures”.

According to Chandra Patel of Seatini “We have noted with concern the new and undemocratic practice of the Chairmen of various negotiating Groups preparing drafts purporting to reflect negotiated consensus: in arrogating this right, the Chairmen have undermined the long established practice, wherein the negotiating groups as a whole exercise the right to adopt texts by consensus.

“We urge all developing country and other like-minded WTO members to reject the new practice of the various Chairmen (including the TNC and of the General Council) drafting and transmitting texts in their own capacities”.

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Annex

Members' Opposition to "Complementary Approaches" in the Council for Trade in Services

Antigua and Barbuda , Barbados, Jamaica, Dominica, Grenada, St Kitts and Nevis, and St Vincent and the Grenadines:

“The proposed new approaches would make it impossible for our domestic service suppliers to maintain their domestic markets. Such deep levels of liberalisation in more sub-sectors than we would rationally commit to would undermine our own development goals and objectives. As these proposals do not aim to facilitate the process of development for small developing countries, the result would be the “crowding out” of domestic suppliers. This issue is of significance to the countries particularly in light of the fact that 50% of the service firms in the group of countries employ less than five persons...

“The proposals require that all Members adopt a similar approach. They do not take into account the fact that small vulnerable countries such as those contributing to this statement are unable to undertake the same pace of liberalisation as larger developing countries....

“It is regrettable that in this development round, more attention is not being paid to ensuring that developing countries are actually the primary beneficiaries of the services negotiations, and not developed countries who already account for 80% of global services exports”.

African Group

The Group spelt out Article XIX.2 of the GATS on flexibilities for national policy objectives.

“Therefore it is the group’s view that pre-establishing anything quantitative and qualitative would go beyond, and in fact reduce the flexibility already inherent in the GATS provisions stipulated above. Such targets, by establishing a common benchmark would tend to harmonize the “development situation” of individual developing countries. This is an inaccurate measure as countries, even within a similar group have their own development objectives which would determine individual decisions regarding their GATS commitments.

“Furthermore, although the proposals claim to be complementary to the request-offer approach, which is recognized in paragraph 11 of the Negotiating Guidelines as the main method of negotiations, they in fact seek to replace the request-offer process and leave the latter to play an insignificant role. This is clearly inconsistent with the mandate in the negotiating guidelines.

“...they have also failed to show how they relate to achieving the main objectives of the GATS preamble. The preamble aims at promoting economic growth and development of developing countries. Moreover the proposals are contrary to the principles set out in the Doha Development Agenda which places Development at their top.

“From the African Group’s assessment, what is lacking in the GATS negotiations is not a binding formula but the requisite political will to make commitments. This is most true in the sectors and modes of interest to developing countries and Mode 4 in particular. In fact we are of the view that the proposals divert attention from this important issue ...”

ASEAN minus Singapore

“Each Member has scheduled its own limitations in one sector or subsector or another. We are currently allowed by the Agreement and the Guidelines to gradually and at our own pace liberalise our markets. And this opening up, usually takes place where and when it corresponds to domestic priorities...

“We also underscore the belief that services liberalisation should be accompanied by sound macro-economic management and appropriate regulation and supervision. While we fully recognize the benefits of an open market, our authorities continue to carefully consider the pace and sequencing of further liberalisation in sectors of mutual interest, together with a comprehensive review of our

existing regulatory regime in order to ensure the sustained soundness of our services sectors, particularly those relating to sensitive systems like financial services and telecoms, to name a few.

“We are concerned that these approaches may undermine such flexibility. A Member may be caught in situations where it has no choice but to undertake commitments prematurely to fulfill the targets. This may undermine the principle of progressive liberalisation.

“It is dangerous to request for an outright agreement on the desirability of complementary approaches before the design is fully fleshed out. It is comparable to asking for a blank cheque, and is disconcerting if viewed in the context of its being possibly extended to encompass future rounds of negotiations...”

LDCs

Citing LDC modalities, Rwanda, speaking on behalf of LDCs said, “...LDCs are to liberalise sectors in accordance with their development situation and needs. It is therefore our view that requiring LDCs to meet certain quantitative and qualitative targets is to ignore this flexibility...”

“In addition, many LDCs have not or are in the process of carrying out assessments and determining their services development plans which are key in determining the nature and scope of commitments. How then are the LDCs expected to determine the extent to which they can make commitments?”

“The LDCs are therefore in favour of respecting and maintaining the request/offer approach which allows Members to take into account the flexibilities granted to LDCs and other developing countries in the services negotiations”.

Indonesia

...“I would like to reiterate that some of the substance of the proposed complimentary approaches do not seem to take duly into account the urgent need to fully respect the architecture of the GATS, especially the specific provisions that grant flexibilities to developing countries like mine... It is difficult for my delegation, at this point, to consider any other approach that we think it would erode the flexibility for developing countries”

Notes:

1 “Statement on the Complementary Approach to GATS negotiations”, Council for Trade in Services Special Session - Informal Session, 22 September 2005, by Antigua and Barbuda, Barbados, Jamaica, Dominica, Grenada, St. Kitts and Nevis, and St Vincent and the Grenadines.

2 “Statement on Complementary Approaches and Intensification of the Request/Offer Approach”, Joint Statement of Brunei Darussalam, Indonesia, Malaysia, the Philippines and Thailand, CTS-SS, September 20 2005, delivered by Mr Manuel A.J. Teehankee, Ambassador and Permanent Representative of the Philippines to the WTO.

3 “Statement by the Delegation of Indonesia, SSCTS, 29 September 2005”.