

Eight days to Hong Kong

# The WTO: From Doha to Hong Kong Via Geneva (IV)

Thursday 8 December 2005, by [JENNAR Raoul Marc](#) (Date first published: 5 December 2005).

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## I. THE MINISTERIAL DECLARATION: SIX REASONS TO REJECT IT

On 26 November Pascal Lamy, the WTO Director-General, presented a draft of the ministerial declaration on which ministers from the 148 countries gathered in Hong Kong will be required to give their views.

The 25 EU Member States will be represented at ministerial level but only Commissioner Peter Mandelson will be able to enter into commitments on the Union's behalf. He will do so, however, after having consulted the European ministers, acting in legal terms as the Council, on the spot. Remember that all decisions taken in the WTO require consensus.

The draft ministerial declaration comprises a 53-point introduction and six documents in the form of annexes, on which there is certainly no consensus. Mr Lamy has acknowledged this. It is a matter of regret therefore that the 53 points in his text take the form of a document which is binding on the Ministerial Conference. It would have been more appropriate for Mr Lamy to have submitted to the Ministerial Conference a 'progress report' on the negotiations.

The draft ministerial declaration was presented to the delegation heads in Geneva. However, it aroused so much criticism that on 1 December Mr Lamy presented a revised draft. This paper refers to that revised draft.

Mr Lamy's text is unlike any other document of its type. On almost all of the chapters of the negotiating agenda agreed at Doha it describes the state of play in the negotiations and takes note thereof. The wording 'we take note' appears very frequently. The presentation is in line with the concern for a 'recalibration' of the ambitions of the 6<sup>th</sup> Ministerial Conference in order to avoid a failure on the specific proposals. There is one major exception: services. Annex C on services sets out a range of decisions to be adopted in Hong Kong.

It should be added that the absence of proposals also represents a choice, and hence an invitation to ministers to make that choice. Such is the case on the question of patents and access to medicines.

### **Reason 1 for rejecting the draft ministerial declaration.**

#### **I.1. DEVELOPMENT**

The documents on the Doha Agenda, like most of the statements by the principal negotiators and their supporters in governments and the media, all refer to the need, above all, to put development at the centre of the negotiations. Quite clearly, after four years of negotiations, it is mainly the development of the richest countries that they have in mind.

The economic theory of comparative advantage, unquestionably an article of faith for the WTO, is applied least of all when it comes to the countries of the South. By proposing linear free trade and a massive opening of markets, the West is denying these countries the benefits of their comparative advantages.

Europe's declarations of intent will change nothing. The celebrated 'Everything But Arms' initiative (see [www.urfig.org](http://www.urfig.org)) turned out to be more of a curse than a blessing, and hardly benefited the poorest countries at all. In fact, they lose out right across the board, particularly the African countries, which gain nothing on cotton, lose out on bananas and sugar and are refused access to essential medicines by the rich countries.

All the glib words about development in Mr Lamy's text no longer deceive those who are most affected, even if it continues to be the message from European governments, the political parties that support them and the press that serves them.

If we just think back to 2001, when the Doha Agenda was adopted, the developing countries' main concern was to redress the imbalance in the WTO agreements, in particular by changing the way they were implemented and through measures allowing for special and differentiated treatment depending on the country concerned. Today however, questions about implementation have simply disappeared, and there is precious little special and differentiated treatment. Instead, the focus of the negotiations has shifted to opening up the markets of the South to manufactures and services from the North. It seems the more they talk about development, the less they actually do.

## **Reason 2 for rejecting the draft ministerial declaration.**

### **I.2. AGRICULTURE**

Although the report claims to reflect all points of view, the way in which they are presented provides opportunity for compromises favouring the industrialised countries on questions of export subsidies, domestic support and market access.

Parallels are drawn between different levels of intervention, yet there is no indication that in one case the level of intervention is that applied in more than 50 countries whereas in another the situation applies to a single country. And as the report indicates that an agreement should be found halfway between the existing situations, that of one single country (the United States) is put on an equal footing with that of 50 countries, without it being made clear. The negotiating parameters are thus distorted in favour of the rich countries.

No solution is proposed on the question of cotton, and the text does not even mention the African Group's proposal. The promises made to the African countries in July 2004 have not been kept.

## **Reason 3 for rejecting the draft ministerial declaration.**

### **I.3. NAMA**

Of course, the report neglects to mention that the negotiations on non-agricultural market access were literally imposed on the developing countries when they did not even want them. Thus it ignores the debate that was held on the opportunity that such negotiations offered less

industrialised and emerging countries. It reduces the negotiations to a question of numbers, whereas in fact it is about a conflict between the heavily industrialised countries' desire to open new markets and the developing countries' concern to protect their nascent manufacturing sectors and raw materials. The report, however, talks about 'good progress' in the sectoral negotiations, although the African countries have so far refused even to begin those negotiations.

Furthermore, the report makes no mention of certain suggestions made by the South for modifying the rich countries' proposals on reducing tariff and non-tariff barriers, which are linear and give too little consideration to the respective development levels of the countries whose markets the industrialised countries want opened up.

In addition, although eloquent on the need to protect the interests of the Least Developed Countries (LDCs), the report fails to address their main expectations.

This report is totally unbalanced because it gives prominence to the negotiating terms which preoccupy the rich countries while ignoring the principal concerns of the developing countries. It creates the illusion of progress, whereas in fact the only gains are for the rich countries.

#### **Reason 4 for rejecting the draft ministerial declaration.**

##### **1.4. SERVICES (GATS)**

For five years the European Commission, backed by governments of both right and left, has been calling for a 'substantial and significant' implementation of the General Agreement on Trade in Services (GATS), which would cause fundamental upheaval to a huge range of everyday activities and call into question the exercise of basic social rights.

Services cover a multitude of activities which the WTO groups together in 12 sectors and 163 subsectors. No service activity has escaped the attention of the GATS: not social services, not health services, not education, not culture, not transport, not environmental services (including water management).

Let us not forget that the GATS applies to the standards laid down by national, regional and local authorities for all service activities, whether performed by the public sector, the private sector or by private service providers carrying out general interest tasks subsidised by the public authorities. Contrary to the assertions of neoliberals on both the right and the left, the GATS does not regulate service activities, it deregulates them in order to set them in competition with each other. And this deregulation is on such a scale that eventually only private companies of international dimension will survive, and only in highly profitable sectors. In itself the GATS is an instrument of a blueprint for society.

An ambition of this nature cannot be realised from one day to the next. Consequently, it was planned that GATS implementation would be subject to a series of successive negotiations. Thus far, however, the first negotiations in that series have yet to be concluded, which is obviously why many people, notably on the left of the political spectrum and the trade-union movement, are paying little attention to this issue and are ignoring the positions adopted by the EU ahead of the WTO negotiations.

Yet the effects of the GATS are plain to see in countries where, under pressure from the International Monetary Fund and the World Bank, it has been applied ahead of time. In South America the railways, the most environmentally sound and least expensive of all means of transport, are in the process of disappearing at the expense of road transport. In many African countries water distribution has been taken over by European private-sector firms, with the result - in the name of

profitability - that the price of water has risen, the quality has fallen and distribution is limited to urban centres. European firms are charging more for water in Africa than in Europe!

Having been the first to experience, in advance, how damaging the GATS is, it is the developing countries which are now most opposed to its implementation, which explains why the negotiations are progressing so slowly. Despite intense pressure from employers' associations on Western governments, particularly those in the EU, despite the aggressive approach taken by European negotiators in the WTO and despite the use of practices which are an insult to the most basic democratic procedures, the overwhelming majority of southern countries have, through a tactic of inertia, quietly resisted.

### **Flexibility under threat**

This was done in full conformity with the terms of the GATS. In the GATS negotiations, during the Uruguay Round, an agreement was reached on the arrangements for its implementation. They reluctantly accepted this agreement, and in doing so made a huge concession to the rich countries. In exchange, provisions were incorporated into the text allowing each country the freedom to decide which service activities it would apply the GATS to, when and to what extent. Thus, in its preamble, the GATS recognises 'the right of Members to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives', while Article XIX provides that 'the process of liberalisation shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors'. Added to these principles, which concern all countries, in the North and the South, is the following clarification: 'There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalising fewer types of transactions, progressively extending market access in line with their development situation ...'. These provisions gave rise to the concept of 'positive lists', meaning lists of services to which the GATS applies and which are drawn up voluntarily and freely by each country.

However, ever since the current negotiations began in 2000, the rich countries (EU, USA, Japan) have sought to challenge this flexibility. At the same time, in Europe, representatives of the European Commission and EU governments have responded to our criticisms with soothing words, emphasising this concept of 'positive lists'. Nevertheless, since an overwhelming majority of countries opposed any broad application of the GATS, at the Doha Ministerial Conference in 2001, in the very specific post-9/11 context, the European Union managed to impose a new methodology: the mechanism of requests and offers. Every member country has to submit to every other member country a list of services to which it wishes to see the GATS applied. And every country has to present a list of services to which it is prepared to apply the GATS at home.

None of the deadlines set for this procedure have been met by the developing countries. Some emerging countries have made offers of modest quantity and limited intensity. And the European Union, which had been expecting 'substantial and significant' offers, was the first to express its 'disappointment'. At the Cancun conference in 2003 the EU governments spelt out the Commission's mandate by supporting a European proposal seeking to 'oblige' each country to present offers. Since Cancun this European position has been maintained and further clarified.

### **Changing the GATS in order to impose it**

With the agreement of the 25 EU governments, the Commission has once again proposed changing the methodology for implementing the GATS. Without proposing any amendments to the text, it is removing the flexibility contained within it.

With a view to obtaining 'substantial' offers, the EU has put forward a proposal requiring each industrialised country to apply the GATS to 139 of the 163 subsectors and each developing country to apply it to 93 subsectors.

And in order to ensure that the offers are 'significant', the EU, with the support of Japan, has called for the opening of a sector to be accompanied by 'qualitative parameters' for each of the four modes of service supply.

When the service is supplied abroad without involving the presence of the supplier (mode 1) it will not be possible to change the current degree of openness or require any presence on the part of the supplier in the country where the service is supplied. Where a consumer in one country makes use of a service in another country (mode 2) it will not be possible to impose any limits. When the supplier of a service invests in a foreign country (mode 3) it will have to be possible for that supplier to hold 51% of the equity in the company which is established, thereby making it impossible to treat national and foreign firms differently. With the support of India, the EU has called for investors no longer to be bound by the obligation that their investments must comply with a given legal framework. On the question of the movement of natural persons (mode 4), the EU, again with Indian support, has proposed greater flexibility regarding the temporary admission of foreign personnel.

Furthermore, seeking to bypass the developing countries' resistance and having obtained the go-ahead from the Member States' governments on 6 September in Committee 133, the EU has proposed the opening of plurilateral negotiations, i.e. negotiations between countries which wish to apply the GATS to an even larger number of services and with an even greater intensity. The declared objective is to dismantle the obstacles to market access among the countries participating in the negotiation for all of the subsectors covered by mode 3 (investment).

It is quite clear that the EU proposals, which include provisions from the Bolkestein proposal, remove all flexibility as far as implementing the GATS is concerned.

With Annex C of the draft ministerial declaration, the revised version of which is unchanged from the original version, the EU's wishes as regards the general orientations for GATS implementation and the changes in methodology to achieve them are very largely satisfied. While some of the figures have not been incorporated (much to the dismay of the Commission, which had hoped to introduce them), the precise wording and the explicit reference to work performed in the context of the Council for Trade in Services leave no doubt about the radical nature of the GATS implementation if this text had to be adopted. The proposed plurilateral negotiations would force countries to which requests have been submitted to take part in them. And under the most-favoured-nation principle - it is proposed that exceptions to MFN should be abolished - once a plurilateral agreement is concluded all it will need is for it to be 'multilateralised'. The tactics are clear.

An overwhelming majority of countries have rejected the European, now WTO, proposals. The countries of Africa, the Caribbean and the Pacific and many countries in Asia and Latin America have indicated their rejection of quantitative and qualitative objectives, objectives relating to the mode of supply and sectors, and of the provisions authorising plurilateral negotiations. They have called for Annex C to be 'recalibrated' as well in order to reflect the continuing disagreements.

The status of Annex C was the focus of debate in the General Council on 2 December, where, in a concession to the developing countries, the reference to Annex C in the actual text of the ministerial declaration was put in square brackets to signify that no agreement had been reached on it. Nevertheless, the declaration still states (point 21) that the aim of the negotiations to take place in 2006 will be to increase the quantity and quality of commitments.

On the eve of Hong Kong, we have four possible scenarios:

- (a) the rich countries, led by the European Union, will attempt to have the brackets enclosing the reference in the text to Annex C removed, which would mean that it would be part of the basic negotiating document;
- (b) the developing countries will seek to have point 21 removed;
- (c) if Annex C is re-established as a negotiating basis, certain countries will seek to amend it;
- d) certain countries will submit a completely new Annex C.

There is no doubt that for the first time the GATS issue will figure prominently in the debate at a WTO ministerial conference. And it is an issue which could turn out to be as explosive in Hong Kong as investment was in Cancun if, as they did in Mexico, the Europeans display the same arrogance and the same obstinacy.

### **Reason 5 for rejecting the draft ministerial declaration.**

#### **I.5. INTELLECTUAL PROPERTY RIGHTS AND HEALTH**

The draft declaration reaffirms the importance attached to the decision of 30 August 2003 on the possibility of importing generic medicines.

There is no need to go back over what I wrote in Part III on 14 November. The developing countries continue to call for a revision of the TRIPS Agreement in order to allow them to access essential medicines, since they have established that the 2003 decision is inapplicable. The only modification of the TRIPS Agreement acceptable to the Europeans and the Americans is for the provisions of the 2003 decision to be integrated into it (with the accompanying restrictive interpretative declaration for the US, and without for the EU). This amounts to a blunt refusal by the West to accept the need for effective access to medicines.

Thousands will continue to die every day because they are unable to get treatment as a result of decisions taken by West. The 25 EU governments which support this position, put forward by the Barroso Commission, can rightly be accused, along with the US and Swiss governments, of complicity in a crime against humanity.

### **Reason 6 for rejecting the draft ministerial declaration.**

#### **I.6. TOWARDS HONG KONG**

Two types of meeting are being held simultaneously to examine the draft ministerial declaration: regular meetings which all the member countries can attend but at which there are no negotiations, and informal meetings where the EU, the US, Japan and twenty or so other countries negotiate under the aegis of the Director General.

This coming week is the last in which the revised text of the draft ministerial declaration can still be amended before the conference starts.

## **II. IN THE EUROPEAN PARLIAMENT**

In the run-up to the Hong Kong conference the European Parliament has organised a debate. As is

the custom a resolution is adopted to conclude the debate, even if it has barely any influence on the Commission and the Council of Ministers. To this end, each political group draws up its own draft resolution. And as no group has an absolute majority, the next stage consists of negotiations among the groups to arrive at a negotiated text which has as much support as possible.

The Socialist group had the choice of negotiating either on the left, with the European United Left/Nordic Green Left (GUE/NGL) and the Greens, or on the right, with the EPP (British Conservatives, Christian Democrats and the UMP), ALDE (Liberals, including the UDF) and the Union for Europe of the Nations (an ultranationalist group including a number of fascists). The Socialists opted for the right, negotiating a very neoliberal text, one of whose signatories is French MEP Harlem Désir (document of 28 November 2005).

It includes the following statement: 'Global growth, development and employment have improved significantly thanks to the multilateral trade system of the WTO', which is at odds with every independent study carried out. Consequently, the text supports all the decisions taken in the WTO, often at the initiative of the European Commission, backed by the 25 EU governments.

In their joint draft resolution, the Socialists, with the Liberals, the right and the far right, set out the following points of view:

(a) Using phrases entirely consistent with the doublespeak of the European Commission and the WTO, the friends of Pascal Lamy, expediently allied with conservatives from right across Europe and with the far right, state that an agreement on the negotiating agenda agreed at Doha in 2001 [which was thoroughly biased towards the richest countries] would 'help employment, growth and security in Europe while offering new opportunities for European exporters in an open global economy and helping to create a more stable world'. What nonsense! Since when has free trade brought about greater equality between peoples, more justice within each country and greater prosperity for all? Only by meeting these demands can we ensure security and stability, yet they are demands which the Socialists have totally abandoned.

If the Doha negotiating agenda was so beneficial, why then, for the past four years, has it aroused such opposition, to the extent that none of the points on the agenda have led to an agreement?

(b) They express their support for the EU's common agricultural policy (CAP) when it is recognised that the CAP is at the origin of the loss of hundreds of thousands of rural jobs, serious health crises and major ecological damage, without even having given us full self-sufficiency in food (the EU is a net importer of oilseeds). At the same time they sing the praises of multifunctional agriculture, which should provide high-quality food while protecting the environment and rural jobs. No one is fooled by this doublespeak any longer.

(c) They call for the negotiations on the opening of markets in manufactures and raw materials - which the developing countries never asked for and which have been imposed upon them - to be 'accelerated as fast as possible'; and they repeat the mantra that 'trade barriers are an obstacle to sustainable development'. Totally ignoring the fact that customs duties are one of the principal resources of the southern countries, those who claim to be Socialists are supporting, together with the mouthpieces of big business, the most neocolonial of negotiations. When the concept of development is taken to mean the dominance by northern firms of southern countries, it is understandable that the rich countries want that development to be sustainable and consider any resistance to be detrimental to its sustainability.

(d) They stress the need for the Hong Kong conference to 'lead to an ambitious agreement on services' which will open up markets for European firms, while conceding that it should not apply to

health, education and culture. Yet in contradiction to all the commitments given in the WTO, they are demanding full reciprocity between the opening of markets in Europe and in the South. They support the GATS amendment which the EU is calling for in order to force implementation on those countries which have so far refused.

(e) They call for a 'permanent solution' on access to essential medicines, without indicating what such a solution might involve, when the European Commission is intending to impose as a 'permanent solution' the 2003 decision which has turned out to be impracticable.

(f) In a remarkable call for voluntary servitude, they stress the 'importance of public and political support for the WTO system', while proposing reforms without giving any indication as to their direction or content. A fine example of 'token socialism'.

The alliance formed around this text by Socialists, Liberals, right and far right has made it possible to cobble together a compromise which is sure to obtain a majority. So that is the text which will express the European Parliament's views. It is not much to shout about. From one compromise to the next, little by little the social democrats are abandoning the people they claim to represent.

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