

# The WTO: From Doha to Hong Kong via Geneva (I)

Wednesday 7 September 2005, by [JENNAR Raoul Marc](#) (Date first published: 20 July 2005).

**First note published under the same title on the preparation of the Hong Kong WTO Conference, in December 2005.**

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## 1. The Doha Agenda (2001)

At the WTO's 4<sup>th</sup> Ministerial Conference in Doha in November 2001 the industrialised countries, particularly the EU and USA, successfully initiated a round of international trade talks which they christened the 'Doha Development Agenda' - a round of negotiations which made many references to development issues but was designed essentially to meet the expectations of the wealthy nations.

This success, after the failure in Seattle, was partly driven by circumstance: the Conference took place just a few weeks after 11 September, at the time of the invasion of Afghanistan. Robert B Zoellick, the US Trade Representative, and his French socialist colleague, Pascal Lamy, the EU Trade Commissioner, repeatedly claimed that an agreement in Doha would help to strengthen the coalition against terror. In other words, blocking an agreement would mean fostering terrorism! No delegation of the South was prepared to risk being accused of that, as I myself can testify.

Subsequent talks under the Doha Agenda have not yielded results on any of the issues, apart from a decision on pharmaceutical products dated 30 August 2003, which has proved unworkable in practice.

## 2. Deadlock in Cancún (2003)

The 5<sup>th</sup> Ministerial Conference in September, in Cancún, saw the countries of the South forming groups on specific issues to express their opposition to the US-European proposals. No agreement was reached at the conference.

### **3. The 'July package' (2004)**

Following intense pressure on the most recalcitrant countries of the South throughout the first half of 2004, and following too the agreement by Brazil and India to take part alongside Australia, the USA and the European Union in the work of an informal negotiating group known as FIPS (Five Interested Parties), where all they did was pursue their own interests, agreement was reached at the end of July, at a meeting of the WTO's General Council, on a more narrowly focused framework for negotiations (the 'July package', WTO document WT/L/579 of 2 August 2004). In fact, whilst that document touches on virtually all the items of the Doha Agenda, it reflects a clear wish for discussion of three issues in particular:

#### **- Agriculture**

There are four groups of countries here, each with their own specific position:

- a) European Union and USA: this group is happy to accept formulas entailing no commitment at all to abolish export subsidies and production aids, but insists that other countries must open up their markets fully;
- b) Cairns Group (major agricultural exporters and keenly in favour of free trade): these countries want all markets to be opened up and all support policies to be abolished;
- c) countries of the South with no export capability, which are net importers of food and whose local productions (cotton, for example) are in direct competition with agricultural products from the EU/USA: these countries want EU/US markets to be opened up, an end to EU/US support policies and a guaranteed level of protection for their own products;
- d) a number of countries with a growing export capability (India, Brazil): these make eclectic choices calculated to favour a fledgling agri-business sector.

The talks centre on three 'pillars':

- market access, that is to say the level of customs duties and import quotas;
- export subsidies;
- direct support to farmers.

#### **- Non-agricultural market access (NAMA):**

The aim is to abolish customs duties, reduce or eliminate tariff peaks, high duties and tariff escalation, together with non-tariff barriers to non-agricultural products, namely manufactured goods, but also natural resources. A single, non-linear formula would be used. All the industrialised countries are pressing hard for this, in the face of opposition chiefly from those countries which receive most of their earnings from customs duties and their own natural resources and which are afraid of competition which will destroy their own industrial capability.

The debate centres chiefly on which formula to adopt in order to cut customs tariffs. One of these, the 'Swiss formula', has the effect of targeting those countries with a high average customs tariff, without taking into consideration the customs features specific to each country, so that it is primarily the developing countries which are targeted. This formula is endorsed by the industrialised countries even though in the course of their own industrialisation they did precisely the opposite: they put customs duties up to protect certain home-produced goods and down when they wanted easier entry for products they needed. They continue to practise this flexibility, but are now denying it to the countries of the South.

## **- Services:**

The objective is that each country should submit liberalisation offers 'as soon as possible', but by the end of 2003 only forty (of the 148) countries had done so. A deadline of May 2005 was set for evaluating proposals. It was also hoped that the talks on disciplines ('regulation' which may no longer be more burdensome than necessary and trade-distorting export subsidies) would also be completed by the end of 2005.

Talks on the other items of the Doha Agenda are continuing, obviously. But they are directly influenced by progress or lack of it on the three main issues.

## **4. Towards the General Council of July 2005**

Talks are ongoing in Geneva in the relevant negotiating groups. Work proceeds with encouragement and direction from two quarters - the WTO's Director-General (Supachai Panitchpakdi up to 31 August, Pascal Lamy from 1 September) and the Chairperson of the General Council (of ambassadors to the WTO), Amina Chawahir Mohamed (Kenya).

Numerous informal meetings, involving different countries depending on the issues addressed, are held in tandem with regular negotiating group meetings.

Specific-issue meetings have also been held by a limited number of ministers (25 to 30, chosen by the USA and EU):

- on the fringe of the World Economic Forum in Davos, 29 January;
- in Mombasa (Kenya), 2-4 March;
- on the fringe of an OECD meeting in Paris, 5 May;
- in Dalian (China), 12-13 July.

It should be noted that these 'mini-ministerial meetings' have no official standing; there is no provision for them in the Agreement establishing the WTO and countries not invited to attend have no entitlement to do so. But established custom, led by the industrialised countries, has given these gatherings the status of decision-making meetings.

Comments made after the Dalian meeting show that expectations of concrete conclusions to be laid before the General Council of 27-29 July have declined, though talks on agriculture and NAMA are still scheduled to take place before the General Council meeting.

It would appear that at their Dalian meeting the ministers were preparing the ground to present the 6<sup>th</sup> Ministerial Conference as an intermediate stage in the Doha Round. Item 45 of the Ministerial Declaration states that 'The negotiations to be pursued under the terms of this declaration shall be concluded not later than 1 January 2005'. Following the failed talks in Cancún an extension to the end of 2005, i.e. the 6<sup>th</sup> Ministerial Conference, had been accepted as inevitable. In Dalian the ministers confirmed that the completion date for talks under the Doha Agenda was being put back to the end of 2006.

In the run-up to a General Council meeting designed to review progress achieved and, maybe, register areas of agreement, an examination of work in progress on the three main issues reveals the following:

**AGRICULTURE** (group chairman: Ambassador Tim Groser, New Zealand):

Agreement was reached at the mini-ministerial meeting in Paris on a highly technical question: how to convert specific duties (amount per tonne imported) into their ad valorem equivalents or AVEs (percentage tariffs - a percentage of the price per tonne imported). This question is fundamental to the first pillar, the aim being to find a workable formula for cutting customs tariffs (still to be negotiated) which takes account of different product categories. The agreement gave fresh impetus to talks which had been totally stalled for seven months.

The core members of the group are the FIPS countries, which are joined by other countries at the invitation of Chairman Groser. The issues under discussion are as follows:

- formula for cutting customs tariffs on agricultural products: the USA and Cairns Group countries want a formula which produces steep cuts; the EU, India and a group of ten countries prefer a formula based on average percentages, which produces more gently tiered cuts; Canada and China are proposing a compromise formula. No agreement to date;
- sensitive products and special safeguards: compilation of a list of products associated with a specific tariff-cutting formula which takes account of the category to which the country belongs. No agreement.

No agreement either on what belongs in the 'Green Box', food aid, domestic support.

I will provide a full analysis of the agricultural talks as a whole after the General Council meeting.

**NAMA** (group chairman: Stefán Jóhannesson, Iceland):

Together with services, this is the issue on which the USA and EU, in return for their pledges on agriculture, are demanding concrete and immediate concessions from the countries of the South.

Talks are centred on the Swiss formula. The wealthy nations, headed by the USA, want this to be applied across the board, whilst other countries such as Argentina, Brazil and India are opposed to this, suggesting instead another linear approach known as 'the ABI formula'. This incorporates the country's average tariffs into the equation and thus eliminates tariff peaks, especially in countries where these are high (developing countries). It takes account of each country's individual needs and is best suited to the objective pursued: eliminating tariff peaks. It is consistent with the official concern for special and differential treatment for developing countries.

The ABI formula was strongly opposed by the USA, EU, Canada, Korea, Japan and New Zealand. The other countries are divided between the two proposals. Kenya, on behalf of the African Group, rejected the Swiss formula.

The EU put forward a proposal to cut and then abolish the export charges levied in a large number of countries.

Chairman Jóhannesson decided that there was consensus on the Swiss formula!

**SERVICES** (group chairman: Alejandro Jara, Chile):

Of all the talks at WTO level, those on services are the least transparent, the least democratic and the most directly influenced by pressure groups. Three subjects emerge from these talks: offers, disciplines and Mode 4.

a) Offers: The Dalian meeting would have agreed to put back the deadline for submitting improved offers to 2006, but the European Commission challenged a number of points relating to the timetable in the final communiqué.

As of 27 June 68 countries (if we consider the EU as a single customs territory, in line with the WTO definition of a state) have submitted initial offers. Revised (expanded) offers have been submitted by 25 countries, including 11 developing countries.

Pressure from the EU is enormous. It is backed by the USA, Canada and Switzerland. Having - very quietly - upped its own requests and offers, for the second time since the talks began, the EU has suggested that the methods employed in these talks be changed.

In November 2001 it had proposed a system of requests and offers. But this did not yield the hoped-for results. Only the industrialised countries put forward significant offers. The other WTO members either made no offers of liberalisation or submitted offers which were few in number and did not go very far.

In June 2005 the EU suggested a system of 'benchmarks': each country would be required to give a minimum number of quality commitments (degree of liberalisation) and quantitative commitments (number of subsectors committed).

The European Commission, in a 'non paper' deposited in Geneva on 24 June, has just unilaterally changed the term benchmarks to common baseline for the talks. It gave a definition which enlarges on the assent given by the EU's Council of Ministers on 15 June. Henceforth every country will have a twofold commitment to:

- make offers in a minimum number of sectors/subsectors from an agreed list;
- indicate, for each sector or subsector committed, a minimum degree of liberalisation in each of the four modes of service provision, this minimum degree being stipulated for each sector.

If the WTO were to adopt this European Commission proposal, sectors or subsectors on the WTO's minimum list but not currently on the list of European offers (I am thinking of culture and audiovisual, where it would be naïve to suppose that the USA will not include these on the minimum list) or which are on it but with exemptions (to Mode 3, for example, which allows restrictions on foreign ownership of companies), the Commission would be in a position of strength to make the EU Member States extend their offers further to accommodate new WTO decisions which were the Commission's own brainchild!

What the European Commission is actually trying to achieve is the removal of all the flexibilities allowed for in the GATS (right of countries not to apply the GATS to a given sector or to apply it only partially; special flexibilities for developing countries). It wants to eliminate the concept of the 'positive list'. Incidentally, this is also one of the things the Bolkestein directive is aiming at for Europe.

b) Disciplines: the talks on this are concerned with practice in regard to government procurement, domestic regulation (conditions relating to quality, procedure, licensing, technical standards), subsidies and national safeguards (a GATT mechanism whereby markets can be closed when import volumes lead to negative effects). Most of the progress in the talks has been on domestic regulation, the industrialised countries being keen to reduce restrictions on their investors. NAFTA has been the model here. As we know, as a result of this free trade agreement, laws to protect populations or the environment adopted after the entry into force of NAFTA are tantamount to 'expropriation orders'. The USA has also suggested that a country should be able to block the entry into force of a domestic law on the grounds that it constitutes a non-tariff barrier and should be able to refer the case to the WTO's Dispute Settlement Body. A number of developing countries, on the other hand, have called for reaffirmation of every country's right to regulate and decide the universal service obligations it wishes to impose.

c) Mode 4 (movement of physical persons): here the developing countries believe that the issue is

not the low level of the offers they themselves have made, but the low level of the European offers. The developing countries very much want to see progress here, whilst the USA is extremely reluctant (Congress is hostile to any relaxing of the rules). The countries of the South hope to see an opening up of markets for skilled and highly skilled occupations (professional services). The EU has explicitly presented the proposed Bolkestein directive as a positive step here.

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Major sticking points remain on each of the issues. The countries of the South may be less united than in Cancún, but they continue to resist. 'Actually, there is disagreement on almost every issue,' as one diplomat remarked after Dalian. So the likely probability is that the negotiating group chairmen will confine themselves, at the General Council, to presenting progress reports, without outlining solutions agreed within their groups.

## **Recommendations**

As far as the Europeans are concerned, one fact is inescapable: Peter Mandelson, the Blairite Trade Commissioner, is cast in the same mould as his predecessors Leon Brittan and Pascal Lamy. This is a matter of personal conviction ('we are all "Thatcherite" now', he wrote in The Times of 10 June 2002), but also because he has the unwavering support of the 25 governments for full-scale liberalisation.

This means that future action in the context of WTO talks requires a challenge to the mandate given to the Trade Commissioner by the governments. That mandate was adopted in 1999, before Seattle, broadly confirmed in December 2003 after Cancún and redefined on 15 June last. It is a mandate which reflects the expectations of the multinationals.

After the failures in Seattle and Cancún, after the objections to the European proposals which the countries of the South have been spelling out and repeating for years, at a time when - just as in the run-up to Cancún - talks on all the issues are generally stalled, something which is largely the fault of the Europeans' obstinacy, the European Union needs to reassess its negotiating position and realise that its negotiator's mandate is no longer appropriate.

As a matter of urgency the European Union must stop telling the countries of the South what course they should follow to further their development, a course which only serves the interests of the European capitalists.

As a matter of urgency the European Union must now allow these countries to choose their own criteria for development.

A rethink of the European mandate along these lines would, in the immediate future, make the European Union the upholder of an impartial process and promoter of democratic practices, with demands in particular for:

- a precise timetable for the issues to be discussed between now and Hong Kong, using methods which are global and transparent and which include all the Member States;
- renunciation of the practice of pre-agreed texts drawn up in a restricted forum and then presented on a take-it-or-leave-it basis;
- renunciation of the practice of accusing those who reject the industrialised countries' proposals of

seeking to torpedo the Doha Agenda or being unwilling to back the fight against terrorism;

- a balance of the subjects under discussion, with a parallel approach whereby any demand by the industrialised countries is discussed at the same time as a demand of equal importance made by the countries of the South.

A rethink of the European mandate along these lines should, in essence, stop the European negotiator from asking the developing countries to do what the European Union is not prepared to do itself, particularly in the areas of agriculture, non-agricultural market access (NAMA) and services. The European negotiator should support the principle of abolishing all subsidies to cotton production and exports.

A new European mandate should include promotion of the idea of food sovereignty so that each nation is free to decide how it becomes self-sufficient in food.

A new European mandate should call for revision of the TRIPS Agreement, to prevent all forms of biopiracy, stop the use of patents resulting in the production of GMOs and ensure that people can have access to all the therapeutic drugs they need.

Lastly, any rethink of the European mandate should include a demand for renegotiation of the GATS, including a definition of public services and their exclusion from all trade agreements. In any event the EU must insist that health, education, culture (including audiovisual) and the environment (including water management) are excluded from the classification of services to which the GATS applies.

These are the demands to be made of every government and of the European Commission.