# Are the WTO talks in trouble? Don't bet on it

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### What is the actual "state of play" in Geneva?

Civil society groups that regard the coming WTO Ministerial in Hong Kong as condemned to producing a deal that can only be detrimental to the interests of developing countries were cheered by the failure of the recent World Trade Organization (WTO) General Council meeting in late July to arrive at substantive agreements in any of the critical areas of negotiations: agriculture, non-agricultural products, and services.

Indeed, most observers, including the media, have largely characterized the inability to produce the "July Approximations" as a significant setback to securing a successful ministerial in Hong Kong in December. The statements of key WTO players appear to lend weight to this. Outgoing Director General Supachai Panitchpakdi's remark that the state of the talks was "disappointing but not disastrous" was taken by some to be, in fact, a rather euphemistic assessment to mask a really gloomy state of affairs. So was the statement of General Council Chairperson Ambassador Amina Mohamad of Kenya that "there is not a 'crisis' in the negotiations-we need not press the panic button."

One has the strong suspicion, however, that these statements are less descriptions of the actual state of play of the negotiations than rhetorical exhortations to spur delegates to hurry up in what is, in fact, a process that has gone beyond stalemate.

It is certainly a relief that the July Approximations could not be put together. But how much of a setback was it? Are the delegations, in fact, really that far apart at this point?

Certainly, in the areas of interest to developing countries, such as special and differential treatment (SDT) and implementation, there has been hardly any movement. Special and differential treatment, for instance, can't move because of the European Union's (EU) intransigent position that any progress in the talks is contingent on agreement from the developing country bloc that the more advanced developing economies such as India and China must be graduated from the ranks of those qualified for SDT treatment. Most developing countries see this as mainly a feint to divide them against one another in order to eliminate SDT as an operative principle in the WTO.

## Mode 4: a dealmaker?

But there is worrisome movement in the other areas, those in which developed countries have a lot of interest. Take services. Much has been made recently about developing country resistance to the European Union's proposal of "benchmarking"-that is, to create quantitative and qualitative criteria of genuine and significant market opening that services requests would have to meet to be valid offers. Yet the numbers seem to be telling a different story about developing country positions. There are now some 70 initial offers representing 95 member countries and around 30 revised offers on the table-certainly a big leap from the 47 countries that had made offers at the beginning of this year. Developed country governments have been dismissive, saying that a substantial number of these offers were not significant in terms of significant market openings, but that is largely a negotiating ploy. What is more likely is that some of the developing countries making offers are saying they want to deal, but they won't really show their cards until the developed countries make serious gestures, such as on the so-called Mode 4 of the General Agreement on Trade in Services (GATS), which pertains to the movement of natural persons.

For instance, India, a significant exporter of labor to northern countries, apparently sees Mode 4 as the centerpiece of its overall negotiating strategy, and Mode 4 concessions by the EU and the United States in the form of more liberal entry and stay of skilled labor are likely to make the government more pliable in the negotiations in agriculture and industrial tariffs. As Focus on the Global South analyst Benny Kuruvilla notes, "India's demands on Mode 4 are actually quite tame - it's happy if the US binds its existing commitments in the H-1 B working visa category. There is a real danger that the US might hold on for a while, then give in, at which point India will only be to happy to compromise on other issues."

But India is not the only country with an inordinate interest in Mode 4 liberalization. Other significant labor exporting countries such as the Philippines and Bangladesh see Mode 4 concessions by the US and EU as important and with likely implications on their positions on other issues.

The US official line at this point is that it does not have much flexibility when it comes to Mode 4, a statement that is partly meant for domestic consumption owing to strong anti-immigrant sentiment in the country. But this is largely a negotiating position since, as services expert Tony Clarke of Polaris Institute puts it, "there's no question that the US and EU want to operationalize Mode 4 because of the interest of their client corporations to maximize cheap labor opportunities. Indeed, the US Coalition of Service Industries is lobbying Washington hard to liberalize the entry of skilled labor. For all these reasons, warns Clarke,"Mode 4 could turn out to be either the 'dealmaker' or the 'dealbreaker.'"

## No movement in NAMA?

Is there really no movement in the area of Non-Agricultural Market Access (NAMA)? Again, as in services, on the surface the negotiations appear to have been marked by loud disagreements over formulas for tariff cuts, the issue of binding tariffs, and the application of the principles of less than full reciprocity and special and differential treatment. However, if we look more closely, there are disturbing signs of a convergence occurring:

**-** despite much initial grumbling after the 2004 July Framework deal, the developing countries have accepted the "Derbez text", which they rejected in Cancun, as the basis of negotiations, as proposed by the Framework;
**-** there is now consensus on a non-linear Swiss or Swiss-like formula for tariff reduction, which

would apply to all products and subject higher tariffs to greater proportional cuts than lower tariffs, thus disadvantaging many developing countries, which maintain relatively higher tariffs on many key industrial goods than developed countries. A Uruguay Round formula, which would stipulate an average tariff cut across industry but leave it up to national authorities to determine the rate for particular products, is not even in discussion, although developing countries, confronted with a choice, would see it as less objectionable than the Swiss formula.

The developed countries have been notably unsympathetic to developing country positions that would preserve a significant degree of industrial protection by appealing to the principles of "less than full reciprocity" and "special and differential treatment" owing to different stages of economic development. Thus the developing countries have been forced to increasingly narrow their defensive tactics mainly to proposing the best non-linear formula that would reduce, rather than substantially avoid, the impact of a comprehensive liberalization of industry. The latest formula to emerge is the so-called Pakistani "compromise" which would factor into the formula the average bound tariff rate, then run a coefficient of six for developed countries and 30 for developing countries. This would, according to the Pakistani proponents, significantly bring down product tariffs for everybody (a developed country concern), harmonize tariffs within each grouping (a WTO objective), and still preserve at least some of the difference in average tariff levels between the developed and developing country groupings (a developing country concern).

Some developing countries, of course, continue to hold that, aside from the tariff cutting formula, the less than full reciprocity and SDT principles should also determine the rate of tariff liberalization for developing countries, but it seems that the momentum now is towards coming to a consensus on the coefficients of a formula. It is likely that the Pakistani proposal—which nobody rejected outright, though some industrialized countries like the US complained that the gap between the coefficients for developed and developing countries were too wide—or something like it will become the basis of the NAMA talks when they resume in September. As an analyst who has followed the NAMA negotiations closely reports, "According to some people in Geneva, the Pakistani proposal has made it more likely that the negotiations will now be only about different coefficients within a simple Swiss formula, not other types of formula or broader alternatives. This would bring everyone closer to an agreement, but still there would be much to negotiate, since developing countries would be calling for much greater difference between coefficients than the US and EU would like to allow."

In any event, it was more than just spin when US Deputy Trade Representative Peter Allgeier issued the following upbeat statement on July 28: "The path ahead on NAMA is much clearer, given the work that has been done in the past several weeks...Several constructive ideas are on the table. There have been signals of flexibility from all sides about finding the right formula and the use of coefficients to realize real market access opportunities. We need quickly in September to turn these signals of convergence into compromises that work for all."

## Agriculture: disquieting developments

Agriculture, however, is the key to either progress or unraveling. Without movement in the agricultural negotiations, movement in the other areas won't translate into a successful liberalization package in Hong Kong.

On domestic subsidies — one of the Agreement of Agriculture's three "pillars," along with export competition and market access - there is hardly any movement. Efforts to reform the "Blue Box" "and"Green Box,"which refer to categories of production subsidies exempted from cuts under the AoA, have failed owing to opposition from the EU and US. The US is, in fact, seeking to expand

the”Blue Box“to accommodate a considerable portion of the $190 billion in subsidies legislated under the US Farm Bill of 2002. This has given EU Trade Commissioner Peter Mandelson an opportunity to seize the high ground with his position that the US should take the initiative in cutting subsidies since although the level of farm support is currently higher in the EU, it is falling while that of the US is”unreformed“and”rising as a result of President Bush’s farm bill and of course unreformed." But this is case of the pot calling the kettle black since the EU has no intention of reducing its own subsidies channeled though either the Blue Box or the Green Box.

Other troublesome issues remain unresolved, among them the Group of 33’s demand for a positive list of “Special Products” (SPs) or commodities that would be exempted from significant tariff reduction and its proposal for “Special Safeguard Mechanisms” (SSMs) that would allow developing countries to raise tariffs to protect themselves from dumping. (See article below for more details of the WTO “groups”.)

Unfortunately, however, there is movement in the two other pillars of the negotiations: export competition and market access.

On the export competition “pillar” of the negotiations, the key outstanding issue for many countries is the date and schedule of the EU’s promised phase out of its export subsidies-an item with ominous possibilities, as we shall show below.

Moreover, at the WTO “mini-ministerial” meeting in Dalian, China, on July 12-13, the Group of 20 developing countries tabled a proposal that has struck some as providing the basis for a breakthrough in the market access area of agricultural liberalization. The G20 proposal would divide the countries of the world into five bands, with each band assigned different rates of tariff liberalization. All products in every band would be subjected to uniform rates of reduction, but products in the higher bands, meaning products with higher initial tariffs, would be subjected to higher rates than those in the lower bands. In addition, tariffs would be capped at 150 per cent for developing countries and at 100 per cent for developed countries.

Coming out of the Dalian meeting, the new US Trade Representative Robert Portman said, “We have a framework.” This was echoed by EU Agriculture Commissioner Mariann Fischer Boll who called the proposal a “good basis for further work,” though she added that the EU would favor only three bands. The framework is now likely to be adopted once the negotiations resume in early September, with the debate shifting from modalities to who belongs to which band and the rates of tariff reduction for each band.

In short, despite the stalemate on domestic subsidies, there is worrisome movement on two of the three pillars of the agricultural negotiations, and this could give momentum not only to the unresolved issues in the agriculture negotiations but it could also open up the path to agreement in the other negotiating areas of NAMA and services.

## The “Lamy factor”

What could make the difference in accelerating the negotiations is the “Lamy factor.” The incoming Director General is known as a consummate negotiator. He is also a very skilled politician who, on his way to the WTO’s top post, forged a North-South alliance that split the Southern camp and left his three rivals, all from the developing world, in the dust. Indeed, the sense is widespread in Geneva, even among developing country delegations, that Lamy, formerly the EU’s Trade Commissioner, is the rightful heir to the throne. His backers extend from Brussels to Washington to the Least Developed Countries (LDCs). He has good rapport with influential NGOs, with Oxfam GB’s

Barbara Stocking praising him as the key person in the EU's "Everything but Arms" (EBA) initiative, which accorded duty free entry to agricultural products from the LDCs.

For others, Lamy is really a skilled manipulator ultimately responding to the interests of the EU and the developed North while projecting sympathy for developing countries. The EBA illustrates this: it has a long phase-in period, up till 2009, for key exports such as rice, bananas, and sugar; it is subject to permanent review; it applies only to agricultural products, thereby limiting incentives and capacity for diversification/industrialisation. It is testimony to Lamy's negotiating and public relations skills that he has been able to sell a dodgy deal to many LDC governments as a substantive victory and to get some northern NGO's to blame the European farm lobbies instead of him for its restrictive elements.

In any case, Lamy knows the fissures among the developing country bloc, for instance among the G20, G33, and the LDCs, and he will not hesitate to exploit these to push through a comprehensive agreement. And he also knows the NGO world, and how to split what the WTO Secretariat has marked off as the "reformists" from those it regards as the "radicals." What's more, he's a man with a mission: Cancun for him was a failure and a humiliation: he will be seeking to reverse the outcome in HK.

## Nightmare scenario

What could be the scenario leading up to a successful ministerial?

How about this: In the lead up to the October General Council meeting, EU Trade Commissioner Mandelson announces one day a schedule for the phase out of the EU's export subsidies. The announcement is not unrelated to a notice by USTR Portman's statement at a press conference that it is "open" to placing still unspecified disciplines on its food aid and export credits, two channels of export subsidization of great concern to the EU. This "October Surprise" is not at all farfetched in the view of some analysts. According to Geneva-based activist Jacques Chai Chomthongdi of Focus on the Global South, "I think they [the Europeans] already have a date, and it's only a question of choosing the time when the statement has the biggest effect."

Indeed, the announcement—though it is a date far into the future like 2015 that is accompanied by some fine print conditions—has a dramatic impact, creating tremendous pressure on the developing countries to come to a compromise in the market access negotiations. It makes Brazil happy since its bottom line in the talks is the elimination of the EU's export subsidies. Moreover, mired in a corruption scandal at home, the Lula government clutches at this development to trumpet what is really a concession to Brazilian agribusiness as a triumph for the people of Brazil. In any case, the impact of the announcement is to discourage Brazil from aggressively bargaining in other negotiating areas.

Hardly is the impact of this move absorbed, when Lamy announces that the EU and US have decided to make some slight concessions liberalizing entry and stay for skilled labor from the developing world. Desperate for a victory it can brandish at home, the Indian government convinces itself its central concern is met and this affects its posture in the other areas of negotiations.

Deprived of aggressive activity-though not rhetorical posturing—on the part of their two key leaders, developing countries retreat to a more acquiescent attitude in the negotiations. A critical mass of countries come up with "better quality" offers in the services negotiations, the NAMA negotiations speed up, based on the Pakistani proposal, and the agriculture market access discussions near completion.

The US-EU wrangle on Blue Box and Green Box subsidies continues for some time, but the two sides are reminded by Lamy that they would not want a repeat of Seattle, where the EU-US divide on the same issue was one of the factors that unraveled the third ministerial in 1999. The two sides agree on a face-saving formula consisting of placing weak caps on some minor subsidy payments channeled through the Blue Box and Amber Box. In other words, there is no change in the status quo in the domestic subsidy pillar. This means massive dumping on developing country markets continues.

At the General Council meeting on 19-20 October, Lamy announces that substantial agreement has been reached in agriculture, NAMA, and services. The General Council comes up with a consensus statement affirming the key points of agreement in these areas that would serve as the draft of the Ministerial Declaration for Hong Kong. Lamy says it's only mopping up operations that remain—that is, sewing up agreements on the less controversial items, such as sensitive products, special products, special safeguard mechanism, state trading enterprises, food aid, special and differential treatment, and implementation.

By early December, developing countries have been herded into unfair agreements on the so-called residual issues, with Lamy telling the G33 and NGOs that a toothless agreement on SPs and SSMs which also allows the EU and the US to maintain "sensitive products" exempt from significant tariff cuts is the best they can get given the circumstances, and the big trading powers orchestrating a campaign to paint developing country holdouts as obstructing efforts to achieve a prosperous world economy, like they did in the lead-up to the Doha Ministerial in November 2001.

A virtually unbracketed statement goes to the Hong Kong ministerial, and Lamy triumphantly announces that while a number of matters need to be tidied up, the Doha Round is practically concluded, and asserts that the world must embark on a new round of even deeper and more comprehensive liberalization.

## The challenge to civil society

This scenario or something similar to it is not far-fetched, in our view, since the pressures on everyone to come to deal are enormous and no one wants to be blamed for another Seattle or Cancun-type collapse. As the representative of a key Geneva-based NGO puts it: "My overall sense is…we are probably not so far away from a deal, but not necessarily because all is solved yet, but because key countries want to make a deal, end the round as quickly as possible, knowing it will be very"low ambition"…No member, no group seems ready to go for a total opposition, a halting-the-round type of approach."

As this statement implies, the only real block to a raw deal for developing countries is civil society. Instead of lamenting, as some international NGO's have, the "lack of progress in the talks," global civil society in the next few weeks should step up the pressure on developing country governments not to cave in to pressures or to sign up to processes that will drastically reduce their policy space. Citizen pressure is decisive at this point.

The period beginning mid-August then must be a period of intense lobbying that continually hammers home the point that the negotiating frameworks set by the July 24 Framework Agreement are so narrow that they cannot but produce proposals such as the G20 Proposal on agricultural market access and the Pakistani proposal in NAMA, both of which essentially foreclose development under the guise of achieving compromises.

Developing country governments should be brought back to the basics: that the July Framework

eliminated practically all developmental space in all the areas being negotiated. Government representatives must be constantly reminded that no deal is better than a bad deal, and that all that confronts them in all the negotiating areas are deals that range from bad to worst.

The G33 countries must be pushed to act more aggressively and demand that getting a fair deal on SPs and SSMs must be front and centre in the agriculture negotiations, not treated as a secondary concern, and that they must oppose all efforts to tie this demand to the EU’s counter-demand for some of its commodities to be listed as “sensitive products” exempt from significant tariff reduction.

Governments must be convinced that, at a minimum, they should seek the freezing of the talks on NAMA because any agreement at this point would have destructive deindustrialization impacts. It should be pointed out that they have a good basis to argue this: the current round’s agenda a agreed upon in Doha did not put as a priority an agreement on NAMA.

Governments must be lobbied against accepting Mode 4 concessions that liberalize only skilled labor and be made to realize that that liberalization of services in return for Mode 4 concessions is a very bad exchange indeed. They must be shorn of the illusion that Mode 4 promises some relief for their unemployment problems since the EU and US will likely liberalize entry only for the most highly skilled professional workers, and this will only worsen their brain drain.

They must already be warned that a strategically timed announcement of a schedule for the phase-out of export subsidies will be made by the EU, but this should not serve as a cause for them to stampede towards a bad consensus in agriculture and elsewhere.

The point is to preemptively reverse any momentum in the discussions in early September. The more pressure from below is brought to bear on governments, the more complex the negotiations become, the more difficult it is to achieve consensus, and the greater the possibility of derailing the process.

We are entering the most dangerous period of the negotiations, when a deal will either be struck or killed. The next four months will determine whether the WTO gets consolidated as the engine of global trade liberalization and we enter a Brave New World of even greater liberalization, or the process of reversing trade liberalization gains momentum and the WTO is crippled as a mechanism of globalization.

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