

Redefining what ‘consensus’ means in the WTO?

Geneva, 27 October 2005

Dear Mr. Lamy,

The undersigned trade unions and Civil society organizations from around the world, are appalled by the highly undemocratic and deceptive process used to manufacture the draft services ministerial statement, which essentially brushes aside the concerns of the majority. This process also completely redefines the “consensus” mode of decision making: rather than having a consensus before an item is included in a negotiating text, it now appears that, at least in the case of the Council for Trade in Services, the Chair can include items from demandeurs that he deems appropriate, even if there is no agreement amongst the membership, and these can only be removed if there is complete consensus amongst 148 Member states.

On 13 October, the Chair of the Council for Trade in Services (CTS), Mexican Ambassador Fernando de Mateo circulated a first “Note by the Chairman” on “Possible Elements for a Draft Ministerial Text on Services” (JOB(05)/234. Under “Objectives” to the negotiations, Ambassador Mateo included:

- Modal or other specific multilateral objectives
- Sectoral and modal objectives as individually expressed by Members... and under “Approaches”
- Plurilateral approaches, sectoral – and/or mode-specific
- Multilateral approaches (e.g. measure specific)
- Numerical targets and indicators.

These elements however do not have the support of the whole membership. In particular, benchmarks, modal specific approaches or numerical targets to speed up the GATS negotiations have been intensely rejected by a large number of developing countries including LDCs. The many statements made by countries and coalitions in the various CTS meetings prove this. In the CTS, many delegations therefore requested that these issues be removed or bracketed, given the lack of consensus. They also pointed out the double standard: that the section on “Rules”, referring to the emergency safeguard mechanism (ESM) negotiations, was placed in brackets even though it was agreed to be negotiated. It was also repeatedly stated that a new paragraph on Principles should reinforce the current architecture of the GATS.

Despite these objections, the new proposals regarding new approaches again reappeared - unbracketed - in Ambassador Mateo’s second draft elements dated 20 October (JOB(05)/234/Rev.1), and have been further elaborated upon in the draft Ministerial Text on Services released on 26 October (JOB(05)/262). A second draft of the text will be released by 3rd November – the text the Chair aims to bring to Hong Kong. Whilst the Chair is putting into the text elements that clearly do *not* have consensus, elements to be

taken out, according to him, require the complete consensus of members! At the same time, what has already been agreed upon for negotiations, the ESM, a promise made since the Uruguay Round as reflected in Article X.1 of the GATS, but where the developed countries have been dragging their feet – was not elaborated upon by the Chair in the draft Ministerial text. The draft Ministerial text also failed to reinforce the current architecture of the GATS.

There are two issues here that are particularly worrying:

First, having multilateral approaches such as numerical targets and indicators – essentially compelling countries to open up a specified number of sectors – will contravene the built-in flexibilities of the GATS and put developing countries' development objectives and policy space in jeopardy. Even plurilateral approaches are problematic since these negotiations will be driven by those with the biggest export capacity. Those who are party to the negotiations will determine critical issues such as “classification issues” within the sector, as well as be the players drawing together the regulatory standards for what is acceptable within such plurilateral agreements. These standards will be those in harmony with the interests of the major corporations. Based on past experience with the financial services and telecoms agreements, there is no guarantee that Members will not be intensely pressured to join in these plurilateral agreements. Those who may want to join in later, will find the rules of the sector already pre-determined, in line with certain corporate interests.

The second issue of concern is that of process. As we questioned the process in the run up to the Cancun WTO Ministerial Conference whereby the Chair of the General Council drafted the Ministerial Text on his “own responsibility” without the consensus of the Membership, we again question the similar process that is occurring today. This process clearly lacks inclusiveness and transparency. We must ask you, Mr. Lamy, if Ambassador Mateo's approach represents a new way of defining and practicing consensus in the WTO? Can the Chair table draft elements that do not represent consensus and then require consensus for any amendments to the text?

As Chair of the Trade Negotiating Committee you have indicated that you might be tabling a draft Ministerial Text by mid November based on the draft texts received from the Chairs of the various negotiating committees. Will you present a consolidated draft Ministerial Text based on submissions from negotiating committees that have been questionably crafted, as we have seen, for example, in the case of the Chair of the Council for Trade in Services?

We look forward to your clarification on this matter and to ensure that – as in previous years – a draft Ministerial Text will be presented to Ministers of WTO Members, which includes within brackets the positions of all Members on matters where consensus does not exist. Civil society organizations in WTO Member states will hold you accountable on your responsibility to ensure that the draft Ministerial Text delivered to Ministers before Hong Kong reflects the consensus interests and positions of WTO Members and,

in particular, in this Doha Development Round, of developing countries. Failure to do so only makes a mockery of the “multilateral”, “rules-based” trading system.

Signatories

1. 11.11.11 - Coalition of the Flemish North-South Movement, Belgium
2. ActionAid International
3. Africa Faith and Justice Network, U.S.
4. Alliance for Democracy, U.S.
5. Arab NGO Network for Development (ANND)
6. Asóciacion Nacional de Empresas Comercializadoras, Mexico
7. ATALC-FoE, Latin America & Caribbean
8. ATTAC France
9. ATTAC Japan
10. ATTAC Norway
11. Australian Fair Trade and Investment Network (AFTINET), Australia
12. Bangladesh Krishok Federation, Bangladesh
13. Begegnungszentrum fuer aktive Gewaltlosigkeit (Center for Encounter and active Non-Violence), Austria
14. Berne Declaration, Switzerland
15. BUND - Friends of the Earth, Germany
16. California Coalition for Fair Trade and Human Rights, U.S.
17. Campaign for the Welfare State, Norway
18. Center of Concern, U.S.
19. Centre for International Environment Law (CIEL), U.S.
20. Centro de Investigación y Documentación Chile-América Latina (FDCL),
21. Christian Aid, U.K.
22. Citizens Trade Campaign, U.S.
23. Confederacion Campesina Del Peru
24. Congress of South African Trade Unions (COSATU), South Africa
25. Convergencia de los Pueblos de la Américas-COMPA, República Dominicana
26. Ecumenical Coalition on Tourism, Hong Kong
27. Emergence of Projects, Austria
28. Equipo Pueblo, Mexico
29. FAIR, Italy
30. Focus on the Global South (FOCUS)
31. Foodfirst International Action Network (FIAN), Mexico
32. Friends of the Earth, U.S.
33. Fundacion Neno Zanchetta Lucca, Italy
34. Global Exchange, U.S.
35. Haiti Survie, Haiti
36. Institute for Agriculture and Trade Policy (IATP), U.S.
37. Instituto de Estudos Sócioeconômicos (INESC), Brazil
38. International Gender and Trade Network (IGTN)
39. International Jesuit Network for Development
40. International Metalworkers Federation (IMF)

41. International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers Associations (IUF)
42. LOKOJ Institute, Bangladesh
43. Maryknoll Office for Global Concerns, U.S.
44. NOAH-Friends of the Earth Denmark
45. Polaris Institute, Canada
46. Public Citizen, U.S.
47. Public Services International (PSI)
48. REDES-FoE, Uruguay
49. Research Foundation for Science, Technology and Ecology, India
50. ROBA dell'Altro Mondo, Italy
51. Service Centre for Development Cooperation (KEPA), Finland
52. Southern Africa Contact, Denmark
53. Southern and Eastern African Trade and Information Negotiations Institute (SEATINI)
54. The Asia Project
55. The Centre for Research on Multinational Corporations (SOMO), The Netherlands
56. The Council of Canadians, Canada
57. The Mexican Action Network on Free Trade (Red Mexicana de Acción frente al Libre Comercio-RMALC), Mexico
58. The Oakland Institute, Canada
59. Third World Network (TWN)
60. Tierra Vida (Miembro de Accion internacional CONADES), Peru
61. Tradewatch, Italy
62. U.S. Columban Justice, Peace and Integrity of Creation Office, U.S.
63. United Church of Christ, Justice and Witness Ministries
64. War on Want, U.K.
65. World Economy, Ecology & Development (WEED), Germany
66. Women in Development Europe (WIDE)
67. World Development Movement (WDM), U.K.
68. WTO Watch Group, Pakistan