

Reply to open letter by NGOs on services negotiations

Dear Signatories,

I would like to thank you for your letter dated 1 November 2005 on the process of negotiations in Services in the WTO. Your letter raises a number of points which warrant factual correction. These corrections are made without prejudice to the views of Ambassador Fernando de Mateo, Chairman of the Special Session of the Council for Trade in Services, to whom your letter was copied.

Preparations for the Hong Kong Ministerial started as early as last July, at a meeting of the Special Session of the Council for Trade in Services. Members of the Council had asked the Chairman to undertake intensive consultations in this regard. Based on such consultations, the Chairman informed Members that he would be willing to produce a set of elements for a draft ministerial text. This was confirmed by the Chairman's unrestricted Report to the TNC, dated 11 July 2005 ([TN/S/22](#)), in which he also set a clear agenda for intensive consultations.

In a series of open-ended and fully-transparent meetings, the Chairman proceeded to invite all Members to express their views regarding the elements they wished to see included in a Hong Kong ministerial text on services. On the basis of Members' comments and at their request, the Chairman produced the first list of elements (JOB(05)/234), to which you refer in your letter. Obviously, the Chairman took an inclusive approach in preparing this list, with a view to providing an equal opportunity to discuss each of the elements put forward. Paragraph 1 of his note clearly states that "[i]t draws upon the various proposals submitted by Members as well as their oral comments. The elements listed below are neither exhaustive nor presume to enjoy consensus by Members."

While it is clear that the elements put forward by the Chairman are a compilation of the proposals and the views expressed, it is nowhere stated, nor has it ever been suggested by the Chairman, as you claim, that consensus would be required to delete any of the elements. Further revision of the list as well as the elaboration of elements in the draft text contained in JOB(05)/262 have been carried out on the basis of proposals by Members. In the absence of such proposals, the Chairman refrained from developing any specific language.

With respect to rule-making, the logic of the presentation in the draft text was clearly explained by the Chairman in paragraph 2 of the document (JOB(05)/234) you referred to and its revision. The Chairman made it clear that work was still underway in the relevant subsidiary bodies, and he did not wish to pre-empt their results. Furthermore, it was made very clear that text will be added to the draft upon receipt of reports from those bodies. This is a clear recognition of the bottom-up approach of the process and that the Chair cannot but draw on the views put forward by Members.

In sum, the objective of a Chairman's text in this preparatory process is to provide delegations with a common basis for discussing their proposals and pursuing their interests in an equitable and transparent manner. This objective calls for even-handed treatment by the Chairman of all Members' submissions. The Chairman and Members are fully aware that at the end of the process, any agreed text will need to enjoy consensus and be supported by all Members. However, until that point, there is no presumption that consensus has been reached on the whole or on any part of the current draft. The whole draft text at this stage is effectively between brackets.

Given the above, I have to refute the allegations made in your letter concerning the undemocratic and deceptive process used to prepare draft ministerial declarations. I would like to note that the same process applies to all other negotiating groups and bodies.

I hope that these factual elements will help to rectify the misinterpretations contained in your letter, and that your constituencies will thereby better understand the process leading to the Hong Kong Ministerial meeting. I would be grateful if you could transmit this response to your members. In the interest of transparency, I will be posting the text of this letter on the WTO website.

Yours sincerely
Pascal Lamy