

Bridging the Gap in the Doha Talks: A Look at Services Trade

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Abstract: Following the suspension of the World Trade Organization (WTO) multilateral trade negotiations in July 2006 – and its subsequent resumption in February 2007 - by WTO Director-General Pascal Lamy, the world trading system must now find ways and means to integrate developing countries in the world trading system. Failing that could be perceived as a danger to the world order. This paper analyzes the legal and policy implications of the current Doha Round for the two main developed WTO Members, i.e., the United States and the European Community, and the most relevant developing countries of the WTO, such as India, Brazil, and China. The specific focus of attention will be mainly on services trade. Thoughts on alternative ways to move forward in the multilateral trading system are presented.

Key words: Doha Round, services trade, liberalization, WTO, commitments

1. Introduction

Before the creation of Doha Round in 2001, developing and least-developed countries had been marginalized in the world trading system, which brought with it serious economic implications. In 2001 in Doha (Qatar), developing countries were promised inclusion in the world trading system in order to achieve a higher level of justice and equity in the world.¹ That is why the new round is called the development agenda.² The argument is that a more open and equitable trading system brings peace to the world and, in this sense, the Doha Development Agenda (DDA), which aims to lower trade barriers around the world, permitting free trade among countries of varying prosperity, should not be approached as a zero-sum game –as many developing countries seem to perceive it- but as a win-win situation. The Doha Round was the result of widespread agreement among delegates at the 4th WTO Ministerial Conference in Doha that it was time to address the imbalances of previous rounds and to offer developing countries the prospect of trade talks which they could see were to their benefit. So a new Round was necessary to include poor countries in the world trading system, and to promote economic development, as well as to alleviate poverty.³

¹ Among those who claim that there is potential for developing countries to benefit from trade liberalization are: Anderson, K., Maritin, W. & van der Mensbrugge, D. "Doha Merchandise Trade Reform: What's at Stake for Developing Countries?," World Bank Policy Research Working Paper 3848, February 2006, available at http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2006/02/15/000016406_20060215164859/Rend ered/PDF/wps3848.pdf.

² Not everyone agrees with the governmental position that the Doha Round is beneficial to developing and least-developed countries. For severe criticisms of the Doha Round, see Oxfam Press Release, "New WTO framework doesn't add up to development," 22 June 2006, available at http://www.oxfam.org/en/news/pressreleases2006/pr060622_wto (last visited July 18, 2006); Hertel, T.W. & Keeney, R. "What is at Stake: The Relative Importance of Import Barriers, Export Subsidies, and Domestic Support," available at http://siteresources.worldbank.org/INTTRADERESEARCh/Resources/Ch2AgTradeBook_HertelKeeney.pdf; Bouet, A., Orden, D. & Mevel, S. "More or Less Ambition in the Doha Round? Winners and Losers from Trade Liberalization with a Development Perspective," available at <https://www.gtap.agecon.purdue.edu/resources/download/2508.doc> (last visited July 18, 2006); Kinnman, S. & Lodefalk, M. "Economic Implications of the Doha Round," Swedish National Board of Trade, July 2006, available at <https://www.gtap.agecon.purdue.edu/resources/download/2756.pdf>; European Commission Press Release, "Doha Round: Some Recent Economic Analysis," MEMO/06/247, available at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/06/247&format=HTML&aged=0&language=EN&guiLanguage=en> (last visited July 18, 2006).

³ [3] This is certainly the position of European trade commissioner Peter Mandelson, who said at a Party of European Socialists conference in Brussels on Decent Work that far from being responsible for poor labor

The initial target was to finalize the Doha Round negotiations by the end of 2005, so that the Agreement could be approved by the U.S. under the fast-track procedure, without having to undergo a lengthy debate within Congress. Although some progress was achieved along the way - notably in Hong Kong in December 2005, where rich nations agreed to eliminate all of their farm export subsidies by 2013 and to allow quota and tariff-free imports from all least developed countries - a final deal remained elusive. Successive deadlines were missed and, at the July 2006 G8 meeting in Saint Petersburg, leaders of the world's biggest economies pledged to give their trade negotiators the flexibility they needed to reach a compromise deal, deciding to hold last ditch talks during the weekends of 23-24 and 28-29 July 2006.

The discussion below chronicles the developments of the Doha Round since its suspension in July 2006 up to now.

2. Suspension of the Multilateral Talks

On July 24, 2006, WTO Director-General Pascal Lamy formally announced the suspension of the talks, bringing five years of negotiations to an end. This was due to the refusal of the United States to make bigger cuts to its farm subsidies if the EC and emerging developing countries such as India, China, and Brazil did not reduce their tariffs on agricultural and industrial products respectively.⁴ Major trading powers, including the EC, are blaming the U.S. for the collapse. Trade officials have continued to meet informally since then, especially after a soft relaunch of discussions in November 2006.

This is not the first time that one of the WTO negotiation rounds has broken down. Negotiations are inevitably complex as each WTO member has a veto power over the final deal. The Uruguay round, which began in 1986 and led to the replacement of the GATT by the WTO in 1995, was frozen for over a year in 1990, due to antagonism between the EC and the U.S., although it was never formally suspended.

More recently, after the suspension of the WTO Doha negotiations, the Commission looked ready to refocus its commercial strategy on bilateral free trade agreements so as to catch up with the U.S. and Japan. Officially, concluding the Doha Round remains the European Community's (EC) number-one priority, but, since negotiations were suspended in July 2006⁵ - when last resort talks failed to bring an agreement on reducing farm subsidies and lowering tariffs, leading therefore the WTO chief Pascal Lamy to formally suspend the Doha Round - the EC has been looking for other ways to open up foreign markets and keep up with its main trade rival, the U.S., which is currently leading the race to conclude free trade agreements (FTAs) with high-market-potential countries.⁶ The Commission's decision to launch new bilateral trade negotiations with countries such as India, South Korea, and the ten Association of South-East Asian Nations (ASEAN) states "could further complicate its trade regime, and divert interest from the multilateral trading system",⁷ according to a bi-annual report carried out by the WTO on the EC's trade policies and practices. The Commission also hopes to negotiate more far-reaching agreements than would be possible under the WTO talks, by tackling issues such as investment, competition policy, and public procurement - known as the Singapore issues - which were dropped from the Doha agenda in 2003. This return to a system of bilateral agreements and FTAs will mean that the large WTO members would be able to strong-arm the small members and where the multiplication of trade rules and tariffs would generate higher transaction costs and damage the trading and investment environment.

conditions, free trade could be a ladder out of poverty and "an engine of the very prosperity that helps societies put poor labor conditions behind them for good." "Free trade is not the enemy of decent work," he concluded; "The enemy of decent work is our willingness to turn a blind eye to it. Free trade does not mean trade indifferent to fair conditions of production." See the speaking points on "Free Trade is not the Enemy of Decent Work," given by commissioner Mandelson at a Party of European Socialists conference in Brussels on May 10, 2006, available at http://ec.europa.eu/comm/commission_barroso/mandelson/speeches_articles/temp_icentre.cfm?temp=sppm098_en (last visited May 13, 2006).

⁴ Pascal Lamy, "What now, trade ministers?" *International Herald Tribune*, July 27, 2006, available at <http://www.iht.com/articles/2006/07/27/opinion/edlamy.php> (last visited March 6, 2007).

⁵ After five years of troubled negotiations, the Doha Development Round, aimed at freeing global trade and at extending the benefits of globalization to developing countries, was suspended following the failure of negotiators to reach a compromise about reducing farming subsidies and lowering import tariffs. The resumption of the Doha talks took place in February 2007.

⁶ Nevertheless, it is worth mentioning that this proliferation of bilateral trade agreements outside the WTO process is perceived as betraying the multilateral ideals that underlay the WTO and its forerunner, the GATT.

⁷ World Trade Organization, "Trade Policy Review of the European Communities," WT/TPR/S/177, 22 January 2007, p. xii.

Lamy warned, though, that bilateral deals could contribute to weakening the multilateral trading system, in a speech to the European Parliament's International Trade Committee on October 17, 2006.⁸ Moreover, he argued that growing number of bilateral and regional trade talks risked distracting from attempts to clinch a long-elusive global deal.⁹ He noted that when it came to bilateral talks, some countries appeared to be promising concessions beyond what would be needed to unblock the multilateral negotiations. While the EC will find that it might be able to address some of its specific concerns through bilateral agreements, it will not be able to answer all of them. In addition, the countries that the EC will negotiate with in these bilateral negotiations will want to see some concerns, like subsidies in agriculture, addressed somehow and that will only be through the multilateral, that is, WTO, process.

In the face of globalization, the EC must remain open. It must also ensure that markets abroad are open to its own exports. European businesses often find it difficult to access foreign markets due to high tariff and non-tariff barriers, as well as discriminatory measures applied against foreign companies. Removing such barriers is particularly important in the services sector, which represents around 70% of Europe's jobs and of the EU's gross domestic product (GDP), but which faces higher trade barriers than goods, mostly due to restrictive national regulations, such as technical standards, licensing requirements or national discrimination.

This proposal of bilateral trade agreements as a result of the suspension of the Doha talks is diametrically opposite to the EC's previous trade strategy, in which the focus was strongly on multilateral negotiations within the WTO, and free trade deals were primarily driven by the logic of development or geopolitics rather than economic interests. That said, U.S. businesses in Europe urged European Union (EU) and U.S. leaders to stop neglecting the transatlantic relationship in favour of boosting relations with China and India. They argued that the two transatlantic economies have become so highly interdependent that their future growth and job creation relies not on improving their relations with China and India, nor in completing a successful Doha Round, but in removing existing barriers to trade and investment in order to create a veritable transatlantic single market.

In relation to services trade, an ambitious deal on service liberalization was of key interest to the EC because trade in services makes up around 75% of its economy. Increased trade in services would also contribute to development goals since improved transport, IT and telecommunications, banking, and insurance sectors form the backbone of a growing economy. However, trade in services faces considerable restrictions, mostly based on national regulations, such as technical standards or licensing requirements and procedures. According to a study by Decreux and Fontagne, more could be gained, for developing and developed countries alike, from a 25% cut of the barriers in services than from a 70% tariff cut in agriculture in the North and a 50% cut in the South.¹⁰ A study conducted at the World Bank estimates that developing countries could gain nearly \$900 billion in annual income from elimination of their barriers to trade in services.¹¹

Discussions in the WTO focused on establishing disciplines to ensure that domestic regulatory measures do not create unnecessary barriers to trade. Significant progress was made in this area but negotiations on market access stood still as a result of the lack of movement on agricultural and industrial market access. Furthermore, in a speech given by Lord Vallance of the European Services Forum to the EU-India Business Summit on 12 October 2006, he said that developed and developing countries will miss out on enormous potential economic gains because services have once again been taken hostage of agriculture even though the latter represents only 8% of world trade and 2% of developed countries economy.¹²

2.1. Failure of Multilateralism?

But why has multilateralism failed? The talks were suspended on 24 July 2006 after ministers from the EC, the U.S., Australia, Brazil, India, and Japan (the so-called G-6 countries) failed once again to reach a deal on agriculture and industrial goods 'modalities' -- formulae and figures for tariff and subsidy cuts, as well as

⁸ See speech given by Pascal Lamy to the European Parliament's International Trade Committee, where he warned that the Doha failure will seriously weaken the trading system. Available at http://www.wto.org/english/news_e/sppl_e/sppl44_e.htm (last visited October 24, 2006).

⁹ The same argument is made by a WTO report, which claims that the EC's decision to seek bilateral free-trade agreements, as well as its rising agricultural tariffs, could be detrimental to the Doha negotiations on a global-trade pact. See World Trade Organization, "Trade Policy Review. Report by the European Communities," WT/TPR/G/177, 22 January 2007.

¹⁰ Decreux, Y. & Fontagne, L. "A Quantitative Assessment of the Outcome of the Doha Development Agenda," *Centre d'Etudes Prospectives et d'Informations Internationales Working Paper No. 2006-10*, May 2006.

¹¹ Anderson, K., Martin, W. & van der Mensbrugge, D. "Doha Merchandise Trade Reform: What's at Stake for Developing Countries?" *World Bank Policy Research Working Paper 3848*, February 2006.

¹² See speech by Lord Vallance of Tummel at the Seventh EU-India Business Summit in Helsinki on 12 October 2006.

exceptions to them -- primarily due to differences on farm trade. "We have missed a very important opportunity to show that multilateralism works," said WTO Director-General Pascal Lamy.¹³ Lamy said that the failure represents a lost opportunity to integrate more vulnerable members into international trade - "the best hope for growth and poverty alleviation,"¹⁴ and warned of the negative impact on the world economy with the possible resurgence of protectionism. "Today there are only losers,"¹⁵ he stated. The same words were used by the International Food and Agricultural Trade Policy Council to express their concern.¹⁶ Lamy believes that the Doha round fell apart because "too many negotiators focused on the small picture, forgetting the bigger one."¹⁷ Moreover, he said that countries must shift their focus away from domestic politics and broaden their vision. The blame game over the collapse between the EC and the U.S. has been particularly intense. Brussels argues that Washington has not cut its farm subsidy ceiling deeply enough; the U.S. counters that it would have done so if only the EC had offered up greater access to its own agricultural markets. Lamy has said that countries would have to offer new concessions in order for the talks to resume.

Similar words were expressed by the Finnish Minister for Foreign Trade and Development, Paula Lehtomaki, by stating that neither industrial countries nor developing countries win upon suspension of WTO Doha negotiations.¹⁸ Before the Board of Governors of the World Bank Group at the 2006 annual meeting in Singapore, Paul Wolfowitz, president of the World Bank, argued that

"[e]very party in this deal needs to compromise. The United States needs to accept further cuts in spending on trade-distorting agricultural subsidies. The European Union needs to reduce barriers to market access. And developing countries such as China, India, and Brazil need to cut their tariffs on manufactures. Developing countries also need to remove trade barriers that make it harder for low-income countries to trade directly with each other."¹⁹

All EU Member States have much to gain from a successful outcome of the Doha Round. An open trading regime has been traditionally beneficial to European economies in the past. So the removal of some technical barriers to trade will certainly help provide additional opportunities for further success. In the specific case of the UK, services play a major part of its economy. More protectionism will be generated worldwide if the Doha Round fails.²⁰

2.2. Consequences of Protectionism: Competing Views of NGOs

These protectionist tendencies of some WTO countries have recently been subject of political debate in various countries on the grounds that jobs in services were being exported from developed to developing economies. Employers in developed economies have been exporting their services to economies where the service provider is much less expensive. Some politicians, such as the UK Secretary of State for Trade and Industry Patricia Hewitt, argue in this respect that "an extra job in India is not one less job in Britain. It is not only one less person in poverty in India: it is also one more potential customer for our goods and services."²¹

¹³ See WTO News – DDA June/July 2006 Modalities, "Talks suspended. 'Today there are only losers,'" Summary 24 July 2006, available at http://www.wto.org/english/news_e/news06_e/mod06_summary_24july_e.htm (last visited September 13, 2006).

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ International Food and Agricultural Trade Policy Council (IPC), "Doha Suspension: Today, we are all losers," 24 July 2006.

¹⁷ See "U.S. chides EU on trade as WTO chief calls for big picture approach," *EU business*, 29 September 2006, available at <http://www.eubusiness.com/Trade/060920111214.gx969d35> (last visited November 6, 2006).

¹⁸ See press release of Finland's EU Presidency on General Affairs and External Relations, Competitiveness (Internal market, Industry and Research), available at http://www.eu2006.fi/news_and_documents/press_releases/vko30/en_GB/164286/ (last visited November 6, 2006).

¹⁹ See Wolfowitz, P. "Path to Prosperity," speech delivered on September 19, 2006 in Singapore, Press release No. 3.

²⁰ For an insight on the costs of EC's protectionism, see Messerlin, P.A. "The EC Trade Policy and the Doha Round," *Aussenwirtschaft*, 57 Jahrgang, Heft III, Verlag Ruediger, September 2002, pp. 271-98.

²¹ House of Lords, "The World Trade Organization: the role of the EU post-Cancun," 16th Report of Session 2003-04, European Union Committee, p. 13, available at <http://www.publications.parliament.uk/pa/ld200304/ldselect/ldecom/104/10403.htm> (last visited March 25, 2005).

Quite refreshing is Oxfam's position, which stressed the enormous cost of further delay, as "the EU and the U.S. remain free to subsidize their biggest agricultural producers and continue dumping, while developing countries continue to struggle to ensure survival of subsistence farmers and break into rich Northern markets."²² It said the U.S. and the EC must "make fundamental changes to their offers"²³ in order to contribute to the development goal. In Oxfam's view, the EC should make more and greater concessions to keep the development negotiations on track. Friends of the Earth, who seemed delighted to see the suspension of the Doha talks,²⁴ argued that the WTO should have greater powers to manage trade opening to ensure that environmental and other considerations were taken into account. The failure of the talks allowed time to review and reconsider the multilateral trading system in its entirety. This was welcome news around the world because the proposed WTO deal would have further impoverished the world's poorest people and caused irreparable damage to the environment. Some developing countries had refused to proceed because they too feared that a WTO deal would cause immense harm to millions of small and subsistence farmers. Moreover, Oxfam argued that the suspension of the Doha talks would not solve the underlying reasons why a development deal remained deadlocked and in crisis.²⁵ Oxfam feared that multilateralism would go further into crisis and was therefore concerned that the EC and the U.S. would turn to damaging regional trade agreements to break open developing country markets.

However, not every NGO was of the same opinion: Other NGOs more critical of free trade viewed the collapse of talks as good news for the world's poor and the environment, on the grounds that it is better to have no deal than a bad deal, calling on world leaders to use the opportunity to build a "new global trade system based on equity and sustainability."²⁶ According to Greenpeace, there is a need to secure a safe political and legal space for the environment and, therefore, it outlines a number of alternative approaches, which would enable governments to move the current negotiations on the relationship between trade rules and multilateral environmental agreements (MEAs) from the WTO to a more suitable forum. Additionally, the emergence of more environmental related trade disputes has re-emphasized the need for an alternative dispute settlement procedure to that of the WTO for solving trade and environment conflicts.

2.3. Trying to Get Negotiations Back on Track

Little was discussed in the way of specific new concessions that could spur the resumption of multilateral trade negotiations. Nevertheless, ministers and senior officials from WTO Members including the G-20 developing countries, the U.S., the EC, Japan, and four West African cotton producing nations pledged to work towards relaunching the stalled talks at a 9-10 September 2006 meeting in Rio de Janeiro. The meeting, which coincided with a G-20 ministerial summit, marked the first big gathering at that level since July 2006. Brazil's minister of foreign affairs said that he had seen signs of flexibility from other countries during the weekend's discussions. Upon his return to Tokyo, Japan's Agriculture, Forestry and Fisheries Minister Shoichi Nakagawa told journalists that there should be some signs indicating the end of the cessation in October 2006.

Governments needed to agree on modalities by the end of July 2006 in order to give themselves enough time to translate them into a Doha Round package of legal agreements before the mid-2007 expiry of the Bush administration's Congressional mandate to negotiate trade agreements. Without this trade promotion authority, the Bush administration is unable to submit trade deals to Congress for a yes-or-no vote without the possibility of major amendments -- and thus ceases to be a credible negotiator. However, many trade observers -- as well as senior U.S. officials -- had suggested that if an agreement were to appear to be coming together by March 2007, Congress might be persuaded to extend the administration's trade promotion authority. Failing that, the negotiations would likely remain stagnant until 2009. Since the [Trade Promotion Act](#) (TPA) of 2002 to U.S. President George W. Bush expires in July 2007, past that date, Congress will resume its power to make amendments to any trade deal presented to it, thereby making it less attractive for other WTO members to participate in negotiations as they are unsure of obtaining any real commitments from the U.S. The U.S. administration has signaled that it could attempt to extend the TPA to make an agreement more feasible.

²² Oxfam International, "Suspending WTO talks resolves nothing," Oxfam Press Release, July 24, 2006, available at http://www.oxfam.org/en/news/pressreleases2006/pr060724_wto (last visited September 14, 2006).

²³ *Ibid.*

²⁴ Friends of the Earth, "WTO Deadlock: Good News for the Poor and the Environment," 24 July 2006, available at http://www.euractiv.com/29/images/Friends%20of%20the%20Earth%20Europe_tcm29-156915.doc (last visited March 6, 2007).

²⁵ See Oxfam Press Release, "Suspending WTO talks resolves nothing," 24 July 2006, available at http://www.oxfam.org/en/news/pressreleases2006/pr060724_wto (last visited November 21, 2006).

²⁶ See Greenpeace International, "'Face it, Doha is dead': Time to look at alternatives to WTO," Greenpeace Press Releases, 24 July 2006, available at <http://www.greenpeace.org/international/press/releases/doha-is-dead> (last visited September 14, 2006).

Some Geneva-based negotiators believe that it may be possible to secure a short term extension of this trade promotion authority to cover the end of the Doha Round negotiations, even with the newly Democratic Congress. However, in order to get the Bush administration and Congress interested, there had to be hard evidence of a doable deal by the end of March 2007. That said, I would caution that there are no guarantees that attempts to win Congressional support would ultimately succeed. In fact, most analyses in the press suggest that the U.S. legislature's already-shaky support for bilateral and multilateral trade talks will be further weakened by the Democrats' ascent to power in both the House of Representatives and the Senate. In particular, the Republican Bush administration is now believed to be even less likely to get Congress to extend its fast-track negotiating authority past the scheduled expiry date next July 2007. Without this, chances to conclude the struggling Doha Round negotiations in the next year or two would virtually disappear, even if WTO Members manage to revive the talks early in 2007.

The U.S. midterm Congressional elections took place on 7 November 2006 and had been looming over the negotiations. However, U.S. Trade Representative Susan Schwab argued in a 9 November 2006 article in the *Wall Street Journal* that the outcome of the elections would not change Washington's stance in the negotiations.²⁷ Broadly restating the U.S.'s standard position, she wrote that "to break the current deadlock, we need commitments that take us beyond current positions in four key areas."²⁸ These are: substantial improvements by the EC, Japan, and other G-10 countries in agricultural tariff cuts, especially for sensitive products that would be exempted from the full tariff cuts; deeper cuts in agricultural tariffs by major developing countries, including for sheltered special products; deeper EC and U.S. reductions in trade-distorting support; and cuts in industrial tariffs by developed and major developing countries.²⁹

Pascal Lamy called an informal meeting of the Trade Negotiations Committee (TNC) on the morning of 16 November 2006. The stated purpose of the heads-of-delegation level gathering was to discuss the situation in the Doha Development Agenda negotiations. This was the first session of the committee charged with overseeing the Doha Round negotiations since July suspension of negotiations. This might imply that several WTO Members may use the informal TNC to agitate for the resumption of the whole multilateral trade negotiation business as usual. This would entail resuming work in all of the Doha Round negotiating committees, which have not met formally since the talks were frozen in July 2006. However, WTO Members need to decide on how to revive the talks, particularly since it was far from apparent that deadlock-breaking offers of tariff or subsidy cuts would be forthcoming.

A 10 November 2006 Green Room meeting to which Lamy invited some 20-odd influential Members - including Brazil, the EC, the U.S., Japan, Australia, New Zealand, Canada, and India - was pivotal in his decision to convene the informal TNC. According to one WTO ambassador, participants at that meeting broadly fell into two camps. Those in the first camp were reluctant to restart formal negotiations, arguing that no new concessions had been made. Resuming the talks, they said, would quickly lead to the old impasse -- this time perhaps for good. The rest, who ultimately carried the argument, countered that the July suspension had not done what it was intended to do. Instead of shocking countries into softening their stances, it had had the opposite effect of taking pressure off the governments altogether. They argued that resumption would, at the very least, force key WTO Members to say out loud that they had nothing new to bring to the negotiating table.

In a speech at Chatham House on 14 November 2006, Peter Sutherland argued that the cost of failure was potentially prohibitive, since "if the Doha Development Agenda goes out of the window so, eventually, may the effective functioning of the multilateral trading system,"³⁰ and further argued that once negotiations resume, WTO Members would do well to agree on an achievable, if relatively low-ambition Doha Round deal, in the interest of preserving the multilateral trading system. Sutherland emphasized that such a deal would be "well worth having and would deliver some creditable development goals."³¹ More significantly, "it would show that multilateralism can deliver, before all credibility is lost."³²

As for EU trade commissioner Mandelson's strategy for relaunching negotiations, this would be based more on convincing others that what was on the table in July 2006 would be better than having no deal at all,

²⁷ See the op-ed by U.S. Trade Representative Susan Schwab, "U.S. elections will not change trade talks prospects," originally published in the *Wall Street Journal* on November 9, 2006, available at <http://usinfo.state.gov/xarchives/display.html?p=washfile-english&y=2006&m=November&x=20061109115012SAikceinawz0.314953> (last visited November 16, 2006).

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ See the John Whitehead Lecture given by Peter Sutherland, "EU/U.S. trade relations – Is a free trade area an alternative to Doha?" Chatham House, 14 November 2006, available at http://www.chathamhouse.org.uk/pdf/meeting_transcripts/141106sutherland.pdf p. 3.

³¹ *Ibid.* at p. 4.

³² *Ibid.*

rather than on offering further concessions on behalf of the EU. Although in his November 2006 speech at the Hindustan Times Leadership Summit Mandelson pledged “to improve [the EC’s] farm-tariff offer by adding substantially [10%] to the 39% it offered a year ago,”³³ this is exactly the same offer that was on the table before talks were suspended in July 2006. Although this offer was within close reach of the cuts demanded by developing countries, it was judged largely insufficient by the U.S. He further stated:

“[I]f Doha fails, the systemic and economic costs will be felt everywhere. It is not just the hundreds of billions of euros annually in new goods and services trade that will be lost - but the multilateral agreements, too, that will extend duty free quota, free access for the poorest nations and straighten out customs rules and add billions of euros to developing country revenues.”³⁴

Lamy seemed quite confident in his December 2006 speech that it was possible to get the Doha negotiations back on track thanks to an increasing level of engagement among the various WTO Members, and conclude the Doha Round in 2007.³⁵ However, this could only happen if countries came forward with concrete new concessions. If this did not happen, the WTO chief warned the General Council of the WTO (the institution’s top permanent decision-making body) that the Doha talks risked total collapse. That said, Lamy acknowledged that no one was going to simply come forward and specify numbers detailing how much more they were willing to offer and how much less they were willing to accept in return. He said that since there is a tradeoff between ambition and flexibility -- in other words, the deeper the overall tariff and subsidy cuts, the more flexibilities WTO Members will demand to shelter specific products from reforms -- trade officials could play with different pairs of numbers to examine potential compromises.

WTO countries would also have to test these different scenarios with influential domestic constituencies, to assess what they could tolerate. Lamy had already indicated that fully-fledged negotiations, including those at the ministerial level, could only truly restart once governments explicitly had offered deeper subsidy or tariff cuts, and had moderated what they wanted in exchange. Nevertheless, he told WTO delegates that in order to be properly prepared for this, they needed to increase the pace of informal work so that there would be no need for him to propose a compromise text. In his opinion, such a manoeuvre would be very risky, and would sit uneasily with the bottom-up principles of the WTO.³⁶ So to avoid a compromise text, and following Lamy’s hope, there was a meeting in January 2007 in Washington, D.C. between Commission President José Manuel Barroso and U.S. President George W. Bush, who agreed that the EC and the U.S. must urgently resolve differences that have been blocking the conclusion of a global trade pact. At the meeting, President Barroso stressed the need for the U.S. to make further concessions if the Doha Round is to succeed: “The U.S. holds the key to making a deal possible in 2007.”³⁷ Commissioner Mandelson said after the meeting that “[t]here’s not an agreement to be announced on key issues or key numbers, but there’s certainly much greater understanding and a measure of convergence now.”³⁸ U.S. Trade Representative Susan Schwab rightly said at the meeting that “nobody is going to reach an agreement on the basis of an artificial deadline [of March 2007] if the content isn’t there that is substantively and politically viable.”³⁹ Hence, even if the major trade actors of the WTO agree that there is a need to act quickly, precaution is also offered.

In services trade, during a Green Room meeting on 22 January 2007, Pascal Lamy agreed to a request by services demandeurs such as the U.S., the EC, and Japan that he emphasize in Davos that services trade is a critical component of the overall market-access negotiations. They specifically asked him to stress that meaningful offers of services liberalization could help unlock possible concessions by major developed countries in the agriculture and industrial goods talks. Domestic regulation, which refers to measures that governments apply to both local and foreign entities supplying or seeking to supply a service in their territory, has long been guarded jealously by

³³See “Providing Leadership in the Doha Round,” speech given by Peter Mandelson at the Hindustan Times Leadership Summit, Delhi, 18 November 2006, available at http://ec.europa.eu/commission_barroso/mandelson/speeches_articles/sppm131_en.htm (last visited November 20, 2006).

³⁴ Ibid.

³⁵ See speech by Pascal Lamy, “We can stay on track to successfully conclude the Round next year,” available at http://www.wto.org/english/news_e/news06_e/tnc_chair_report_14dec06_e.htm (last visited December 18, 2006).

³⁶ The precedent for this comes from 1991, when the then Director-General of the GATT, Arthur Dunkel, drafted a comprehensive agreement text in an eventually successful attempt to break a deadlock in the Uruguay Round negotiations. Though roundly pilloried at the time, especially in developing countries, the Dunkel draft eventually provided much of the basis for the final agreement concluded three years later.

³⁷ EurActiv, “EU, US attempt Doha revival,” 9 January 2007, available at <http://www.euractiv.com/en/trade/eu-us-attempt-doha-revival/article-160722> (last visited January 17, 2007).

³⁸ Ibid.

³⁹ Ibid.

WTO Members as their sovereign prerogative. These measures, typically covering qualification requirements, qualification procedures, licensing requirements, licensing procedures, and technical standards that suppliers have to comply with in order to be able to supply a service, have the potential to be unduly trade-restrictive.⁴⁰

White House officials have indicated that President George W. Bush was trying to call on Congress to renew his TPA mandate, currently set to expire at the end of June 2007.⁴¹ Extending it is widely believed to be essential to concluding the Doha Round in the foreseeable future. U.S. trade officials say that a breakthrough in the negotiations by spring 2007 would help win Congressional support for TPA renewal. But what is needed for a successful deal? For the past year, Lamy has said that the basic ingredients of a Doha deal are clear: the U.S. must agree to deeper cuts to its ceiling on trade-distorting farm subsidies; the EC must offer more agricultural market-access;⁴² and developing countries, such as Brazil and India, must further reduce their industrial tariffs.

3. Resumption of the Multilateral Talks

“Mr. Chairman, for your last meeting as General Council Chair, I am pleased to be able to report some positive news: we have resumed our negotiations fully across the board.”⁴³ With these words, Lamy officially resumed the multilateral trade negotiations in the framework of the Doha Round on 7 February 2007, which had been suspended since July 2006. In his report to the WTO General Council, Lamy said that “political conditions are now more favourable for the conclusion of the Round than they have been for a long time.”⁴⁴ He added that “political leaders around the world clearly want us to get fully back to business, although we in turn need their continuing commitment.”⁴⁵ As for the way forward, he added: “With regard to timing, in my view we should not attempt to set ourselves any false deadlines. We are all very much aware of the urgency of the task ahead, but it is also important to reach a substantive outcome which is acceptable to everyone.”⁴⁶

Since the negotiations stalled in July 2006, political and business leaders have acknowledged the considerable costs that would be incurred by a failure to conclude a global-trade pact.⁴⁷ Business groups have voiced their concern about the potential loss of considerable economic welfare gains, both for industrialized as well as developing countries, and about the risk of weakening the safety net that the WTO provides against rising protectionist tendencies.⁴⁸ Furthermore, the Global Services Coalition (GSC) held a series of meetings with WTO ambassadors and officials. It pressed the case for renewed efforts to be made in order to produce a more commercially attractive package of liberalization commitments in the current Doha Round.⁴⁹ Lord Vallance of Tummel, the Chairman of the European Services Forum, expressed cautious optimism about the prospects for completion of the Doha Round.⁵⁰ His comments were tempered by his warning that much more progress is needed on services if a Doha Round trade deal is to gain the support of the global services industry.⁵¹ The industry delegation comprised more than 40 executives and association representatives of the Global Services Coalition, which includes the leading service industry associations from Australia, Brazil, Canada, the Caribbean region, Chile, the EU, Hong Kong, Japan, India, New Zealand, Taiwan, and the United States.

⁴⁰ Let us remember that Article VI of the GATS mandated WTO Members to negotiate possible disciplines on domestic regulation. The December 2005 Hong Kong Ministerial Declaration specified that new disciplines should be developed before the end of the Doha Round. See Ministerial Declaration, WT/MIN/(05)/DEC, 22 December 2005.

⁴¹ Elliot, L. “Bush seeks to renew authority to fast track trade deal,” *The Guardian*, 29 January 2007, available at <http://business.guardian.co.uk/davos2007/story/0,,2001022,00.html> (last visited February 12, 2007).

⁴² On liberalizing agricultural markets, the G-33 argued that liberalizing developing country agricultural markets was never one of the objectives of the Doha Round. “This round is a development round, it's all focused on market access from the developing countries into the developed countries, not the other way around,” Indian Commerce Minister Kamal Nath said in Jakarta in the framework of a summit on 20-21 March 2007 whose aim was to call on industrialized nations to take the lead in breaking the deadlock in the Doha Round trade negotiations.

⁴³ Lamy, P. “We have resumed negotiations fully across the board,” available at http://www.wto.org/english/news_e/news07_e/gc_dg_stat_7feb07_e.htm (last visited February 10, 2007).

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ World Economic Forum, “Merkel Urges New Dialogue and Closer Atlantic Partnership,” available at http://www.weforum.org/en/media/Latest%20Press%20Releases/AM07_Angela_Merkel (last visited February 12, 2007).

⁴⁸ European Business for Doha, “Save the Doha Round Now,” 25 January 2007.

⁴⁹ Global Services Coalition, “Progress in Services Negotiations Needed to Secure Business Support for Doha Round,” 21 February 2007.

⁵⁰ *Ibid.* at p. 1.

⁵¹ *Ibid.*

At the same time, at the World Social Forum 2007 - which brings together activists and movements in favour of an alternative globalization rather than the business and political elite (represented at the annual meetings of the World Economic Forum in Davos) – civil-society groups were more sceptical about reviving the Doha Round.⁵² They say that the Round has lost sight of what should have been its main priority, i.e., helping developing nations to escape from poverty.⁵³

4. Epilogue and Recommendations

Since the suspension of the multilateral trade talks, EU Member States should have pressed for a wide-ranging EC approach to the Doha Round aimed at tackling the main barriers to trade in services. The EC should overcome the failure of Cancun and work on a framework for negotiations in order to secure a successful outcome of the Doha Round. The EC needs to adapt to the changes taking place in the world trading system and world trade negotiations. There remains considerable potential for further liberalization, even if the growth of South-South trade over the last decade has been quite remarkable; however, certain fields such as culture, education, health, and public services remain a barrier to the current trend of services liberalization.

The Irish poet W.B. Yeats wrote that when things fall apart, the center cannot hold.⁵⁴ The Doha round has finally fallen apart. What, if anything, can hold the WTO and the multilateral trading system together? The WTO is in seemingly inevitable float – away from the hard politics of trade liberalization and the rules that underpin it. Serious players will switch further to preferential trade agreements; and they will be tempted to disobey existing multilateral rules. In essence, the WTO suffers from severely diminishing returns. In contrast to the General Agreement on Tariffs and Trade (GATT), it has a bigger, messier, politically more controversial agenda, shot through with multiple and contradictory objectives. And decision-making is crippled in a general assembly with near-universal membership.

For future trade rounds, we need to find a more effective way of negotiating multilaterally. The WTO family has grown very much both in its number of members – at the start of the Uruguay Round, there were only 86 members - and in its agenda in the last years, which means that the legal, economic, as well as political needs and interests of the various WTO members might differ drastically. Thus, variable geometry and sectoral agreements, as opposed to a single undertaking approach, seem to me a plausible way to move forward the multilateral trade agenda, since the single undertaking approach seems too ambitious. The same is true for the EU, i.e., the so-called enhanced cooperation. This approach has the advantage of releasing the current frustration at the WTO negotiating table – and sometimes violent protests organized by civil society - because of its slow negotiating pace. However, one disadvantage is that developing countries might feel marginalized at the WTO.

Furthermore, the WTO members' ambitions must be scaled back. Experience has taught us that the expectations of the world trading system's agenda cannot be digested by the current multilateral trade negotiations. It is not possible to get decisive progress without lowering expectations for the Doha Round. Although agriculture seems to be the key issue to disentangle the Doha talks, opening up service markets remains a vital aspect of a successful outcome from the Doha Round. In this respect, many developing countries see sending services supplies under Mode 4 of the General Agreement on Trade in Services (GATS) to lucrative markets as one of the principal areas of negotiations during the Doha round. Whether the development promise of the Doha round is achieved will depend on the extent to which the present level of commitments under Mode 4 will be expanded.

⁵² Oxfam Press Release, "Davos meeting must signal change of direction in trade talks," 23 January 2007, available at http://www.oxfam.org/en/news/2007/pr070123_davos (last visited February 12, 2007).

⁵³ Action Aid International, "Poor will gain nothing from last ditch attempts to kick-start Doha deal," 23 January 2007, available at http://www.actionaid.org/index.asp?page_id=1545 (last visited February 12, 2007).

⁵⁴ W.B. Yeats, *The Second Coming*, NORTON ANTHOLOGY OF ENGLISH LITERATURE 1880-1881 (M.H. Abrams, et al. eds., Norton, 6th Ed. 1993).