

**COMMUNICATION FROM SWITZERLAND**

Guidelines for the Mandated Services Negotiations

The following communication has been received from the delegation of Switzerland with the request that it be circulated to the Members of the Council for Trade in Services.

**I. INTRODUCTION**

1. The mandated services negotiations have started at the beginning of February 2000. Substantial work has been done in the Council for Trade in services (CTS) and in the subsidiary bodies, based on numerous written and oral contributions by Members. With this paper, Switzerland would like to provide an update of its views in the context of the current discussion on the guidelines for the mandated services negotiations. It builds on previous contributions by Switzerland: "Preparing for the GATS 2000 negotiations" (S/C/W/103 dated 22 March 1999) and "Negotiations on Trade in services – Negotiating Guidelines and Procedures" (S/C/W/123 dated 17 September 1999). It also refers to more recent submissions by other Members.

2. The "roadmap", on which Members agreed on 26 May 2000, is meant to guide work primarily in the first phase of the negotiations. For the further proceedings, agreed negotiating guidelines and procedures need to be elaborated, following GATS Article XIX. Switzerland believes that, in the absence of a definition of the term "negotiating guidelines and procedures", the CTS should avoid any abstract debate and concentrate its efforts on the elaboration of brief and purposeful guidelines. GATS Article XIX offers guidance with respect to the aim and modalities of the negotiations and the assessment of trade. From Article XIX, it is clear that the assessment of trade in services should not be part of the guidelines, but rather of the process leading to their elaboration.

**II. OBJECTIVES FOR THE NEGOTIATIONS**

3. Based on Article XIX of the General Agreement on Trade in Services, the negotiations on trade in services shall aim to achieve a higher level of liberalisation of trade in services. They shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. The negotiations shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.

4. In particular, negotiations shall aim at:

- deepening and broadening the existing commitments, thereby securing a higher level of legally-binding liberalisation;

- ensuring effective market access through appropriate rules and disciplines for trade in services and by ensuring transparency, predictability and certainty in the respective regulatory regimes of the Members.

### III. MARKET ACCESS NEGOTIATIONS

#### (i) Coverage

5. The concept of progressive liberalisation contained in the GATS refers primarily to a process of gradual improvement of the overall level of specific commitments. Therefore, negotiation of specific commitments should be at the heart of the current services negotiations.

6. For Switzerland, the negotiations of specific commitments should not exclude any sector or mode of supply *a priori*. The mandate for the negotiations provided by Article XIX of the GATS is formulated in general terms. A comprehensive approach offers the most prospects of trade-offs and facilitates thereby negotiations which are conducive to substantial gains for all Members, including developing countries.

#### (ii) Negotiating modalities

7. Switzerland tends to support the proposal on negotiating modalities made by some other Members, according to which the development of liberalisation formulas, clusters or model schedules could help bringing the negotiating process further. For Switzerland, such formulas are complementary to the more traditional approach of request/offer; they should not replace such negotiating methods. These alternative approaches should be used on a voluntary basis. Switzerland expects a more homogenous level of commitments from the more intensive use of clusters or negotiating formulas. This would make the GATS more readily understandable and help reinforce its role as a legal benchmark for operators. Switzerland believes that the ongoing discussion in CTS and in the Committee on Specific Commitments (CSC) has been very useful for helping to understand the practical implications of such cluster approaches.

#### (iii) Treatment of autonomous liberalisation

8. As far as the treatment of autonomous liberalisation is concerned, Switzerland notes that so far, attempts at establishing concrete modalities for this issue have failed. Switzerland believes that this is primarily due to the difficulty of defining the notion of credit. Obviously, the value of a credit that reflects the value of a measure of autonomous liberalisation by a Member would be different for each Member. It would vary according to the density of trade relations between the Members concerned, the nature of the measure at stake, the respective interest of each Member in the given sub-sector. Many more factors could be thought about to determine the value of a credit. But even if the right valuation criteria were identified, the need would arise as to whether any useful figure or proxy would be available to assert the effective value of a credit.

9. In fact, it seems that any objective measurement of the value of a liberalisation measure is nearly impossible. What remains is to leave it to direct negotiations among the Members concerned to yield the correct value of an autonomous liberalisation measure. But this in turn raises the question whether any special scheme for autonomous liberalisation measures in addition to the bilateral offer/request negotiation, is necessary at all.

(iv) *Starting point for negotiations*

10. Unless a satisfactory solution to the question of the treatment of autonomous liberalisation can be found, Switzerland holds the view that the logical starting point for the negotiation of specific commitments should be the currently applicable schedules.

(v) *Article II exemptions*

11. The GATS Annex on Article II exemptions (MFN exemptions) prescribes that the CTS shall review all MFN exemptions no more than 5 years after the entry into force of the WTO Agreement. This review has been conducted during the year 2000, in conformity with the GATS-Annex. It has shown that most of the exemptions are justified by national policy objectives and hence are not in contradiction with the spirit of the GATS. According to the GATS Annex on Article II exemptions, the exemptions shall be subject to negotiation in subsequent trade-liberalisation rounds. Therefore, the negotiation of MFN exemptions may be integrated as part of the bilateral offer/request process provided for the negotiation of specific commitments.

(vi) *Classification, scheduling guidelines*

12. Regarding the ongoing work of the Committee of Specific Commitments (CSC), Switzerland believes that the priority should be given to the completion of a revised version of the scheduling guidelines. Decisions are needed in this regard.

13. The classification issues are also important and have to be advanced as quickly as possible, as it appears to be necessary that classification issues be settled on time in order to ensure a clear technical background for the negotiation of specific commitments. But Switzerland also believes that new questions regarding classification will arise along with the market access negotiations, that will need to be addressed. Therefore, Switzerland expects that classification issues will be on the agenda of the CSC for some time.

#### **IV. STANDSTILL**

14. Switzerland shares the view of many other delegations that Members should not take any new measures affecting trade in services that would improve their negotiating position or be used as leverage through the conclusion of the negotiations. This seems to be a principle that is usual to such negotiations. It ensures a predictable environment for the negotiators and thereby favours the successful conclusion of negotiations. Therefore, Switzerland supports a standstill as a usual notion in negotiations.

#### **V. GATS RULES**

15. The work mandated by the GATS should be part of the negotiations. Switzerland considers the establishment of a well-developed framework of rules and disciplines as equally important as specific commitments for ensuring effective market access. The GATS rules have therefore to be treated with a sense of priority, whilst recognising that, as a part of the global package, rule work will probably be finally completed together with other issues under negotiations.

(i) *Safeguards*

16. Whilst keeping in mind that the basic questions of feasibility and desirability are yet to be answered, Switzerland considers that useful work has been undertaken during the past few months. Switzerland is willing to continue to contribute to the ongoing process and to pursue the analysis of a possible safeguard mechanism for the GATS during the coming 15 months.

(ii) *Subsidies*

17. Switzerland attaches a great importance to the issue of subsidies. It regrets therefore that, as of today, little progress could be registered in this field. Switzerland believes that the elaboration of subsidies disciplines under the GATS will prove to be a demanding exercise that will require a lot of effort. We expect that, once the discussion on general disciplines will have advanced, a more sectoral focus will be required in order to develop workable disciplines. These efforts are yet to be undertaken and we hope that the WPGR will be in position to do so in the near future.

(iii) *Government Procurement*

18. The negotiations on government procurement in services need to be pursued, if need be in connection and co-ordination with other mandated work under the WTO. Switzerland could for instance support the idea of holding joint sessions between the WPGR and the Working Group on Transparency on Government procurement for discussing common issues.

## **VI. DOMESTIC REGULATION**

19. Current work in the Working Party on Domestic Regulation (WPDR) had shown that domestic regulation issues are becoming an increasingly important aspect of liberalisation of trade in services if effective market access is to be secured. Experience clearly shows that measures pertaining to the definition and implementation of licensing and qualification requirements and procedures as well as of technical standards can seriously affect the effective conditions of access for foreign services or foreign services suppliers. With a growing level of market access and national treatment commitments, the relevance of GATS Article VI measures for effective market access will inevitably become greater.

20. The ongoing discussion in the WPDR on the clarification of the concepts of necessity and transparency is very useful in view of the development of regulatory disciplines. Switzerland believes that both concepts are equally important, since necessity needs transparency in order to be properly enforced. The discussion on the two aspects should be pursued in parallel with a view to developing a general discipline in the sense of Article VI:4, applicable to all sectors.

21. In addition to the general principles that Article VI is meant to provide, discussions held so far has shown that specific disciplines in individual sectors will be needed, especially in sectors where particular regulatory constraints do exist and substantially affect the condition of business. The services industry is known as highly regulated, so that effective access to foreign markets by services suppliers may, at least in some sub-sectors, require some degree of specification of the general principles contained in GATS Article VI. Existing examples are the reference paper for the telecommunication services, as well as the Article VI disciplines on accountancy services. We believe that further disciplines of this kind should be envisaged in other sectors and could provide a basis for additional commitments. Recent consultations with professional services organisations tend to show that the disciplines on accountancy services could be transposed, with some changes, to other sectors.

## **VII. FLEXIBILITY FOR DEVELOPING COUNTRIES**

22. Switzerland believes that GATS Article IV and XIX provide for a sound basis for ensuring an increasing participation of developing countries. We fully subscribe to these provisions and are ready to take them fully into account in the course of the negotiations by providing the necessary flexibility, especially for least-developed countries. More specifically, we support ideas put forward by other Members to allow flexibility to least-developed countries for the submission of their schedules as well as to allow for the longer transitional periods when phasing in commitments.

### **VIII. TIME-FRAME FOR THE NEGOTIATIONS**

23. The timetable for the initial phase of the negotiations up to March 2001 is contained in the "Roadmap". With respect to the timetable suggested by some Members, Switzerland could support holding a mid-term review. However, the date of that review, as well as the final deadline for the negotiations need to be decided in the broader context of a comprehensive round of negotiations. Switzerland believes that, at this time, it is not appropriate to establish additional deadlines.

### **IX. PRACTICAL ARRANGEMENTS REGARDING THE ORGANISATION OF WORK**

24. The services negotiations during the current year have taken place in five special sessions of the Council for Trade in Services. The most important part of the discussion have so far been devoted to essentially procedural issues. We believe that after this year of "warming up", the CTS should now concentrate its work on more concrete issues. A more sectoral perspective could provide for such a focus. This process should be driven by Members' contributions and proposals. In this regard, the Annex on Tourism, which has been proposed by the Dominican Republic, Honduras and El Salvador, is a valuable example of such initiatives.

25. Practically, we believe that the work of the CTS and the subsidiary bodies should be organised in less sessions than it was the case in the current year, but that these services sessions should last two weeks instead of one. This would lead to a more focussed and productive work.

### **X. CONCLUSION**

26. The present contribution presents an update of Switzerland's view to the mandated services negotiations. Switzerland favours an elaboration of negotiating guidelines on this basis, that are comprehensive, but also concise and purposeful. We are confident that the Council for Trade in Services will be in a position to do so in the near future.

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