

COMMUNICATION FROM KENYA

Negotiating Proposal

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

I. OBJECTIVES

1. In the on-going GATS negotiations, Kenya attaches paramount importance to the facilitation of the increasing participation by Kenyan service suppliers in the growing international services trade. Such enhanced participation in international services trade will contribute to attainment of economic growth and poverty alleviation objectives.

2. In the light of this objective, Kenya would like to highlight her expectations in the negotiations on following issues as well as specific sectors of interest to Kenya. Kenya reserves the right to further elaborate on this and possible future proposals.

II. ASSESSMENT OF TRADE IN SERVICES

3. In order to achieve this objective it is important first and foremost to undertake an assessment of trade in services at the national level. This would enable Kenya to assess the gains/benefits accrued as a result of the GATS, the areas which could further be liberalized as well as identifying the sectors of export interest. We note that the Guidelines and Procedures for the Negotiations on Trade in Services provides for such technical assistance. In this regard, Kenya as a matter of priority requests for this assistance in order to undertake this study at the national and sectoral level.

III. AUTONOMOUS LIBERALIZATION

4. Kenya has undertaken a number of liberalization measures since the previous round of multilateral trade negotiations. In this regard, Kenya would like recognition of the autonomous liberalization measures undertaken be taken into account. Multilaterally agreed criteria for the recognition of autonomous liberalization would ensure that Kenya along with other developing countries is a net beneficiary in terms of the credit for these efforts.

IV. MOVEMENT OF NATURAL PERSONS

5. Kenya has a well-developed human resource base. Kenya is cognizant of the economy-wide benefits stemming from the foreign expertise and managerial skills that accompany FDI. They are

most relevant when such expertise is not available locally. Kenya expects economically meaningful commitments from its trading partners in mode 4 in selected sectors and occupations.

V. DOMESTIC REGULATION AND GATS RULES

6. The two Working Parties that were established to conduct work on Domestic Regulation and GATS rules need to complete their mandate. It is important that issues related to Domestic Regulation and GATS rules are solely tackled by these working parties. The 15th March 2002 deadline for accomplishing work on ESM should be respected.

VI. PROFESSIONAL SERVICES

7. A number of professionals of various disciplines are allowed to register and practice in Kenya. However, Kenyan professionals are not extended similar treatment in most other countries. In this regard, Kenya considers acceding to existing MRAs as a practical contribution to the achievement of the objectives stated in Article IV. In so doing, trade in services capacity of the professionals will be increased.

VII. ECONOMIC NEEDS TEST

8. Economic needs test is an important policy instrument for ensuring the accrual of maximum benefits in selected sectors of developing countries' economies. Development of multilaterally agreed criteria and procedures for its application is necessary and important.

VIII. FINANCIAL SERVICES

9. Kenya has undertaken a number of commitments in Financial services in both banking and insurance sub-sectors. Kenya believes that a strong and transparent regulatory regime as well as an efficient supervisory body should precede further liberalization, in order to preserve the integrity and stability of the financial system. Moreover, Kenya recognizes a modern and sound financial infrastructure as an important ingredient for economic growth and stability through its role as an intermediary for financing for development.

IX. TOURISM SERVICES

10. The potential contribution of tourism to the Kenyan economy has long been recognized by the Government. In this regard, Kenya undertook deep commitments in this sector during the Uruguay Round. Full liberalization of Tourism services is a potential win-win situation once the issue of anti-competitive practices is adequately addressed. The UNCTAD expert meeting on tourism highlighted the existence of these practices that impede the full utilization of this sector's potential. The on-going negotiations are therefore the appropriate fora for addressing these concerns through the establishment of an Annex on Tourism as proposed. Moreover, we recognize that the GATS avails Members the necessary flexibility to pursue legitimate policy objectives such as the encouragement of eco-tourism for sustainable development.

X. CONSTRUCTION AND RELATED ENGINEERING SERVICES

11. Kenya's objective in the negotiations on Construction and Related Engineering services is to promote employment creation, human resource development and capacity building as a way of achieving technology transfer and enhancing indigenous know-how. Construction services is a fundamental infrastructural service where participation of local firms is crucial. In order to ensure the sustainability of local infrastructural facilities and take advantage of knowledge of the local conditions, preference should be given to Kenyan professionals. This can be achieved inter alia through:

- (a) Joint ventures, associations and partnership with foreign firms;
- (b) Improved access to information networks and distribution channels in line with Article IV;
- (c) Use of performance requirement consistent with multilateral disciplines.

12. In order to enable Kenya meet her development targets with the support of her development partners, positive measures should be taken in line with Article IV so that local firms can participate in the design and execution of construction projects funded by all development partners.

13. It is recognized that some Members of the WTO are subsidizing their construction and related engineering service sectors while others especially the financially disadvantaged developing countries like Kenya are unable to do so. Kenya would like to seek that trade distortive subsidies are not used in a way that undermines competitiveness of service suppliers of developing countries.

14. The payment demanded when request for the expression of interest is invited should be abolished. Security bond should not be extended to consultancy services.

XI. REGIONAL INTEGRATION

15. The role of regional integration between and among developing countries as a vehicle for progressive liberalization of services in line with the provisions of GATS Article V cannot be over-emphasized. In this regard, Kenya considers regional integration as a way of building capacity and competitiveness of domestic firms.
