

WORLD TRADE ORGANIZATION

RESTRICTED

WT/GC/W/215

S/C/W/112

22 June 1999

(99-2524)

General Council
Council for Trade in Services

Original: English

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Focus and Priorities of the New Round of Services Negotiations

Communication from Hong Kong, China

The following communication, dated 21 June 1999, has been received from the Hong Kong Economic and Trade Office.

1. The World Trade Organization (WTO) is mandated to enter into successive rounds of services negotiations with a view to achieving progressively higher levels of liberalization. The first round of such overall negotiations will begin not later than year 2000. This non-paper outlines Hong Kong, China's focus and priorities for the new round of services negotiations, and suggests possible scope and modality for the services negotiations.

Objectives

2. Hong Kong, China's objectives for the next round of services negotiations are:

- (a) to achieve progressive trade liberalization in the whole range of services sectors by broadening and deepening the market access and national treatment commitments;
- (b) to uphold the fundamental WTO principle of non-discrimination by eliminating the exemptions to the most-favoured-nation (MFN) treatment;
- (c) to tackle vigorously barriers to trade in services arising from domestic regulations and anti-competitive behaviour;
- (d) to ensure that the GATS rules remain relevant and responsive to the needs of the modern business world through clarifying and, if necessary, reviewing certain GATS provisions and developing new rules and disciplines; and
- (e) to enhance the transparency and certainty of the specific commitments through improving the scheduling methods and clarifying the ambiguities arising from certain commitments.

Scope of negotiations

3. Whilst the exact scope and coverage of the next round of services negotiations have yet been discussed in the WTO, it is noted that the GATS mandates negotiations on a wide range of issues. In

addition to the negotiations on specific market access and national treatment commitments, the GATS mandates the WTO to develop rules governing emergency safeguard measures, government procurement and subsidies; disciplines governing domestic regulations; and reviews of the Annex on MFN Exemptions, the Annex on Air Transport Services and the Annex on Maritime Transport Services. In addition, Hong Kong, China considers that the scope of the negotiations should allow for consideration of and work related to other GATS provisions which warrant attention.

Focus and priorities

(a) Negotiations on Specific Commitments (Article XIX)

4. Hong Kong, China considers the negotiations on specific commitments should be the core element of further broad-based negotiations to liberalize trade in services. Efforts should be devoted to widening and deepening the market access and national treatment commitments of WTO Members and to ensuring that these take account of the changing nature of services and service providers. In this regard, we support a comprehensive sectoral coverage for the negotiations and propose that Members should make their best endeavour to submit offers on all service sectors covered by GATS. To avoid protracted discussions, we do not see the need to prioritize the services sectors before the launching of the sectoral negotiations. Nonetheless, we do not rule out the need for more intensive and focussed negotiations on specific sectors during the new round in case such are merited in order to move matters forward more expeditiously.

5. In line with the objective of progressive liberalization in trade in services, we consider that any changes to the existing Schedules of Specific Commitments (the Schedules) in the context of new negotiations should be improvements. It thus follows that any termination or reduction of existing commitments should go through Article XXI procedures so as to preserve the balance of rights and obligations obtained in the Uruguay Round and the extended track of negotiations. In this connection, we agree that a more straight-forward mechanism should be installed to facilitate the scheduling of new commitments, improvements or rectification in a Member's existing schedule.

6. We consider that the traditional request-and-offer approach should provide the basis on which specific commitments should be negotiated. Nonetheless, we believe other approaches (e.g. horizontal or formula approach) may usefully supplement the traditional approach and help to encourage specific commitments. The possibility of having a combination of approaches may also be considered. Related to this, Hong Kong, China proposes that the new negotiations should aim at the complete removal of all existing MFN exemptions listed by Members by the conclusion of the new round or 2005, whichever is the earlier.

7. A related issue is how the existing scheduling methodology could be improved so as to encourage further commitments and enhance transparency. This requires reviews of the scheduling guidelines and the existing GATS sectoral classification. On the former, the WTO Committee on Specific Commitments (CSC) has identified a number of key issues arising from the existing scheduling guidelines. These include, among other things, the need to clarify the distinction between Modes 1 and 2, the interpretation of national treatment commitments in particular those under Modes 1 and 2, the relationship between the commitments/limitations listed under Articles XVI and XVII given the scheduling practice prescribed in Article XX:2, the legal status of headnotes and footnotes in Schedules, etc.

8. On classification, in view of the technological changes and the emergence of new services after the Uruguay Round, it may be necessary to review the scope of certain services sectors (e.g. energy services, environmental services and distribution services) as well as to examine the possible overlaps between different service sectors (e.g. audio-visual and communication services,

postal/courier services and transport services, etc.). Hong Kong, China considers that these technical issues should be clarified at the early stage of the negotiations since an improved scheduling methodology would remove the uncertainty involved in making commitments and help encourage more substantive and meaningful commitments from Members.

(b) Domestic Regulations (Article VI)

9. In addition to specific commitments, we consider that an important focus for the new negotiations is the development of disciplines and guidelines on domestic regulations to ensure that they would not become disguised barriers to trade (Article VI:4). A set of disciplines for the accountancy sector have been developed and adopted by the CTS last year to ensure that qualifications/licensing requirements and procedures and technical standards do not constitute unnecessary barriers to trade. The work needs now to be advanced on a much wider footing, pursuant to Article VI:4 of the GATS. Building on the guidelines for the accountancy sector, we are of the view that the newly established Working Party on Domestic Regulations should conduct parallel work on the development of general disciplines on domestic regulations and horizontal disciplines for other professional services. In this regard, Hong Kong, China has submitted a paper proposing a way forward for domestic consultation with the professional bodies.

10. In addition to the Article VI:4 principles, WTO Members should also examine how to ensure that the value of market access commitments would not be compromised by anti-competitive behaviour in the domestic markets (e.g. cartel, exclusive franchise, etc). These include a lack of access to basic information and facilities such as physical infrastructure and other supporting facilities. In this regard, the Regulatory Principles on Basic Telecommunications (the Reference Paper) took a major step in the telecoms sector. Members should consider seriously whether similar pro-competition principles should be developed and adopted for other services sectors in the negotiations, particularly those which are prone to anti-competitive behaviour. Alternatively, Members may consider whether the elements contained in the Reference Paper could be applied horizontally to other sectors or to specific sectors.

(c) Rule-making issues

11. It is necessary to inject fresh momentum into three mandated rule-making work, particularly with regard to Government Procurement (Article XIII) and Subsidies (Article XV), as well as Emergency Safeguard Measures (Article X), progress on which has been unsatisfactory.

12. Furthermore, the services work programme should allow for the clarification and, if necessary, review of certain GATS provisions. Several provisions are not as clear as they ought to be, in particular the interpretation and application of Article V on economic integration agreements. The WTO Committee on Regional Trade Agreements (CRTA), which is tasked to examine, among other things, the systemic implications of the RTAs, has not yet focussed on the interpretation of Article V. In view of the proliferation of RTAs in recent years, it is imperative that the WTO should look at the rules and see if they need to be clarified and strengthened to meet the changing environment. In this regard, Hong Kong, China has submitted to the General Council a paper proposing that "the existing WTO rules and decisions relating to RTAs should be clarified and, where appropriate, reinforced."

13. In this connection, Hong Kong, China believes that it would be desirable if the rules and disciplines and clarifications described above could be agreed at an early stage of the new round of negotiations – to be brought into effect at the end of the round - so as to provide a degree of certainty and to encourage improvements in specific commitments.

(d) Increasing participation of developing and least-developed economies

14. Article IV mandates that the increasing participation of developing Members in world trade should be facilitated through negotiated specific commitments relating to, *inter alia*, the liberalization of market access in sectors and modes of supply of export interest to them. Special attention should be given to the needs of the least-developed economies in this respect. For example, Members should strive to improve developing Members' access to their markets in sectors where the latter have a competitive edge (e.g. construction and related services, tourism, health services and computer-related services). This requires the developing members to articulate their interests from the new negotiations, and the developed Members to make a genuine effort to accommodate them. In addition, Members should consider, perhaps in the wider context, how to enhance the capacity building and technical assistance for the least-developed economies to enable them to benefit from trade liberalization and implement their market access commitments.

Negotiations guidelines and way forward

15. The GATS mandates that negotiating guidelines and procedures should be established for each round of services negotiations. These Negotiating Guidelines should be agreed at the Seattle Ministerial Conference. Clearly some elements of the negotiating principles (such as "standstill" and "early harvest") and modalities will be linked to the broader package of negotiations to be agreed upon. The level of specificity of the guidelines for the differing subject areas under WTO Agreements will need to take account of the differing needs and requirements of the areas to be negotiated. Also, the Negotiating Guidelines for services should set out in clear and precise terms the scope, structure and timeframe of the new round of services negotiations.

16. We have discussed above the scope and coverage Hong Kong, China considers appropriate. In our non-paper of 26 April 1999, we also discussed the possible administrative arrangements that should apply to services negotiations.
