

WORLD TRADE ORGANIZATION

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PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Preparation for the 2000 Services Negotiations

Communication from Japan

The following communication, dated 12 July 1999, has been received from the Permanent Mission of Japan.

1. Proposal

1. Japan hereby proposes on the issue of services that Members should commence the next round of negotiations soon after the third Ministerial Conference, with broad and general guidelines and procedures, towards (a) achieving deeper and broader liberalization commitments, and (b) elaborating effective rules for trade in services.

2. Japan proposes to take up the following issues and considerations as the agenda of guidelines and procedures: comprehensive scope of sectors; negotiations on specific commitments by combining a request-offer with a formula approach; MFN exemptions; disciplines on domestic regulations with the possibility of pro-competitive disciplines; and negotiations on GATS rules. Japan proposes in the context of negotiations to pursue further consideration on special and differential treatment for developing-country Members and on scheduling guidelines and classifications.

2. Background

Negotiating guidelines and procedures

(i) Objectives

3. Our starting point is "to achieve a progressively higher level of liberalization" (Article XIX of the GATS), from which a number of more specific objectives could come out. Such objectives may be categorized into the following two concepts:

- (a) to achieve deeper and broader liberalization commitments, thereby securing a higher level of legally-binding liberalization; and
- (b) to elaborate effective rules for trade in services, thereby ensuring transparency and certainty in the respective regulatory regimes of the Members.

(ii) Scope

4. Japan has been advocating, with other Members, that the scope of the next round of services negotiations should cover all sectors and modes of supply. None of those elements should, a priori, be excluded. By doing so, Members, including developing-country Members, with fairly diverse interests in trade in services, could accommodate their respective interests through a series of deals in the negotiations.

5. Although we do not see a particular need to limit the scope to certain sectors and issues, we may be interested in paying due attention to some sectors. For example, the maritime services should be given priority for completing the negotiations at the earliest possible date in the next round, since the negotiations in that sector were suspended, leaving commitments extremely limited and MFN principle not applied.

(iii) Issues

6. The issues that Japan envisages for the forthcoming negotiations are elaborated below. In discussing those issues, Japan views that Members should respect those "mandated" issues when setting the agenda for the next round, since there were a number of issues left unsettled in the previous round of negotiations and thus further work was mandated in various parts of the GATS and other related decisions.

(iv) Negotiations on specific commitments

7. The achievement of deeper and broader market access and national treatment commitments should be placed as one of the most significant pillars of the forthcoming negotiations.

8. Members could pursue these objectives by combining a number of approaches. While Members should continue to take the traditional request-offer approach, they should also explore the possibility of taking a "formula" approach. Horizontal formulas, by which Members make identical or equivalent levels of commitments with regard to certain modes or certain types of restrictions across the board, are useful tools for negotiators to achieve a liberalization target in a more structured manner. They will also enhance the "user friendliness" of the GATS. Various kinds of formula techniques could be classified into two categories: horizontal and sectoral. Japan believes that, for the time being, Members should discuss horizontal initiatives, since sectoral issues would be tackled better by sectoral experts after the inception of the negotiation.

9. Japan sees that such items as the MFN exemptions, majority ownership, grandfathering, nationality and residency requirements for executives and employees in a company, and the various performance requirements are, among others, candidates for discussions in deepening an understanding on possible horizontal formulas. In this context, appropriate flexibility elements may need to be considered to accommodate the concerns of developing-country Members which could face difficulties in joining those initiatives.

10. Japan observes that Members could achieve consensus by the time of the Ministerial on exploring this approach, but it seems difficult to agree on specific formulas by Seattle. For this objective, further discussions may facilitate the Members' understanding of formulas, and Japan is willing to join in such efforts.

(v) MFN exemptions

11. Since the MFN exemption is an irregular departure from one of the most fundamental principles upon which the multilateral trading system has been founded, only necessary and minimum exemptions should be allowed. The current situation of MFN exemptions is far from satisfactory.

12. In this connection, Members should commence the review of those exemptions envisaged in the Annex at the earliest possible stage, hopefully before the Seattle Ministerial. Although the elimination or reduction of the exemptions will be realized through the next round of negotiations, the review itself will be certainly useful in facilitating the negotiations.

(vi) *Disciplines on domestic regulations*

13. Japan supports the development of horizontal disciplines for domestic regulations within the meaning of Article VI:4 of the GATS. Future work should be encouraged, in parallel to the work on professional services mandated by the Ministerial Decision of the Uruguay Round. Japan is also of the view that the possibility of taking a sectoral approach should not be excluded, although Japan is not in a position to articulate any particular sector that needs detailed work immediately. Our current task is to refine the concept of a necessity test and transparency, taking into account the lessons drawn from the accountancy disciplines.

14. With respect to the pro-competitive disciplines, it is important at this stage to analyse further in which sectors such disciplines, as reflected in the Reference Paper of the Basic Telecommunication Agreement, are applicable, and what issues may arise in the case of such application, taking into account the different nature of individual sectors. Assessing the current state of competition in the respective sectors is, therefore, relevant in this sense.

(vii) *GATS rules (safeguards, subsidies and government procurement)*

15. Members should also continue to work on the GATS rules issues, including safeguards in particular. While the question of desirability and feasibility is still considered to be open, Japan views that its scope would have to be limited with a clear definition of coverage, criteria for justification and procedures. Japan would like at this juncture to work on a horizontal approach instead of sector-specific/scheduled approaches. Japan is ready to pursue a pragmatic approach including participating in discussions based on hypothetical questions.

(viii) *Special and differential treatment for developing countries*

16. As a clear direction is given in Articles IV, XIX, and XXV of the GATS on the special and differential treatment of developing-country Members, Members need to pay particular attention to this issue for the purpose of the next round. In this context, Japan would like to propose that the concept of flexibility stipulated in the second paragraph of Article XIX of the GATS should be incorporated into the negotiating guidelines.

(ix) *Scheduling guidelines and classification*

17. A number of delegations have emphasized the need for improvement on scheduling guidelines and classification. Japan will certainly participate positively in the discussions, but Members should keep in mind that, for the sake of the legal stability and reliability of the schedule, the revision of the current structure should be limited to cases where the revision is essential to solve issues that have arisen from the current scheduling. Some Members may argue for the reclassification of sectors in order to enhance the effectiveness of the negotiations and transparency of the commitments, but in this case we could also devise a category of services solely for negotiation purposes and incorporate the results into the current schedule.