

WORLD TRADE ORGANIZATION

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General Council

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PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Negotiations on Services

Communication from Switzerland

The following communication, dated 20 July 1999, has been received from the Permanent Mission of Switzerland.

Proposal

1. Negotiations shall aim, based on Article XIX of the General Agreement on Trade in Services, to achieve a higher level of liberalisation of trade in services. Such negotiations 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.

Background

2. Switzerland is of the view that GATS Article XIX constitutes a good basis for the future negotiations on services. The wording proposed above reflects, in Switzerland's view, the core of GATS Article XIX.

3. GATS Article XIX further provides for equally important elements that should be taken up at a horizontal level in the Seattle declaration. These elements relate to:

Organization of the negotiations

("The process of progressive liberalization shall be advanced through bilateral, plurilateral or multilateral negotiations").

Developing-country Members

("The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors." "There shall be appropriate flexibility for individual developing-country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with the development situation and, when making access to their markets available to foreign services suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV of the GATS." "Negotiating guidelines shall

establish modalities for the special treatment for least-developed country Members under the provisions of paragraph 3 of Article IV of the GATS").

Autonomous liberalization measures

("Negotiating guidelines shall establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations").

4. As far as the establishment of negotiating guidelines in accordance with GATS Article XIX:3 is concerned, Switzerland is of the view that the work currently underway in the Council for Trade in Services should be pursued and completed in time for the General Council to be able to consider the result of these work before the Seattle Ministerial meeting. In that connection, reference is made to the communication from Switzerland dated 19 March 1999, *Preparing for the GATS 2000 negotiations* (S/C/W/103) which is reproduced in Annex.

ANNEX

WORLD TRADE ORGANIZATION

RESTRICTED

S/C/W/103

22 March 1999

(99-1126)

Council for Trade in Services

Original: English

COMMUNICATION FROM SWITZERLAND

Preparing for the GATS 2000 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.

This paper constitutes a contribution of Switzerland to the work to be undertaken by the Council for trade in services in fulfilling its mandate under GATS Article XIX in perspective of the year 2000 negotiations on services. It is without prejudice to the position of Switzerland in the process underway in the General Council in special session following the ministerial decision of May 1998.

PREPARING FOR THE GATS 2000 NEGOTIATIONS

Article XIX of the GATS prescribes that "Members shall enter into successive rounds of negotiations, beginning not later than five years after the entry into force of the WTO Agreement...". At the Ministerial Conference held 1996 in Singapore, Ministers endorsed a recommendation:

- calling upon the Council for Trade in Services to develop an information exchange program (IEP) with the aim of facilitating the access of all Members, in particular developing country Members, to information regarding laws, regulations, administrative guidelines and policies affecting trade in services; as well as;
- calling upon the Council to begin the consideration of guidelines and procedures for negotiations mandated under Article XIX at an appropriate time;

with a view to facilitating the coming GATS 2000 negotiations.

An extensive and fruitful information exchange has taken place during the last months in the framework of the Council for Trade in Services, on the basis of a series of background notes prepared by the Secretariat as well as of a number of contributions by Members. This information exchange proved to be highly informative and helpful in preparing for the GATS 2000 negotiations. The IEP does also provide an excellent basis for the work to be undertaken under the mandate of GATS Article XIX:3, i.e. to develop negotiating guidelines and procedures.

Switzerland believes that time has now come to meet the second part of the mandate to the GATS Council, i.e. to establish negotiating guidelines and procedures.

Negotiating guidelines and procedures

GATS Article. XIX prescribes with respect to negotiating guidelines that "for the purpose of establishing such guidelines, the Council for Trade in Services shall carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV". Switzerland believes that, with the completion of the IEP, the GATS Council has conducted much of the work conducive to a proper assessment of trade in services in the meaning of GATS Article XIX. Furthermore, with the Secretariat's note that has been prepared following the decision of the Council on 15 December 1998 (S/C/W/94) and the coming discussion of this note within the CTS, we feel that most of what Members are able to undertake in terms of assessing trade in services will have been done.

The next step following the mandate to the CTS under GATS Article XIX is to establish negotiating guidelines and procedures. There is no formal precedent to the work that the CTS is about to undertake following this mandate. Neither does a definition of the term "negotiating guidelines and procedures" exist. Switzerland believes however that the CTS should avoid any abstract debate about the actual meaning of these terms. On the contrary, the CTS should, following the mandate arising from GATS Article XIX, concentrate its efforts on the preparation of the GATS 2000 negotiations as concretely as possible.

It can be drawn from previous negotiations that a negotiating program typically includes the identification and determination of: (a) issues/topics for the negotiation; (b) the objectives of the negotiation; (c) a method or principles for the negotiation; (d) an approximate time-frame; (e) and practical arrangements regarding the organisation of work. It is not clear as from today to which extent the CTS will be able to address these five topics within the time available. Switzerland believes

however that the CTS should start by concentrating its efforts on the first item, i.e. the identification of the negotiating issues, because the determination of the negotiating issues is necessary to take up anyone of the other elements. This paper therefore focuses on the identification of the negotiating issues/topics.

Issues/topics for negotiation

A number of the issues that are identified below are not new. Some of them have already been decided as issues to be tackled in the framework of the year 2000 negotiations; some are being discussed already today as a result of corresponding mandates arising from the GATS Agreement. Other are being suggested as "new" issues, i.e. issues that we believe should be taken up in the framework of the coming negotiation, but that are not yet the object of a corresponding decision. They are presented here in a structured manner in order to bring the process of preparing the GATS 2000 negotiation further.

As the Preamble to the GATS states, the GATS aims at achieving progressively higher levels of liberalisation of trade in services through successive rounds of multilateral negotiations aimed at promoting the interests of all participants on a mutually advantageous basis. From the discussion conducted so far principally in the framework of the IEP, a number of different topics for negotiations emerge that are conducive to a higher level of liberalisation of trade in services. These topics can be divided into three broad categories: (i) the level of market access and national treatment commitments; (ii) domestic regulation and GATS Article VI related issues; (iii) functioning of the GATS.

(i) Specific commitments and MFN exemptions

Negotiations on specific commitments conducted during the Uruguay Round and within the built-in agenda have produced a heterogeneous overall picture in a cross-sectoral as well as in a cross-country perspective. Not least the IEP has shown the existence of fairly broad differences regarding actual and prospective market access opportunities among sectors and/or countries. Obviously, the notion of progressive liberalisation within the GATS aims primarily at improving the overall level of specific commitments. Therefore, negotiation of specific commitments should be the heart of the GATS 2000 negotiating program.

Switzerland believes that the negotiations of specific commitments should be a priori extended to all sectors. The mandate for the negotiations provided by Article XIX of the GATS is formulated in general terms and does therefore not exclude any sector from the scope of the negotiations. Furthermore, a comprehensive approach offers prospects of trade-offs and facilitates thereby negotiations which are conducive to substantial gains for all Members, including developing country Members.

Yet, it is foreseeable that some degree of prioritisation will emerge from the negotiation of specific commitments. For instance, additional liberalisation steps in sectors with limited commitments (e.g. air transport, environment services, distribution services, energy services) will bring most substantial effects, hence addressing those sectors will probably emerge as a priority. Maritime transport will merit special attention, given the present status of this sector in the GATS. Furthermore, a particular attention should be given to sectors where regulatory changes, modification of business structures and/or technological progress have occurred since the last negotiations (for instance air transport or audiovisual services) which facilitate liberalisation at the multilateral level.

The negotiation of liberalisation commitments across all sectors would profit from some streamlining efforts in the form of commonly agreed methods, be it on a sectoral or cross-sectoral

basis, or on a modal or cross-modal basis. Furthermore, while keeping in mind the principle of progressive liberalisation, a more homogenous level of commitments would make the GATS more readily understandable and help reinforcing its role as a legal benchmark for operators. Therefore, Switzerland believes that the development of liberalisation formulas could help bringing the negotiating process further. A debate about such approaches could concentrate on some of the following elements:

- establishing standardised lists of services products for a given sub-sector to be included in Members' commitments;
- establishment of standardised minimum liberalisation commitments on a sub-sectoral or on a modal basis (including the movement of natural persons);
- exclusion of certain types of restrictions across the board;

Finally, the GATS Annex on Article II exemptions prescribes that the CTS shall review all MFN exemptions no more than 5 years after the entry into force of the WTO Agreement i.e December 31, 1999. It is therefore to be expected that MFN-exemptions will be taken up in the framework of or at least in parallel to the coming negotiations.

(ii) Domestic Regulation (Art. VI GATS)

Switzerland believes that issues pertaining to domestic regulations will become 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 qualifications requirements and procedures as well as of technical standards [i.e. measures that are not subject to scheduling under GATS Article XVI (market access) and XVII (national treatment)] 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.

Article VI:1 GATS requires Members to "ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner" in sectors where they have undertaken specific commitments. Article VI:4 GATS mandates the Council for Trade in Services, through appropriate bodies it may establish, to develop any necessary disciplines to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services. A useful work has been undertaken so far under this mandate by the WPPS. We believe that, building on these efforts, Members should develop further disciplines pertaining to GATS Article VI as a matter of priority for the GATS 2000 negotiations¹.

In our view there are two lines for improvement of the domestic regulation issue:

¹ See also Document S/C/W/66: Work programme on Article VI:4, Communication by New Zealand
 Document S/C/W/96, Article VI:4 of the GATS: Disciplines on domestic regulation applicable to all services, Note by the Secretariat
 Document S/C/W/97, International regulatory initiatives in services, Background Note by the Secretariat

- The present phraseology of GATS Article VI itself is too loose and fairly unbalanced in comparison with Article XVI GATS (market access) and Article XVII (national treatment). As outlined above, further liberalisation under GATS Article XVI and XVII will even increase this unbalance. In other words, the less restrictions exist in market access and national treatment, the more important ruling about domestic regulation will become. Article VI itself should therefore be reassessed and further elaborated towards more clarity and a more straightforward normative content.
- In addition to the general principles that Article VI is meant to provide, it seems, not least from discussions during the IEP, 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 being 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.

(iii) Functioning of the GATS

Experiences from more than four years of implementation of the GATS indicate that the General agreement and its Annexes and Protocols function fairly well. At the same time, the first years of implementation have let a number issues of various importance and relevance appear that would need to be addressed.

- The first obvious loophole inherited from the Uruguay Round are the GATS rules: The built-in agenda provides for negotiations on three unresolved issues from the Uruguay Round: emergency safeguards (Article X GATS), government procurement (Article XIII GATS) and subsidies (Article XV GATS). Given the conceptual difficulties in some of the issues and current pace of discussions in the WPGR, it is likely that these negotiations are to continue into the next round. To the extent that the discussion on the GATS rules will not have been completed by the end of 1999, these issues will therefore need to be taken up and brought to a conclusion within the coming GATS 2000 talks.
- Switzerland believes that, while there should be no re-negotiation of the General Agreement as such, some review work should be undertaken to ensure consistency of all parts of the Agreement as well as to allow for some adjustment of individual provisions, where such adjustments are technically necessary, where obvious mistakes exist or where the text does not reflect Members' obvious common intention. Some provisions have indeed proven to be difficult to interpret or to implement. Some examples of such issues are:
 - the definitions of a (financial) services supplier in Article XXVIII and in the Annex on financial services are different;
 - the relationship between Article II exemptions and specific commitments have given rise to different interpretations during the telecommunication and financial services talks, but also during accession negotiations;
 - Article XX:2 GATS prescribes that "Measures inconsistent with both Articles XVI and XVII shall be inscribed in the column relating to Article XVI. In this case the

inscription will be considered to provide a condition or qualification to Article XVII as well." That prescription has proven to be quite cumbersome, to the extent that it prevents a country from submitting a restriction under GATS Article XVI to a national treatment obligation, even if it would want to do so;

- the distinction between mode 1 and mode 2 provided by GATS Article I has proven to be difficult to implement in the practice, at least in some sectors.
- Finally several technical shortcomings of the GATS system have emerged in the course of implementation of the obligation as well as during accession negotiations. Some of them have been discussed within the CSC, some have been highlighted within the IEP. Among others, they are:
 - classification of services, in particular new services;
 - scheduling issues.

Switzerland believes that the GATS 2000 negotiations should be the occasion to take up these technical issues and to make the necessary adjustments.

Conclusion

The present contribution aims at presenting in a structured manner the items that, according to our view, should be at the agenda of the GATS 2000 negotiations. We suggest that the CTS should first concentrate its work on identifying the issues that Members will be negotiating during the GATS 2000 talks. This is without prejudice to other aspects of a negotiating programme as outlined above such as the objectives or the organisation of the negotiation.
