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PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Negotiations on Trade in Services Negotiating Guidelines and Procedures

Communication from Indonesia and Singapore

The following communication, dated 28 July 1999, has been received from the Permanent Mission of Singapore.

I. PROPOSAL

1. Article XIX of the General Agreement on Trade in Services (GATS) requires the next round of services negotiations to begin “not later than five years from the date of entry into force of the WTO Agreement” i.e. not later than the year 2000. It requires WTO Members to establish negotiating guidelines and procedures for each successive round of services negotiations.
2. This paper proposes the elements that should be included. The negotiating guidelines should specify the objectives, scope, modalities and time-frame of the services negotiations. The negotiating procedures, in turn, would have to specify the administrative framework within which the negotiations would be conducted.

II. NEGOTIATING GUIDELINES

A. OBJECTIVES

3. Article XIX provides a clear overall direction of what the objectives of these negotiations should be:
 - (a) they should aim to achieve progressively higher levels of liberalization;
 - (b) they should 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”;
 - (c) they should promote the “interests of all participants on a mutually advantageous basis” and secure an “overall balance of rights and obligations”;
 - (d) they should take into account national policy objectives and “the level of development of individual Members, both overall and in individual sectors”;

(e) they should provide for “appropriate flexibility for individual developing-country Members” including measures taken by the latter “aimed at achieving the objectives referred to in Article IV” of the GATS.

4. There is no need for the Seattle declaration to spell out anything more on the objectives of the negotiations than what is already contained in the Preamble, Article IV and Article XIX of the GATS.

B. SCOPE

5. The negotiations would need to encompass the following three elements: (a) specific commitments, (b) rule-making and (c) framework issues.

(a) Negotiations of specific commitments (i.e. market access and national treatment)

6. This will form the core of the next round of services negotiations. The guidelines should reflect the following key themes in respect of the negotiations on specific commitments:

- Keeping in line with the objective of progressive liberalization, the negotiations should aim to widen and deepen Members’ sectoral commitments both in terms of reducing existing market access and national treatment limitations as well as scheduling additional sectors. However, the negotiations should also take into account liberalization measures undertaken autonomously by Members beyond their existing commitments.
- There should be no a priori exclusion of sectors or modes. Comprehensive negotiations are the only way of securing an “overall balance of rights and obligations”.
- Whilst the negotiations could proceed on all sectors concurrently, it may be useful for Members to consider the scope for an added focus on those sectors that are “economically significant”, particularly for developing countries.
- The negotiations should also cover MFN exemptions listed by Members and consider: (a) the scope for their reduction; and (b) possible criteria for renewal of MFN exemptions in light of “whether the conditions which created the need” still prevail.

(b) Rule-making (used in the generic sense rather than in reference to safeguards, subsidies and government procurement only)

7. The built-in agenda of the GATS on domestic regulation, professional services, safeguards, subsidies and government procurement and technical clarifications of existing GATS disciplines should also feature prominently in the next round of services negotiations. For example, Members may wish to consider: (a) the scope for further regulatory disciplines to underpin market access that has been negotiated; and (b) the need for a clarification of existing GATS disciplines such as the relationship between Articles VI (domestic regulation), XVI (market access) and XVII (national treatment).

8. The guidelines should, thus, reflect the following key themes:

- Most (if not all) measures that affect trade in services arise from domestic regulations. There is, thus, a need for effective disciplines on domestic regulation so as to ensure

that they do not “constitute unnecessary barriers to trade in services”. A balance, however, must be struck between such multilateral disciplines and the right of Members to have an adequate domestic regulatory framework to achieve legitimate objectives.

- The accountancy disciplines, concluded last year, were a step in the right direction. They, however, represent only a partial fulfilment of the mandate contained in Article VI.4 of the GATS and the Decision on Professional Services. Members should, in the course of these negotiations, aim to fulfil this mandate in full.
- As required by Article VI.4, Members should develop horizontal disciplines in respect of “qualification requirements and procedures, technical standards and licensing requirements” so as to ensure that they “do not constitute unnecessary barriers to trade in services”.
- Members should, pursuant to Article VII.5, work towards the “establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions”.
- Members should also take up the question of the appropriate disciplines for the other professional services. A useful starting point would be the accountancy disciplines themselves. Members could first identify which among these may be applicable horizontally to all professional services. They could then progress on to formulating profession-specific rules.
- With respect to work in the areas of safeguards, subsidies and government procurement, it would be important for Members to complete the discussions in these areas and seek an early agreement on emergency safeguards.
- Article IX of the GATS explicitly recognises the anti-competitive effects that “certain business practices of services suppliers” may have. It does, however, fall short of stipulating mechanisms¹ by which such business practices can be tackled. In parallel to the market access negotiations, it may be useful for Members to consider: (i) the scope of these problems, on a sectoral basis; and (ii) the need for and the types of mechanisms that will allow Members to address them.
- Members’ experience with the GATS has highlighted several grey areas. These include for instance the ambiguity surrounding the term “economic needs test” in Article XVI and the possible overlaps between Articles VI, XVI and XVII. The negotiations provide Members an opportunity to bring greater clarity to the operation of these provisions, and such systemic issues like grandfathering.

¹ Article IX merely requires each Member, at the request of any other Member, to “enter into consultations with a view to eliminating” such practices. It should, however, be noted that the Reference Paper on Basic Telecommunications does provide a mechanism for dealing with such problems at least in the context of the telecoms sector.

C. FRAMEWORK ISSUES

9. The ongoing work in the Services Council and the Committee on Specific Commitments have highlighted various definitional, scheduling and classification problems. These include:

- the lack of standard definitions of frequently used concepts, e.g. "foreign investment", "partnership", "sole proprietorship", "subsidiaries" are often used in schedules, but rarely defined;
- classification of "new" services and uncertainty as to whether a so-called "new" service is covered by an existing commitment;
- perceived ambiguities in the distinction between modes 1 and 2;
- bindings that are vague and unclear. (There are many examples of imprecise and vague language in schedules, particularly in the "horizontal" sections of schedules); and
- classification problems as identified during the Information Exchange Programme (Job No. 5353). These have and could lead to conflicting interpretations of the commitments made.

10. It would be important to have such framework issues addressed early since an improved scheduling methodology would remove the uncertainty involved in making commitments and help encourage more substantive and meaningful commitments. We should also consider ways and means of making the national schedules of commitments more user-friendly to the business community. The existing schedules are complex and difficult to read.

D. NEGOTIATING MODALITIES

11. The basis for negotiations should be the existing schedules of specific commitments.

12. The "request and offer" method employed during the Uruguay Round is likely to be also the modus operandi of the new round of services negotiations. However, in view of the objective to broaden and deepen commitments, as referred to in paragraph 6, we may also wish to consider, in the course of the negotiations, alternatives such as "cross-cutting" approaches to supplement this method, taking into account the interest of all Members.

13. Members could develop general negotiating guidelines and targets, against which progress and results could be benchmarked. For certain types of barriers, it might be possible to apply a formula to all sectors, while for other barriers it may be necessary to develop approaches adapted to the unique characteristics of that sector.

14. In formulating the appropriate modalities for negotiations, Members would also need to address three other issues (mandated by Article IV and XIX respectively):

- (a) the treatment of liberalization undertaken autonomously by Members since the Uruguay Round under Article XIX.3;
- (b) the scope for facilitating the increased participation of developing countries through negotiated specific commitments under Article IV.1; and

(c) the treatment for least-developed countries under Article IV.3.

15. In respect of the treatment of autonomous liberalization, credit should be given on the basis of bound commitments.

16. To ensure that the market access concerns of developing countries are taken into account in the negotiations, it would be important for these to be identified early. It would, however, also be important for developed-country Members to willingly table commitments that accommodate the market access interests of developing countries. Members may wish to consider ways in which Article IV could be operationalized and made more effective. For example, it may be useful for Members to review the operation of the contact points provided for in Article IV.2. Improvement in technical assistance, in particular for the least-developed countries, should also be a key outcome of the new negotiations.

E. TIME-FRAME

17. The time-frame for the services negotiations should be within three years. To ensure the success of the services negotiations, the results would have to be adopted at the same time on the basis of a single undertaking.

III. NEGOTIATING PROCEDURES

18. Members would in Seattle have to decide on the administrative arrangements for the negotiations. Decisions would have to be taken in respect of the participation of observers, other intergovernmental organizations, the bodies to be tasked with the negotiations, etc. One key question that would have to be addressed is whether the existing bodies dealing with the GATS would suffice for the purpose of the new negotiations or whether there is a need for additional mechanisms. The Council for Trade in Services could provide overall direction for the negotiations, or alternatively a Services Trade Negotiating Committee could be established.
