

WORLD TRADE ORGANIZATION

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General Council

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PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Agreement on Investment

Communication from Japan

The following communication, dated 6 July 1999, has been received from the Permanent Mission of Japan.

Proposal

1. An enhanced predictability for investors would not only promote foreign direct investment but would also expand world trade, thereby contributing to the development of the global economy. The next WTO negotiations, therefore, should include a multilateral rule-making on investment. The objective of a WTO agreement on investment rules should be to promote foreign direct investment by providing disciplines for governmental measures on such investment, and priority should be given on improving the transparency and stability of the legal systems in host countries. While the rules need to substantially contribute to the promotion of foreign direct investment, consideration should be given to providing an appropriate balance with the development needs of developing-country Members.

Background

2. As the global economy is further integrated, investment and trade will become increasingly interlinked for the companies operating internationally. However, while the GATS provides a certain level of rules for investment in service sectors, international rules for investment, particularly in manufacturing sectors, have been less developed. Therefore, the establishment of multinational investment rules in the WTO will enhance predictability for investors, and thus further expand foreign direct investment and world trade.

3. The establishment of investment rules in the WTO will benefit both developed and developing countries. The expansion of foreign direct investment resulting from the establishment of investment rules would stimulate the economies of developing countries, by expanding their employment and improving their level of technology. As the world economy continues to face economic difficulties that started in Asia, further improvement in the investment environment is important in order to promote foreign direct investment in developing countries. We believe that investment rules will benefit developing countries themselves. Nevertheless, we think that future investment rules in the WTO should give due consideration to the developing needs of developing countries. For example, it should be noted that rapid investment liberalization may have a strong impact on the development policies of developing countries. Investment rules must also ensure that the economic environment leads to sustainable development.

4. A future WTO agreement on investment rules needs to reflect the interests of all Members; thus, a clear distinction must be made between the forthcoming investment negotiations in the WTO and those carried out in other fora having a different membership.

5. The principal elements of investment rules in the WTO should include the following:

- (a) While there are various types of foreign investment, it is the foreign direct investment that makes the most direct contribution to the economic development of host countries through employment creation and technology transfer, as well as making investors commit to the host country's economy on the long term. Investment rules in the WTO should, therefore, aim at providing the necessary disciplines for governmental measures on foreign direct investment. They should, in principle, exclude both the short-term investment that does not aim at establishing a long-term economic relationship, and the equity investment below a certain level of participation. With regard to portfolio investment, in particular, it is important to carefully consider the wide range of ongoing discussions as to ensuring financial integrity.
- (b) Transparency and stability in the legal systems of host countries enable investors to make stable investment on a mid- to long-term perspective. It is also necessary to prevent a situation where investment-related applications are not processed in a prompt and fair manner, particularly due to the lack of transparency in the administrative procedures of host countries. It is therefore necessary to develop rules, taking note of the relevant existing provisions, including those on publications and domestic procedures in the GATT and GATS.
- (c) National treatment and the most-favoured-nation treatment are the basic principles of the WTO Agreement, and thus should be included in the future investment rules of the WTO. In particular, once a foreign company is established in a host country, it should, in principle, be treated in a manner equal to that of domestic companies, as there are in most cases no rationales for discriminatory treatment. On the other hand, national treatment for foreign companies in a pre-establishment phase, which in effect provides the liberalization of investment, should be introduced in a progressive manner, striking a balance with the development policies of Members. It is thus desirable to adopt a so-called "positive-list" approach. In addition, in order to enhance transparency in the investment environment, it is necessary to consider the way to draw up a list of as many investment restriction measures as possible in sectors where commitments are not undertaken. Providing investment protection is also one of the basic needs of investors, and appropriate rules should be developed based on the existing international investment rules.
- (d) Performance requirements, which developing countries have adopted as a tool for economic development policies, may not only restrict or distort trade, but may make it difficult for investors to develop their own international business operations in an efficient manner and to respond flexibly to changes in the economic environment. On the other hand, due consideration must be given to the development perspectives of developing countries when formulating investment rules in the WTO; thus, the contents of such rules should be carefully considered in regard to performance requirements. It is also necessary to carefully consider rules on investment incentives by taking into account the importance of incentives for the economic development of developing countries.

- (e) Regarding dispute settlement, the existing system in the WTO has basically been functioning effectively, thereby allowing for a prompt settlements of disputes. The existing WTO dispute settlement mechanism should, therefore, be used for disputes under future investment rules in the WTO, thereby excluding introduction of a new state-investor dispute settlement mechanism. It should further be noted that allowing invocation of the dispute settlement mechanism by investors may not only cause significant burdens to the host country governments, but also may transform the primary nature of the WTO as an intergovernmental organization.
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