

WORLD TRADE ORGANIZATION

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PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Negotiations on Trade and Investment

Communication from Hong Kong, China

The following communication, dated 20 July 1999, has been received from the Hong Kong Economic and Trade Office.

Proposal

1. Hong Kong, China proposes that the next round of negotiations to be launched at the Third Ministerial Conference should include negotiations on core rules and disciplines that should apply to foreign direct investments. The aim is to maximize allocative efficiency and to promote more trade and investment in a globalized environment while providing a level playing field with greater predictability and stability for investors. The negotiations should take into account the existing architecture of the WTO Agreements and the needs of all Members, and in particular the developing and least-developed Members.

Issues

2. There is a complex interaction between trade and investment policies. Trade barriers can influence investment decisions. Similarly, investment measures can affect the flow of goods and services among economies. The interaction can then distort mutually beneficial trade based on comparative advantage. This interaction issue gains in prominence in tandem with the increasing globalization of production and share of intra-firm trade. It is therefore imperative to tackle the implications of this interaction so that the economic benefits of trade liberalization are not undermined by distortive investment measures. Against this background, Hong Kong, China is of the view that WTO work in this regard should be limited to foreign direct investments which entail either commercial presence, lasting interest and/or managerial control. Portfolio investments which result in none of the three should not be included.

3. There is a wide range of measures which can influence investment decisions. Members have also adopted very diverse approaches in handling foreign direct investments. Noting this diversity, Hong Kong, China is of the view that harmonization is not feasible, nor is an ambitious framework achievable within a three-year round. We therefore favour a building block approach so as to provide the foundation for work in the future. We consider it prudent to identify first the key elements of the interaction which should be brought within the WTO framework, and then the core multilateral rules/disciplines that can help minimize the distortive effects of investment measures insofar as the

key interaction elements are concerned. As Members are at different levels of development, commitments to liberalize investment opportunities should be made on a bottom-up basis.

4. In respect of the elements of the interaction, possibilities for multilateral rule-making include investment incentives, local content and export requirements, and restrictions on foreign direct investments. As regards core rules/disciplines, transparency, non-discrimination (MFN and national treatment) and dispute settlement mechanism should be included.

5. Any core rules/disciplines that may emerge from the next round should be an integral part of the WTO framework. Hong Kong, China therefore believes it important for the discussions on the legal form of the core rules/disciplines to take into account the existing architecture of the WTO Agreements, including provisions therein which may be relevant to trade and investment. Worthy of particular reference is the need to consider the implications of multinational firms for disputes on trade and investment that may arise and what these may mean in respect of the applicability of the WTO Dispute Settlement Understanding.

6. Hong Kong, China also recognizes that foreign direct investments can have developmental implications. We consider it important that the multilateral rules/disciplines on trade and investment should address the special needs of developing and least-developed Members. These needs can be recognized in several ways: for example by longer phase-in of rules for such Members and by considering ways in which the developmental benefits of foreign direct investments can be enhanced.
