

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Negotiations on Trade in Services – Negotiating Guidelines and Procedures

Communication from Switzerland

The following communication, dated 16 September 1999, has been received from the Permanent Mission of Switzerland with the request that it be circulated to the Members of the General Council and the Council for Trade in Services.

1. This submission is a contribution to the work to be undertaken by the General Council and the Council for Trade in Services in fulfilment of the mandate of GATS Article XIX in perspective of the year 2000 negotiations on services, in particular the establishment of negotiating guidelines and procedures.
2. The attached document sets out Switzerland's views on the structure and content of the negotiating guidelines and procedures as prescribed by GATS Article XIX. It builds on a previous submission by Switzerland (*Preparing for the GATS 2000 negotiations - S/C/W/103* as reproduced in WT/GC/W/262) as well as on a number of submissions by other Members on the future services negotiations.
3. This contribution aims at facilitating the transition towards the next phase of the preparatory process leading to the establishment of negotiating guidelines and procedures, which should be a drafting phase. It also takes into account the different views and opinions that have been expressed so far during numerous debates on the subject of negotiating guidelines and procedures in the General Council and the Council for Trade in Services.
4. The draft negotiating guidelines and procedures as outlined in the attached document are meant to stand on their own and therefore include all elements that we believe are necessary and of relevance for the negotiations on trade in services. This is however without prejudice to the question of whether or not to incorporate them as such into the Seattle Declaration itself, respectively of the form and method for such incorporation. In particular, some elements of the draft negotiating guidelines and procedures such as the treatment of autonomous liberalization measures as well as the treatment of least-developed country Members could be superseded by corresponding elements of the Seattle Declaration.
5. Possible elements of the Seattle Declaration regarding electronic commerce are assumed to be elaborated in a separate process from the elaboration on negotiating guidelines and procedures under GATS Article XIX.

DRAFT GUIDELINES AND PROCEDURES FOR THE NEGOTIATIONS ON TRADE IN SERVICES

(a) Negotiations on trade in services

General undertaking

6. There shall be negotiations on trade in services beginning not later than 1 January 2000.

Objectives

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

8. In particular, negotiations shall aim at:

- deepening and broadening the existing commitments, thereby securing a higher level of legally-binding liberalization;
- ensuring effective market access through appropriate rules for trade in services and by ensuring transparency, predictability and certainty in the respective regulatory regimes of the Members.

Principles/modalities

9. The negotiations shall be conducted with due respect for national policy objectives of individual Members, both overall and in individual sectors.

- [Single undertaking].¹ Negotiations shall be conducted in an open manner; Members are free to make submissions on any issue of interest to them in the negotiations.
- [Time-frame]²
- [Treatment of autonomous liberalization measures]³

Organization of the negotiations

- [...]⁴

¹ Reference is made to the main body of the Seattle Declaration.

² Reference is made to the main body of the Seattle Declaration.

³ Reference is made to the main body of the Seattle Declaration.

⁴ To be elaborated in function of the corresponding part of the Seattle Declaration.

Increasing participation of developing country Members⁵

10. The negotiations shall be conducted with due respect for the level of development of individual Members, both overall and in individual sectors.

11. 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.

– [Modalities for the special treatment for least-developed country Members under the provisions of paragraph 3 of Article IV]⁶

Scope

12. Negotiations shall be comprehensive and extend a priori to all matters relevant to the GATS. No sector or mode of supply shall be excluded from the negotiations.

(b) Liberalization commitments

Negotiations on specific commitments

13. The negotiations shall be directed towards increasing the general level of specific commitments undertaken by Members. To that end, the negotiations may be conducted in the form of a bilateral request/offer process and, where appropriate, of multilateral sector-specific negotiations.

14. Such negotiations may be supplemented by the elaboration of agreed negotiating formulas in the form of commonly agreed benchmarks, be it on a sectoral or cross-sectoral basis or on a modal or cross-modal basis. Such formulas shall provide common references for the scheduling of specific commitments, while ensuring the necessary flexibility for accommodating the specificity of individual Members' regulatory policies.

MFN exemptions

15. The existing MFN exemptions shall be reviewed in accordance with paragraphs 3 and 4 of the Annex on MFN exemptions. The negotiation of MFN exemptions may be integrated as part of the bilateral offer/request process provided for the negotiation of specific commitments.

Air Transport Services

16. The Annex on Air Transport Services shall be reviewed in accordance with paragraph 5 of that Annex. In particular, the classification of air transport services shall be reviewed with a view to ensuring that the actual structure of the market and the mode of operation of providers are adequately reflected in the classification. A review of the characteristics of air transport regulations shall be conducted with a view to identifying areas that lend themselves to a multilateral liberalization.

⁵ To be revisited depending on the form and modalities of incorporation of the negotiating guidelines into the Seattle Declaration as well as on the content of the Seattle Declaration in relation to that subject.

⁶ To be elaborated.

Maritime Transport Services

17. In accordance with the Annex on Negotiations on Maritime Transport Services and subsequent decisions by the Council for Trade in Services, negotiations on Maritime Transport Services shall be resumed and concluded no later than at the end of this first round of progressive liberalization negotiations.

Scheduling and classification issues

18. Members shall complete the work undertaken by the Committee on Specific Commitments in reviewing the classification of services as well as resolving technical uncertainties with regard to the scheduling of specific commitments.

(c) Domestic regulations and pro-competitive principles

19. Negotiations shall be conducted towards the development of the necessary disciplines to ensure that measures relating to licensing requirements and procedures, technical standards and qualification requirements and procedures do not constitute unnecessary barriers to trade in services, in accordance with the Decision on Domestic Regulation (S/L/70). In fulfilling that task, Members shall develop generally applicable disciplines and may develop disciplines as appropriate for individual sectors or groups thereof.

20. Negotiations shall also encompass the tasks assigned to the Working Party on Professional Services, including the development of general disciplines for professional services as required by paragraph 2 of the Decision on Disciplines Relating to the Accountancy Sector (S/L/63).

21. The negotiation shall be directed towards the strengthening of existing pro-competitive disciplines of the GATS as a means of providing effective market access. Such work may build on existing GATS Articles such as Articles VIII and IX and/or consist in the elaboration of sector-specific pro-competitive disciplines following the example of the reference paper in the telecommunication sector.

(d) GATS rules

22. Negotiations shall encompass the negotiations on the question of emergency safeguard measures, the negotiations on government procurement in services as well as the elaboration of disciplines on subsidies, as provided for under GATS Article X, XIII and XV, respectively. Unless otherwise provided by existing decisions of the Council for Trade in Services, such negotiations shall be completed at the latest at the end of this first round of progressive liberalization negotiations.

(e) Functioning of the GATS

23. Members shall conduct a review of the GATS Agreement with a view to ensuring the overall consistency of the Agreement and to undertaking the necessary adjustments of individual provisions where such adjustments are technically necessary or where obvious mistakes exist.
