

**PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE**

Guidelines and Procedures for Negotiations on Services

*Communication from Hong Kong, China; Korea and Norway*

The following communication, has been received from the Permanent Missions of Hong Kong, China; Korea and Norway with the request that it be circulated to all Members.

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**I. INTRODUCTION**

1. There is now a wealth of material from Members, covering in essence, all the substantive issues that we need to consider for the Negotiating Guidelines for the forthcoming round of services negotiations. In addition to flagging up specific areas of interest, some submissions also deal with what the Negotiating Guidelines should contain. But there has been little input as to what the Negotiating Guidelines should look like and the considerations that should be behind such decisions. It is hoped that this paper will be useful in this regard as a facilitatory tool.

2. Previous experience of Negotiating Guidelines suggests that a balance needs to be struck between having a reasonable level of detail and becoming bogged down or limited- by such. In the past both have occurred, and much (fruitless) time has been spent on arguing what can be included and what can not. The form, length and any level of detail of the text on Services in the Ministerial Declaration will also be affected by the general choices made on the format of the Declaration. However, discussions and submissions in services show many areas of convergence, both on the negotiation of specific commitments and on rule making.

**II. BACKGROUND**

3. Article XIX of the GATS requires that, for each round of negotiations, guidelines and procedures be established. Although this provision was conceived to serve the objectives of the GATS independently from other agreements under the WTO where negotiations could take place, current preparations for the Ministerial are addressing negotiations in other areas as well. That implies that there will be questions that will require co-ordination at a general level. In particular, but not only, procedural matters would fall into this category.

4. Procedures for negotiations include such matters as the establishment of a negotiating structure, participation of acceding countries, frequency of meetings, grouping of subject matters etc. Guidelines normally address the substantive agenda for the negotiations. As we have been doing, it is sensible to focus first on the guidelines, since any decisions on procedural matters should be taken on

the basis of the substantive tasks involved. For example, decisions on the negotiating structure (e.g. establishment of negotiating groups) can only be taken in the light of what has been identified as areas for negotiations.

### III. OBJECTIVES OF THE GUIDELINES

5. The Negotiating guidelines should be designed to serve the objectives of the GATS: i.e. the preamble to the GATS, Article IV and Article XIX. Any introduction of the text of the guidelines should refer to these objectives, perhaps borrowing from language of the Agreement, and any other policy statements which we may be able to agree to.

6. **It is suggested** that a relatively short, open, set of guidelines would be appropriate, with any new negotiating mandate(s) being inclusive rather than exclusive. Such should allow Members to raise whatever issues they deem appropriate within a given negotiating area. Of course the final results of the negotiations would have to be decided upon by consensus.

7. The GATS calls for the Council for Trade in Services to Review, within five years, several matters and to start negotiations in 2000 on progressive liberalisation of services. This work is alongside continuing work on rule making in several areas. **It is a matter for Members to discuss and agree** whether all three of these areas should be included in any Negotiating Guidelines. If such were agreed, it would probably be helpful if the guidelines had a clear structure that distinguished between the three different areas of negotiations:

- (a) Specific Commitments;
- (b) Rule making; and
- (c) Reviews by the Council for Trade in Services

8. These can perhaps best be shown in expanded tabular form, as set out below.

<u>Specific Commitments</u>	<u>Rule Making</u>
<p>Negotiations of further liberalisation. In the form of:</p> <ul style="list-style-type: none"> <li>- more sectors/modes</li> <li>- less limitations</li> </ul> <p>Could be based on:</p> <ul style="list-style-type: none"> <li>- Request / Offer procedure</li> <li>- Formulae</li> </ul> <p>Any other substantive issues of sectoral nature which might require examination</p> <p>Negotiations on MFN Exemptions</p>	<ul style="list-style-type: none"> <li>- Article VI:4 disciplines (Domestic Regulation)</li> <li>- Article X (Safeguards)</li> <li>- Article XIII (Subsidies)</li> <li>- Article XV (GP)</li> </ul> <p>(The above are built in Agenda Items)</p> <hr/> <ul style="list-style-type: none"> <li>- <u>Any other issues raised by Members</u></li> <li>- Technical review of GATS</li> <li>- Clarification of GATS provisions (Articles V &amp; XX)</li> <li>- Article VII</li> <li>- Article VIII</li> <li>- Article IX</li> <li>- Article XXI</li> <li>- Rectification of schedules</li> <li>- Revision of scheduling guidelines</li> <li>- Classification issues</li> </ul>
<p><b>Council Reviews</b></p> <ul style="list-style-type: none"> <li>- MFN Exemptions</li> <li>- Air Transport Annex</li> <li>- Understanding on Accounting Rates</li> </ul>	

#### IV. SPECIFIC COMMITMENTS

9. Article XIX of the GATS states that the negotiations should aim at achieving a progressively higher level of liberalisation through the reduction or elimination of trade barriers. It also stipulates that this process must promote the interests of all participants on a mutually advantageous basis and secure an overall balance of rights and obligations.

(i) *Sectoral coverage*

10. Article XIX does not explicitly state that **all** sectors and modes should be covered in the negotiations. However, it would seem to go completely against the spirit of Article XIX and against the proposals of many Members to date, if any sector or mode was excluded *a priori*. **It is suggested** that the negotiating guidelines should specifically provide for all sectors and modes to be included to make this clear. In addition, some Members have already indicated differing areas of priority or focus. If a consensus on (some of) these can be reached, they should be included in the text of the guidelines.

(ii) *Autonomous liberalisation and Least Developed Countries*

11. Article XIX also requires that the negotiating guidelines establish modalities for: (a) the treatment of liberalisation undertaken autonomously by Members since previous negotiations, and (b) the special treatment of least-developed country Members under the provisions of paragraph 3 of Article IV. Such considerations should be spelt out in the text of the guidelines. The question of special treatment of least developed country Members, and indeed how best to reflect the considerable weight given in the preamble of the GATS to developing country Members in general, is one that needs to be taken fully on board by Members. As regards autonomous liberalisation, this is a difficult area, as discussions in the Uruguay Round demonstrated and indeed there are ongoing discussions on this matter in the General Council in a wider context. Clearly there is overlap here with other negotiations that may take place and co-ordination will be required. The Guidelines should also spell out the way both these broad provisions will be given effect.

(iii) *Negotiating techniques*

12. Negotiations on further liberalisation should lead to two types of modifications in Members schedules: the expansion of the sectoral coverage of a schedule by adding new sectors or sub-sectors (and modes) and/or the elimination or modification of previously scheduled limitations in sectors already inscribed. Negotiations on such commitments could follow (a) request/offer procedure which would involve bilateral consultations between Members and/or (b) formulae or model approaches, which would require a process of multilateral (or plurilateral) discussions to develop an agreed basis on which commitments would be inscribed in schedules.

13. Formulae could take several forms. There are already four examples under the GATS of what might be called formula approaches: the draft schedule on maritime transport and the model BT schedule (both of which might be termed as formulae to enhance transparency or facilitate scheduling); and the Reference Paper in Basic Telecommunications and the Understanding on Financial Services (both of which might be termed as facilitating the scheduling of further commitments). It is also possible to develop other formulae depending on the sector and the issues involved. Several ideas have already been floated. And there is no reason why formulae could not take account of the needs and aspirations of Members at different stages of development. Exactly what formulae is probably best left to the negotiations themselves. **If agreed, it is suggested** that it should be sufficient to refer in the Negotiating Guidelines to the possibility of using such multilateral approaches, in addition to the traditional request/offer procedure.

(iv) *Sectoral/Modal issues*

14. The negotiating guidelines should also provide for the possibility to address any substantive issues of a sectoral or modal nature that require multilateral discussions. Such issues have previously arisen out of negotiations in sectors like maritime transport, basic telecommunications and financial services. Several are also currently being discussed in the Committee on Specific Commitments.

(v) *Negotiation of MFN exemptions*

15. The annex on MFN exemptions stipulates two provisions regarding the future of MFN exemptions. One is a review of the exemptions, which the Council for Trade in Services is required to conduct within five years upon the entry into force of the WTO Agreement. The subject has recently been placed on the CTS agenda. The other is that the exemptions will be subject to negotiation in subsequent trade liberalising rounds. These two provisions could be identified separately in any Negotiating Guidelines but could also be identified jointly.

## V. RULE MAKING

### (i) *Built-in agenda*

16. A mandate already exists for continuing ongoing work on the development of multilateral rules under the current provisions of the GATS, ie. the negotiations under Article VI:4 (Domestic Regulation), Article X (Safeguards); Article XIII (Government Procurement) and Article XV (Subsidies). On the question of safeguards, the timeframe has been decided by a Council Decision. **It is suggested** that there might be advantage if these rule making issues were included in the Negotiating Guidelines. Some Members see distinct advantage in including such in the new round, as that would provide an impetus for work and, if concluded but not implemented- early, a firm background against which to negotiate specific commitments. On the other hand some Members do not wish to link directly the two exercises, for differing reasons. This is an important matter which will need discussion.

### (ii) *Review of the text of the GATS*

17. The GATS is less than five years old. Although many parts of the text have borrowed old concepts from the GATT (e.g. MFN and national treatment) they are designed to address much more complex situations. Experience to date has revealed some imperfections and ambiguities in the text, and also revealed areas which some Members consider could merit rather deeper review. Therefore, **it is suggested** that the text of the GATS might benefit, during the course of this round, from both a technical review (of such questions as the method of scheduling under Articles XVI and XVII) and a deeper review (for example of Article V).

18. If such a review was agreed, the Negotiating Guidelines should perhaps make clear that the review would focus on ensuring legal consistency and improve the clarity of the Agreement. **It should not, it is suggested,** be in any way aimed at changing the structure of the GATS nor the specific commitments already scheduled. The negotiating guidelines could contain a general mandate for such a review, allowing Members to raise issues or make proposals in this regard.

### (iii) *Scheduling guidelines and classification*

19. The Committee on Specific Commitments is currently undertaking work on important technical issues of great relevance to the negotiation of commitments. These include the revision of scheduling guidelines as well as classification issues. This work should continue with a view to providing a timely results for the negotiations on specific commitments. The negotiating guidelines need not provide an additional mandate in this regard. **It is suggested** it should rather be a question of synchronising the work of the Committee with the negotiations of the new round.

## VI. COUNCIL REVIEWS

20. The CTS is mandated to undertake three reviews: MFN exemptions; the Air Transport Annex; and the Understanding on Accounting Rates. The MFN exemptions have been covered in paragraph 15 above. The Air Transport Annex is self explanatory. The Understanding on Accounting Rates arose from the negotiations on Basic Telecommunications and is set out in S/GBT/4 dated 15 February 1997.

21. These reviews are of somewhat different in nature to the negotiation of specific commitments and the rule-making issues described above. That said, there would be nothing to prevent them from being considered as part of the negotiations and included in the Guidelines. **It is suggested** that a decision on this should take careful account of the sort of work that needs to be done.

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