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COMMUNICATION FROM THE UNITED STATES

Framework for Negotiation

The attached communication has been received from the delegation of the United States with the request that it be circulated to Members of the Council for Trade in Services.

I. INTRODUCTION AND MANDATE OF THE WTO SERVICES NEGOTIATIONS

1. The scope of the negotiations is comprehensive, mirroring the scope of the GATS itself. WTO Members agreed in the Uruguay Round to a far-reaching additional negotiation beginning in 2000 aimed at producing significant liberalization in services trade.

2. *The mandate of the negotiation is ambitious: to remove restrictions on trade in services and to provide effective market access, subject to certain specified limitations. Our challenge is to accomplish significant removal of these restrictions across all services sectors, addressing measures currently subject to GATS disciplines and potentially measures not currently subject to GATS disciplines, and covering all ways of delivering services.* Not included in the negotiations are air transport services excluded from the GATS under the Annex on Air Transport Services, and services supplied in the exercise of governmental authority. And, the GATS makes clear that Members retain the right to regulate to meet national policy objectives, consistent with existing or potential new GATS disciplines.

3. A wide range of countries have already stated their interests in the negotiations. Thus, all countries, including developing countries, should have an important stake in outcome of these negotiations, both as parties seeking and as parties providing GATS commitments. In this regard, we welcome the first comprehensive negotiating proposal in the Council in special session from several developing countries – the Dominican Republic, El Salvador, and Honduras – relating to tourism services.

4. The United States submits this proposal as a framework for accomplishing the mandate in Article XIX. This comprehensive paper provides specific proposals for procedures, timetables, guidelines, and objectives. This proposal is submitted in accordance with paragraph 2(c) of the “roadmap” document agreed at the May 26, 2000, meeting of the Council for Trade in Services in special session and addresses, *inter alia*, items identified in that subparagraph.

5. Some of the issues addressed in this proposal also would be appropriate for inclusion in the negotiating guidelines and procedures called for in Article XIX. Members have agreed, in the roadmap, to give priority to completion of the negotiating guidelines and procedures. The United States therefore proposes that this work be completed by the October 2000 special session.

II. BUILDING ON PROGRESS TO DATE

6. Work in the Council for Trade in Services before the launch of the services negotiations in early 2000 has laid a solid basis for the negotiations. As instructed by Ministers at the second Ministerial Conference, this preparatory work became more intensive after June 1998, when the Council exchanged information and conducted an assessment of trade in services required by Article XIX.

7. In the view of the United States, the assessment has achieved its central objective. Nevertheless, some Members may wish additional opportunities to present their views. The United States supports including the assessment on the agenda of the Council in special session. In doing so, the United States requests those Members with additional perspectives on the assessment to present them at the earliest opportunity.

8. The Council's subsidiary bodies also have made progress in broadening a consensus among Members on issues including transparency, classification, and scheduling guidelines. For the latter two issues, Members have agreed to aim to complete work by March 2001, and we should make every effort to do so. And, in the negotiating guidelines and procedures, Members should provide guidance on how to proceed with other work in the Working Party on Domestic Regulation and the Working Party on GATS Rules.

9. Agreement to the May 26 roadmap was a significant event demonstrating Members' shared interests in moving forward in an ambitious manner in the negotiations. Importantly, the roadmap sets the stage for moving topics from the technical subsidiary bodies up to the special session of the Council for Trade in Services for substantive negotiations.

10. In view of the broad, complex, and ambitious scope of the negotiations, the United States advocates a strong guiding role for the Council in special session. As the designated negotiating body, it is important that the Council in special session provide an opportunity to assess progress in the negotiations, assess balance in this progress, and provide a forum for transparency in the negotiations.

11. Finally, the United States notes the work that has been done on the relationship between services trade and environment and welcomes future consideration of this issue in the appropriate fora.

III. OBJECTIVES FOR THE NEGOTIATIONS

12. Consistent with the above mandate, the United States proposes the following specific objectives for the negotiations to elaborate on those contained in Article XIX. New GATS obligations consistent with these goals would continue to ensure the right of Members to set, maintain, and enforce high levels of protection for consumers, health, safety, and the environment.

Market Access: Members should take on full bindings aimed at reduction or elimination of measures inconsistent with Article XVI.

National Treatment: Members should take on full bindings aimed at reduction or elimination of measures that discriminate between domestic and foreign services or service suppliers.

MFN Treatment: Members should aim to ensure full application to all WTO Members of treatment that is no less favorable than treatment accorded to any other Member, to the extent not inconsistent with non-trade objectives.

Modes: Members should take on bindings by mode that allow service consumers and suppliers freedom to choose commercially desirable ways of purchasing and selling services.

Domestic Regulation: Members should reach agreement on GATS disciplines to promote greater transparency in regulation of services and to address other, identified, trade-restricting aspects of regulation.

Progressive Implementation: According to individual circumstances, Members may undertake liberalization in a phased manner.

13. To accomplish these objectives, the United States proposes the following:

Achieving meaningful liberalization: Many GATS commitments made during the Uruguay Round consisted of standstill bindings. While in some cases a standstill binding can represent a significantly open services regime, too often these bindings merely lock in place relatively restrictive existing regimes. *Meaningful liberalization should occur in this negotiation.*

Broader sectoral coverage: The sectoral coverage of Members' country schedules often is incomplete: subsectors, modes, or even entire sectors are excluded from schedules, with the result that trading partners -- and more importantly service providers -- are unable to determine restrictions in force. *Scheduling transparency* -- setting out clearly for governments and commercial actors the rules of the road in a particular area of services trade -- is extremely important. *GATS scheduling should be broader and more transparent.* This can be accomplished without changing the fundamental architecture of the GATS.

Improved classification: The United States advocates an improved classification scheme that better reflects the realities of trade in services to which all Members will adhere. The classification scheme that many Members use to schedule their commitments, contained in MTN.GNS/W/120, served a useful purpose in the Uruguay Round, allowing negotiators to move quickly into market access negotiations. Significant improvements can be accomplished with limited, specific changes to W/120 as it now stands. We intend to work with other Members to meet the agreed deadline of March 2001 to conclude classification work in the Committee on Specific Commitments, as this will provide a stronger basis for more meaningful market access negotiations. *The GATS classification system should better reflect the reality of the marketplace.*

IV. PRINCIPLES GOVERNING THE NEGOTIATIONS

14. To achieve these goals and objectives, the United States proposes adoption of the following approaches for the negotiations:

Standstill: Members should not take any new measures affecting trade in services that would improve their negotiating position or be used as leverage through the conclusion of the negotiations.

Timetable for the negotiations: The May 26 roadmap provides that members will submit negotiating proposals by December if possible, with flexibility for further or more detailed submissions thereafter. Building on this timetable, Members should establish two additional deadlines: (1) to conclude the negotiations *within three years, by December 2002*; (2) to agree on modalities for liberalization by the 2001 midterm of the negotiation; for example, on the approach for tourism now under consideration in the Council in special session.

Starting point for the negotiations: This negotiation is about new liberalization and removal of market access restrictions. Therefore, *the starting point for requests in these negotiations should be current restrictions sector by sector.* We do not rule out, however,

that Members may consider a trading partner's offer to bind at current levels of openness as sufficient. This might be one way, for example, to account effectively in the negotiations for autonomous liberalization measures.

Treatment of autonomous liberalization: According to GATS Article XIX, the negotiating guidelines should establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations. The United States proposes the following such modalities:

- First, any Member that has liberalized autonomously in a particular sector, mode, or type of measure since the end of the Uruguay Round and through the end of the current round should make the nature of the liberalization known to interested trading partners.
- Further, that Member and any interested trading partner should discuss and seek agreement on their respective bindings relative to the autonomous liberalization. The liberalizing Member could discuss the issue of credit with more than one trading partner. Additionally, it may be possible to set agreed targets for multilateral liberalization (e.g., in the form of model schedules) against which the value of particular autonomous liberalization measures might be gauged.

Modalities for Liberalization: There are several different ways to liberalize substantially across a broad range of services sectors. We continue to support request-offer as one way to achieve targeted results – that is, to focus a bilateral partner's attention on a specific restriction in a specific sector or subsector. A request-offer approach helps ensure that each WTO Member has the ability to highlight any and all specific issues it wishes to raise for negotiation; regardless of any broader approach to the negotiations, request-offer preserves the ability of each Member to include issues on which it places particular importance.

The United States does not view the request-offer approach as the only means of achieving substantial liberalization. Based on past experience, other modalities already have been developed to supplement request-offer or be incorporated into the request-offer approach to ensure a more efficient and comprehensive achievement of the negotiation's agreed objectives. Moreover, the proposal on tourism services from several developing countries is a further example of these supplemental modalities. We expect to say more about this at a future date.

One such method is through creation of "model" sets of GATS commitments for key sectors. These models, or templates, would provide meaningful liberalization through removal in given sectors of as many restrictions as possible.

A second approach is to use clusters of services activities, to break out of the sometimes restrictive categories created in W/120. A third approach might be to negotiate cross-sectoral or "horizontal" commitments in one or more modes across sectors.

Some Members at this stage seem inclined to rely on request-offer. However, this approach has limitations. For example, it presumes that all Members have a comparable capacity to develop requests. If this is not the case -- and, in view of the scope of these negotiations and the nature of trade in services, it may not be the case -- then Members with greater resources may dominate the negotiations, and Members with fewer resources will obtain fewer benefits.

Moreover, limiting the current negotiations to request-offer would be a step backward, since Members already have demonstrated flexibility in post-Uruguay Round negotiations by

supplementing request-offer with such approaches as model schedules, clusters, and common horizontal scheduling by mode – as a means of specifying shared expectations.

Therefore, the United States proposes that Members work now to identify their common expectations for the negotiations. These expectations could constitute benchmarks or yardsticks for assessing progress and results in the negotiations. They could cover a range of issues of interest to different Members and thus build more balance into the negotiations.

Use of a full range of negotiating modalities will comply with Article XIX's mandate that progressive liberalization be advanced through bilateral, plurilateral or multilateral negotiations.

Needs assessment for developing countries and others: Assisting all Members to participate fully in the negotiations should be established as a regular item on the agenda of the Council. For some Members, this could involve identifying sources of assistance that would, for example, allow them to specify their interests in the negotiations, or that would allow them to develop the regulatory capacity to accompany greater market openness. Providers of such assistance, whether WTO Members, international organizations, or other public or private entities, could be invited to make presentations on how their programs might address Member interests in the context of the GATS negotiations. Members who are recipients of assistance may wish to provide information on how it has or has not supported their interests in the GATS negotiations.

Special treatment for least-developed countries: Least-developed countries should be free to choose their participation in any plurilateral or multilateral GATS initiatives. Timeframes within the negotiations should be sufficiently flexible to allow least-developed countries to identify their interests in the negotiations and respond to requests of trading partners. Members should be responsive to proposals by least-developed countries to phase in new commitments and establish transition periods. The concluding date for the negotiation will allow for submission of final country schedules by least-developed countries six months later.

Possible new GATS disciplines:

Working Party on Domestic Regulation: The United States proposes bringing to conclusion by the midterm of the negotiations ongoing work on possible new GATS disciplines on domestic regulation so that results may be incorporated into the market access negotiations.

Safeguards: The United States expects to work productively with others in pursuit of the December 15, 2000, deadline. The United States believes that the question of emergency safeguards should be considered in the context of the degree of flexibility that is likely to remain in other parts of the Agreement, including in the schedules of commitments, and the feasibility of applying safeguard measures in particular sectors.

Subsidies: Members could consider whether existing disciplines on national treatment are sufficient to address the most trade-distortive effects of subsidy programs.

Government Procurement: Members could consider the potential for specific rules and commitments under the GATS.
