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PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Further Negotiations As Mandated by the General Agreement on Trade in Services (GATS)

Communication from the United States

The following communication, dated 28 July 1999, has been received from the Permanent Mission of the United States.

I. PROPOSAL

1. Ministers recognize that competitive and innovative services assist our manufacturers, farmers, and other citizens to exchange their products and improve their standard of living, and promote integration of developing countries into the global economy.
2. Ministers agree that the new round of services negotiations shall expand the range of effective market access opportunities to service providers by negotiating commitments to liberalize trade in services across a broad range of sectors, such that each participant shall ensure such access across a significant portion of its economy. This improved access shall be accomplished through (1) use of all appropriate negotiating modalities, including request-offer and horizontal and sectoral approaches; (2) an improved nomenclature for services to make the operation of the agreement more effective; and, where appropriate, (3) disciplines to underpin market access and national treatment commitments by ensuring transparency and fairness in regulation of services, while maintaining regulators' ability to meet legitimate objectives.
3. For each of these three areas, Members wishing to submit proposals will do so by the end of 1999, with an objective of reaching agreement in each area by June 2000. All Members will present initial offers based on agreement in these three areas by September 2000.

II. RATIONALE

4. Services are the infrastructure that allows our industrial and agricultural sectors to function productively:
 - Efficient transport and distribution helps farmers get their products to market without spoilage and ensures that manufacturing components reach the factory in time for production.

- An open and competitive financial services sector provides cheaper capital and allocates it more efficiently in support of economic growth, and can better withstand financial market instability.
- Legal and accounting services give businesses the contractual framework in which to function and afford protection for consumers.
- Telecommunications, software, and information dissemination are essential to the functioning of all modern industries.
- Energy services – for example, energy transmission, distribution, and storage – promote competitive energy markets; provide affordable energy to more industrial, commercial, and residential consumers; promote economic growth; and improve quality of life.
- And rapid development of new technologies, including the internet and electronic commerce, promises a vast increase in the efficiency and productivity of service industries in the years ahead, with opportunities to increase the potential of all economies to participate in world trade.

5. Since the end of the Uruguay Round, the WTO's accomplishments in basic telecommunications and financial services have demonstrated that Members understand the important role of services in promoting equitable economic growth and building the infrastructure for a more interconnected global economy of the 21st century. And, in the view of the United States, our constituencies expect us to continue working to make the WTO relevant to how they transact business. The GATS framework sets a good standard, but for it to serve our communities, it must continue to address the issues our businesses and consumers consider important.

III. PREPARATIONS UNDER ARTICLE XIX

6. The United States welcomes progress over the past year in the Council for Trade in Services in preparing for the mandated next round of services negotiations. In particular, the sectoral "information exchange" since June 1998, covering about 15 sectors, has helped develop a common understanding among Members of the important role that services can play in their own economic growth, the evolution in the nature of trade in services since the Uruguay Round, and, in many cases, the very limited nature of country commitments in these sectors.

7. Already, this information base has served to reorient work on classification issues in the Committee on Specific Commitments, and it similarly can serve as a resource for the work on GATS disciplines for regulation in the Working Party on Domestic Regulation.

8. While the required "assessment" of trade in services, under Article XIX, is continuing, the United States believes there already is a large body of information demonstrating the economic benefits of maintaining open, and, where regulation is necessary, well-regulated services markets, as well as the value of WTO bindings in providing transparency and predictability to consumers and suppliers of those services. For example, in the United States, services exports support about four million jobs domestically – jobs in both the services and manufacturing sectors.

9. At the same time, Members have begun consideration of negotiating guidelines and procedures for the next round of services negotiations. These guidelines and procedures are intended to carry out the objectives stated in Article XIX. To contribute to a more focussed discussion of

preparations for the next services round, the United States presents its views here with respect to each of the article's objectives.

A. *"Members shall enter into successive rounds of negotiations . . . with a view to achieving a progressively higher level of liberalization. Such negotiations 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."*

10. In the area of services, the primary accomplishment of the Uruguay Round was the framework agreement itself, the first multilateral agreement to create a set of rules to liberalize trade in services. However, in most cases, specific commitments in country schedules merely reflected existing laws and regulations, including restrictive measures – essentially preserving the *status quo*. Many of the commitments were vague, and there were few sweeping commitments to remove barriers.

11. Moreover, in many cases Members left some service sectors entirely unbound. So, while the agreement contains the outlines of a global regime to promote trade in services, it does not fully encompass the important areas of market access and national treatment. In general, the GATS becomes effective only to the extent that countries subscribe to these disciplines by listing sectors in its schedule of specific commitments. Indeed, a country that has listed no MFN exemptions cannot claim to meet any particular standard of openness, as MFN treatment in itself does not necessarily mean openness to trade in services.

12. Thus, to date many Members have not included in their country schedules even their current levels of access for trade in services. The stated objective of the negotiations under Article XIX, moreover, is to bind new market access and national treatment in country schedules; that is, to remove restrictions on market access and national treatment and bind this liberalization in the WTO.

13. The United States believes it is appropriate to make the Article XIX negotiating objectives more specific. One way to do this is to develop negotiating modalities or methods that aim to accomplish the stated objective, with the understanding that all WTO Members would, in general, subscribe to these modalities. It may be appropriate to address liberalization of certain types of restrictions occurring across sectors, or to undertake to provide certain minimum levels of openness. In this case, Members may develop "horizontal" negotiating modalities that would apply across sectors. Such a horizontal approach could address all or part of a particular mode of delivery – for example, a commitment to electronic delivery of services, across sectors, subject to specified sectoral exceptions. Another example could be a commitment to provide access for certain commonly-defined categories of natural persons as service suppliers.

14. Alternatively, it may be appropriate to develop "sectoral" negotiating modalities, where Members have identified common sector-specific interests in promoting greater trade in services, to the benefit especially of their domestic consumers. Many services provide an intermediate function in economies and, like telecommunications and financial services, underpin economic growth through an infrastructural role. For example, in their submissions, some developing-country Members already have identified sectors in which they have an export interest, including some or all of the following sectors: audiovisual services, tourism, private healthcare, computer services, and professional services. In addition to financial services and telecommunications, other examples might include distribution and express delivery services, private education, environmental services, and energy services.

15. The United States looks forward to continued discussion of these and other potential alternatives, all of which should be aimed at meeting the interests of the broadest possible range of WTO Members, and which could supplement the request-offer approach used in the Uruguay Round.

16. Article XIX also calls for the negotiations to result in effective market access. In some cases, commitments to market access, national treatment, and MFN treatment may be sufficient to ensure effective market access. WTO Members have acknowledged, however, that especially in many regulated sectors it may be appropriate to develop new disciplines to ensure that regulations themselves do not have an unnecessarily restrictive – and perhaps unintended – effect on trade in services. These disciplines must ensure that governments can achieve legitimate domestic regulatory objectives. At the same time, they can facilitate competition in domestic markets. Indeed, in many cases, domestic regulation can supplement and reinforce GATS obligations, as in the case of additional commitments undertaken in the basic telecommunications “reference paper.” A transparent and effective regulatory framework provides businesses with the guidance and certainty they need to make long-term decisions, and assures citizens that policies are in place to promote their interests.

17. For the United States, it will be important to pair commitments to market access, national treatment, and MFN treatment with disciplines that promote transparency and fairness in regulation. In discussions under GATS Article VI, we will work with other Members to determine whether it is most appropriate to develop cross-sectoral disciplines, sector-specific disciplines, or some combination of the two.

18. There is an additional component of effective market access. The value of scheduled commitments is diminished if descriptions of the service activities covered are imprecise, outdated, or incomplete. Further, both governments and private sectors are disadvantaged when countries use different classifications systems in their individual schedules. To date, there is no agreed classification system used to schedule commitments in the GATS. Members have agreed that it is important to develop classifications used by all, to promote clarity of commitments across schedules. It is equally important that the classifications reflect commercial realities – that is, that they accurately and fully capture the service activities of our private sectors. The United States has contributed proposals for sectoral classification to the work underway in the Committee on Specific Commitments and looks forward to early conclusion of this work.

B. “This process 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.”

19. The United States has welcomed the constructive discussions – both formal and informal – to lay the groundwork for the next GATS round. In particular, in contrast with the Uruguay Round it is evident that in this next round WTO Members are very interested in working jointly to consider the possibility of alternative negotiating approaches.

20. In the Uruguay Round, specific commitments were the result of bilateral request-offer negotiations. To a large extent they reflected individual interests of participants, with their differing levels of activity in the negotiations, such that the final result of the Uruguay Round in this area was merely the summing up of all of the individual bilateral negotiations.

21. In contrast, for this round Members appear willing to consider joint efforts aimed at producing results that (a) are more coherent from a commercial perspective, and (b) reflect interests of a wide range of countries. That is, Members appear interested in building into the negotiations an approach intended to produce meaningful results. One way to do so is through alternative horizontal and/or sectoral negotiating approaches, noted above. The United States is interested in working with other Members to develop such approaches aimed at meeting the interests of a broad range of participants. Also, as noted above, these approaches could supplement a request-offer approach.

C. “The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors.”

22. In the post-Uruguay Round period, the GATS has proven itself to provide great flexibility in accommodating national policy objectives. For example, in the important and sensitive sectors of financial services and telecommunications, some 70 Members, from a broad range of economic circumstances, undertook market access and national treatment commitments using similar approaches. In some cases, Members used phase-in of commitments as a way to correlate their GATS and domestic objectives. In other cases, however, Members undertook identical commitments, regardless of level of development, as reflected in the basic telecommunications “reference paper,” incorporated into country schedules.

23. In addition, since the end of the Uruguay Round acceding countries, even at relatively low levels of development, have undertaken specific commitments guaranteeing open and non-discriminatory markets in large numbers of sectors, in many cases beyond even what some developed countries provided in the Uruguay Round. These countries that have joined the WTO since the end of the Uruguay Round, or are close to concluding their accession negotiations, have shown great leadership for the direction of the next GATS round.

D. “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 their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.”

24. An important objective of Article IV is access for developing countries to technology on a commercial basis as a means to strengthen their domestic services capacity, efficiency, and competitiveness, and to improve these countries’ access to distribution channels and information networks. In the view of the United States, the primary means of accomplishing these objectives is to ensure that consumers in developing countries – service suppliers, manufacturers, and farmers, as well as individuals – have access to affordable, high-quality, innovative services that meet their needs and budgets. Some of these services will be provided on a cross-border basis, but most will be provided through commercial presence. For this reason, it should be in a country’s economic interest to remove restrictions and provide guaranteed access for foreign service providers to enter its market through branches, subsidiaries, representative offices, and other forms of commercial presence.

25. Article IV also states the importance for all Members – developed and developing – of undertaking “liberalization of market access in sectors and modes of supply of export interest” to developing-country Members. As noted above, some developing-country Members already have identified their interests for the next round. The United States hopes that other such Members will do the same and looks forward to discussion of how to meet those interests.

26. With respect to paragraph 2 of Article IV, the United States also would be interested in views of developing-country Members on possible improvements to the “contact points” established under that provision. Based on informal consultations, it does not appear that these contact points, established by developed countries for use by service suppliers from developing countries, are being used.

E. “Negotiating guidelines shall establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations”

27. Many WTO Members, from the least-developed to developed, are proceeding to deregulate their services sectors and remove other restrictions to market access and national treatment. Also,

many Members are reforming the regulations they retain to ensure that they promote rather than restrain competition. The GATS negotiations should recognize and encourage these initiatives.

28. Generally, the United States believes that existing services regimes should be the starting point for negotiation of specific commitments. We are prepared, however, to consider acknowledgement of liberalization undertaken before the next round when this liberalization would be bound in the country's schedule. We look forward to discussion of how to meet these objectives.

F. "Negotiating guidelines shall establish modalities . . . for the special treatment for least-developed country Members under the provisions of paragraph 3 of Article IV."

29. Least-developed WTO Members have undertaken a variety of specific commitments. Some of these Members have included only one or two sectors in their country schedules. Others, however, have included extensive commitments in sectors such as audiovisual services, telecommunications, financial services, and distribution services. These latter countries have shown that their status as least-developed is not incompatible with their desire to undertake GATS commitments comparable with countries at higher stages of development.

30. The United States wishes to work with least-developed countries, and other WTO Members, to promote their participation in the negotiations and to ensure that the negotiations assist these countries in their own economic and other national policy goals.

G. "The process of progressive liberalization shall be advanced in each such round through bilateral, plurilateral or multilateral negotiations directed towards increasing the general level of specific commitments undertaken by Members under this Agreement."

31. The United States seeks broad participation in the next GATS round and looks to all WTO Members to contribute to the round's objectives. As noted above, the United States has welcomed the interest and willingness of a large number of WTO Members in discussing joint efforts to promote results in the next GATS round that will meet the interests and objectives of a broad range of participants. Service consumers and suppliers in each WTO Member country can benefit from significantly improved commitments by each Member.
