

**Council for Trade in Services
Special Session**

DRAFT MINISTERIAL TEXT ON SERVICES

Note by the Chairman

Revision

Attached is the second revision of the draft services text for the Ministerial Meeting in Hong Kong. This revised draft has been prepared on the basis of submissions by Members and the various discussions during meetings of the Special Session of the Council for Trade in Services. With a view to facilitating its integration in the final draft Ministerial Declaration, this draft is divided into two parts: the first should be considered for incorporation in the main body of the draft Ministerial Declaration, while the second is proposed as an Annex to the Declaration.

As Members will recall, the development of this draft has been based on the Chairman's Note containing the list of possible elements for a draft Ministerial Text on Services (JOB(05)/234, dated 13 October), which, in turn, had subsequently been revised in the light of comments by Members. While this text remains under the responsibility of the Chairman and there have been a number of proposals to modify different parts of it, in my view it provides a sound basis for agreement by Ministers in Hong Kong. It attempts to bridge gaps between positions on the different elements in a manner which, I hope, provides an acceptable balance. However, on the issue of setting numerical targets and indicators, positions remain too divergent to be bridged by any compromise language. It is therefore up to Members to consider whether this issue should be pursued further, including at the TNC level.

DRAFT MINISTERIAL TEXT

(Services)

1. The negotiations on trade in services shall proceed to their conclusion with a view to promoting the economic growth of all trading partners and the development of developing and least developed countries (LDCs), and with due respect for the right of Members to regulate. In this regard, we recall and reaffirm the objectives and principles stipulated in the GATS, the Doha Declaration, the Guidelines and Procedures for the Negotiations on Trade in Services adopted by the Special Session of the Council for Trade in Services on 28 March 2001, as well as Annex C of the Decision adopted by the General Council on 1 August 2004.
2. We urge all Members to participate actively in these negotiations towards achieving a progressively higher level of liberalization of trade in services, with appropriate flexibility for individual developing countries as provided for in Article XIX of the GATS. Negotiations shall have regard to the size of economies of individual Members. We recognize the particular economic situation of LDCs, including the difficulties they face, and acknowledge that they are not expected to undertake new commitments. We recognize the special situation of recently acceded Members who have undertaken extensive market access commitments at the time of accession. This situation will be taken into account in the negotiations.
3. We are determined to intensify the negotiations in accordance with the above principles and the Objectives, Approaches and Timelines set out in Annex [...] with a view to expanding the sectoral and modal coverage of commitments and improving their quality. In this regard, particular attention will be given to sectors and modes of supply of export interest to developing countries.

Annex [...]

Negotiations on Trade in Services

Objectives

1. In order to achieve a progressively higher level of liberalization of trade in services, with appropriate flexibility for individual developing country Members, we agree that Members should strive to ensure that their new and improved commitments adhere to the following objectives:

- (a) Mode 1
 - (i) commitments at existing levels of market access on a non-discriminatory basis across sectors of interest to Members
 - (ii) removal of existing requirements of commercial presence
- (b) Mode 2
 - (i) commitments at existing levels of market access on a non-discriminatory basis across sectors of interest to Members
 - (ii) commitments on mode 2 where commitments on mode 1 exist
- (c) Mode 3
 - (i) commitments on enhanced levels of foreign equity participation
 - (ii) removal or substantial reduction of economic needs tests
 - (iii) commitments allowing greater flexibility on the types of legal entity permitted
- (d) Mode 4
 - (i) new or improved commitments on the categories of Contractual Services Suppliers, Independent Professionals and Others, de-linked from commercial presence, to reflect *inter alia*:
 - removal or substantial reduction of economic needs tests
 - indication of prescribed duration of stay and possibility of renewal, if any
 - (ii) new or improved commitments on the categories of Intra-corporate Transferees and Business Visitors, to reflect *inter alia*:
 - removal or substantial reduction of economic needs tests
 - indication of prescribed duration of stay and possibility of renewal, if any

- (e) MFN Exemptions
 - (i) removal or substantial reduction of exemptions from most-favoured-nation (MFN) treatment
 - (ii) clarification of remaining MFN exemptions in terms of scope of application and duration
- (f) Scheduling of Commitments
 - (i) ensuring clarity, certainty, comparability and coherence in the scheduling and classification of commitments through adherence to, *inter alia*, the Scheduling Guidelines pursuant to the Decision of the Council for Trade in Services adopted on 23 March 2001
 - (ii) ensuring that scheduling of any remaining economic needs tests adheres to the Scheduling Guidelines pursuant to the Decision of the Council for Trade in Services adopted on 23 March 2001.

2. In order to provide guidance for the request-offer negotiations, the sectoral and modal objectives as identified by Members may be considered¹.

3. Members shall pursue full and effective implementation of the Modalities for the Special Treatment for Least-Developed Country Members in the Negotiations on Trade in Services (LDC Modalities) adopted by the Special Session of the Council for Trade in Services on 3 September 2003, with a view to the beneficial and meaningful integration of LDCs into the multilateral trading system.

4. Members must intensify their efforts to conclude the negotiations on rule-making under GATS Articles X, XIII, and XV in accordance with their respective mandates and timelines:

- (a) Members should engage in more focused discussions in connection with the technical and procedural questions relating to the operation and application of any possible emergency safeguard measures in services.
- (b) On government procurement, Members should engage in more focused discussions and in this context put greater emphasis on proposals by Members, including on proposals for a possible framework for government procurement.
- (c) On subsidies, Members should intensify their efforts to expedite and fulfil the information exchange required for the purpose of such negotiations, and should engage in more focused discussions on proposals by Members, including the development of a possible working definition of subsidies in services.

5. Members shall develop disciplines on domestic regulation pursuant to the mandate under Article VI:4 of the GATS before the end of the current round of negotiations. We call upon Members

¹ As attached to the Report by the Chairman to the Trade Negotiations Committee on [...] November 2005, contained in document TN/S/23, as well as any future revisions thereof.

to develop text for adoption. In so doing, Members shall consider proposals and the illustrative list of possible elements for Article VI:4 disciplines².

Approaches

6. Pursuant to the principles and objectives above, we agree to intensify and expedite the request-offer negotiations, which shall remain the main method of negotiation, with a view to securing substantial commitments.

7. In addition to bilateral negotiations, we agree that the request-offer negotiations should also be pursued on a plurilateral basis in accordance with the principles of the GATS and the Guidelines and Procedures for the Negotiations on Trade in Services. The results of such negotiations shall be extended on an MFN basis. These negotiations would be organized in the following manner:

- (a) Any Member or group of Members may present requests or collective requests to other Members in any specific sector or mode of supply, identifying their objectives for the negotiations in that sector or mode of supply.
- (b) Any Member or group of Members who have made such requests in a specific sector or mode of supply, together with Members to whom such requests have been made, and any other interested Member, shall enter into plurilateral negotiations to consider such requests.
- (c) Plurilateral negotiations should be organised with a view to facilitating the participation of all Members, taking into account the limited capacity of smaller delegations to participate in such negotiations.

8. Due consideration shall be given to proposals on trade-related concerns of small economies.

9. Members, in the course of negotiations, shall develop methods for the full and effective implementation of the LDC Modalities, including expeditiously:

- (a) Developing appropriate mechanisms for according special priority including to sectors and modes of supply of interest to LDCs in accordance with Article IV:3 of the GATS and paragraph 7 of the LDC Modalities.
- (b) Undertaking commitments, to the extent possible, in such sectors and modes of supply identified, or to be identified, by LDCs that represent priority in their development policies in accordance with paragraphs 6 and 9 of the LDC Modalities.
- (c) Assisting LDCs to enable them to identify sectors and modes of supply that represent development priorities.
- (d) Providing targeted and effective technical assistance and capacity building for LDCs in accordance with the LDC Modalities, particularly paragraphs 8 and 12.
- (e) Developing a reporting mechanism to facilitate the review requirement in paragraph 13 of the LDC Modalities.

² As attached to the Report of the Chairman of the Working Party on Domestic Regulation to the Special Session of the Council for Trade in Services on 15 November 2005, contained in document JOB(05)/280.

10. Targeted technical assistance should be provided through, *inter alia*, the WTO Secretariat, with a view to enabling developing and least-developed countries to participate effectively in the negotiations. In particular and in accordance with paragraph [...] on Technical Assistance in the Hong Kong Ministerial Declaration, targeted technical assistance should be given to all developing countries allowing them to fully engage in the final phase of the negotiation. In addition, such assistance should be provided on, *inter alia*, compiling and analyzing statistical data on trade in services, assessing interests in and gains from services trade, building regulatory capacity, particularly on those services sectors where liberalization is being undertaken by developing countries.

Timelines

11. Recognizing that an effective timeline is necessary in order to achieve a successful conclusion of the negotiations by [...], we agree that the negotiations shall adhere to the following dates:

- (a) Any outstanding initial offers shall be submitted as soon as possible.
- (b) Groups of Members presenting plurilateral requests to other Members should submit such requests by [February 2006] or as soon as possible thereafter.
- (c) A second round of revised offers shall be submitted by [date].
- (d) Final draft schedules of commitments shall be submitted by [date].

Review of Progress

12. The Special Session of the Council for Trade in Services shall review progress in the negotiations and monitor the implementation of the Objectives, Approaches and Timelines set out in this Annex.
