

WORLD TRADE ORGANIZATION

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Council for Trade in Services Special Session

SPECIAL SESSION OF THE COUNCIL FOR TRADE IN SERVICES

Report by the Chairman to the Trade Negotiations Committee

1. Since the Fourth Session of the Ministerial Conference, the Special Session of the Council for Trade in Services has held nine formal meetings on 3-6 December 2001; 19-22 March 2002; 5-6 June 2002; 23 July 2002; 28 October and 1 November 2002; 9 December 2002 and 13 January 2003; 3-6 March 2003; 19-22 May 2003; and 4-10 July 2003. Reports of the meetings are contained in documents S/CSS/M13 and TN/S/M/1 to TN/S/M/8 inclusive.¹ The reports of the meetings should be read in conjunction with this report.

I. ORGANIZATION OF WORK

A. WORK RELATED TO THE NEGOTIATION OF SPECIFIC COMMITMENTS

2. At the last Ministerial Conference in Doha Ministers took note of the large number of proposals submitted by Members related to Trade in Services, reaffirmed the Guidelines and Procedures for the Negotiations adopted by the Council for Trade in Services on 28 March 2001, and directed participants to submit initial requests by 30 June 2002 and initial offers by 31 March 2003. In so doing, Ministers provided impetus to the on-going negotiations on specific commitments.

3. At the commencement of the mandated negotiations in 2000, Members agreed to begin work with the consideration of negotiating proposals. These proposals aim at indicating Members' negotiating interests in specific services sectors and modes of supply. They addressed questions relating to classification of services, market access and national treatment commitments and regulatory issues. They also addressed the negotiation of existing exemptions from Article II (MFN), as stipulated in paragraph 6 of the Negotiating Guidelines. Some 110 negotiating proposals have been presented, 26 since the last meeting of Ministers at Doha. In total 47 of these have been presented by developing country Members. With the onset of the request-offer process, negotiating proposals have in some cases addressed issues directly related to the current phase of the negotiation of specific commitments. Two such proposals have been presented with the indication that they are the work of a "friends" group.

4. In accordance with paragraph 15 of the Doha Ministerial Declaration, Members began to submit initial requests for specific commitments as of 30 June 2002 and initial offers as of 31 March 2003. Thirty initial offers have so far been received by the Secretariat, including 15 from developing country Members. As foreseen in the Guidelines and Procedures for Negotiations on Trade in Services, since October 2002 the Council has been reviewing progress in the negotiations. Pursuant to paragraph 15 of the Negotiating Guidelines, the Council started in May 2003 considering

¹ At the time of this report TN/S/M/8 remained to be issued.

on a regular basis the extent to which Article IV is being implemented, with a view to suggesting ways and means of promoting the goals established therein.

5. The Special Session also remains engaged in important work mandated under paragraph 3 of Article XIX of the GATS. Work on one important piece of the negotiating architecture was completed on 6 March 2003 when the Council adopted the Modalities for the Treatment of Autonomous Liberalization and took note of an accompanying Statement by the Chairman.² The statement was made in the context of specific concerns expressed by some Members, including those recently acceded. By defining the scope of measures eligible for credit, the criteria for assessing the value of such measures, and the procedures through which credit will be determined and granted, particularly for developing countries, the Council has established a tool for the treatment of autonomous liberalization in the context of the negotiations.

6. Furthermore, paragraph 3 of Article XIX mandates that the Council for Trade in Services conduct an assessment of trade in services in overall terms and on a sectoral basis. The Council has been pursuing this exercise since 1998. It was also stipulated in paragraph 14 of the Guidelines that the process would continue throughout the negotiations. So far some 145 submissions have been made, including those in the context of an information exchange programme. Since the last meeting of Ministers in Doha, one oral presentation has been made by an invited expert and eight written communications have been submitted including a checklist by the Secretariat of issues that Members might wish to take into account when conducting their own assessment at the national level.

7. It is worth noting that a symposium on the assessment of trade in services was held on 14-15 March 2002, and another on movement of natural persons was held on 11 and 12 April of 2002.

B. WORK RELATED TO RULE-MAKING

8. In addition to the elements of the negotiating architecture related to Article XIX of the GATS, important work on mandated rule-making has been on-going since the Fourth Ministerial Conference in four areas. Work in accordance with the mandates contained in Article VI:4 (Domestic Regulation) has been pursued in the Working Party on Domestic Regulation, while work under Article X:1 (Emergency Safeguard Measures), Article XIII:2 (Government Procurement) and XV:1 (Subsidies) has been pursued in the Working Party on GATS Rules. Reports by the Chairs of the Council's four subsidiary bodies has remained a standing item on the Special Session's agenda.

9. With respect to domestic regulation, Members have recently renewed their focus on the creation of disciplines under GATS Article VI:4. Discussions in the Working Party on Domestic Regulation have focused on elements largely inspired by the Accountancy Disciplines adopted by the Council for Trade in Services on 14 December 1998.³ At the same time, Members have continued the discussion of regulatory examples. The key issues on which work has focused include additional disciplines on transparency, the coverage of Article VI:4 measures in relation to scheduled measures, understanding the necessity of domestic regulatory measures, and the recognition of qualifications. As well, a symposium on Domestic Regulation is foreseen in 2003.

10. The Working Party on GATS Rules has continued its work on emergency safeguard measures, government procurement and subsidies. On 15 March 2002, the Council for Trade in Services adopted, upon recommendation from the Working Party on GATS Rules, a fourth Decision on emergency safeguard measures which extended the deadline for these negotiations until 15 March 2004. On 22 July 2002, the Working Party adopted work programmes on emergency safeguard measures, subsidies and government procurement respectively, recognizing, *inter alia*, that these did not prejudice in any way the outcome of the negotiations under the respective agenda items,

² TN/S/6 and TN/S/8.

³ S/L/64.

and that the undertaking of individual items of work, including the questions of desirability and feasibility, should be without prejudice to each other under each subject of negotiations.⁴ With respect to emergency safeguard measures, the main elements are, *inter alia*, to identify, elaborate and consolidate elements for an ESM, to address the questions of desirability and feasibility, to encourage Members to put forward submissions as early as possible before 31 December 2002, and to finalize the negotiations by 15 March 2004. For both subsidies and government procurement, the work programmes provide, *inter alia*, for continued discussion on the basis of submissions from Members and materials available, and encourages Members to put forward submissions as early as possible before 31 March 2003. As mandated in the work programmes, the Chairperson of the Working Party issued three notes reporting on the progress of negotiations in the three areas; the report on emergency safeguard measures was issued on 14 March 2003⁵, and the two reports on subsidies and government procurement on 30 June 2003⁶. At its meeting in July, the Working Party had a stock-taking discussion on the progress made in the negotiations regarding the three agenda items under its mandate.

II. OUTSTANDING ISSUES

11. The Council is fully aware that one remaining piece of the negotiating architecture mandated under paragraph 3 of Article XIX consists of the Modalities for the Special Treatment for Least-Developed Country Members. The Council has been actively engaged in work on this item since December 2002 when the LDC Group submitted an initial draft which was subsequently revised in March 2003.⁷ Members have often expressed the view that the special situation of LDCs in general and in the context of the negotiations requires the Council to pursue its work on this item with a sense of urgency in order to reach a timely conclusion. At its meeting held on 4-10 July 2003, the Council agreed to keep this item open so that it might continue formal discussions in the coming weeks should consultations warrant such action. In the interim I will renew my efforts through consultations.

III. FUTURE WORK

12. While there is a degree of satisfaction with how the negotiations are proceeding, it is imperative to ensure that the negotiations continue to progress in accordance with the agreed Guidelines and Procedures (S/L/93) towards a successful conclusion. It is also necessary to achieve a higher level of participation and engagement by all Members in the negotiations.

13. Technical assistance is essential at this stage of the negotiating process. The Secretariat must therefore be able to respond rapidly and flexibly to all relevant requests with priority being given to those from least developed countries.

14. In order to facilitate the participation of least-developed country (LDC) Members in these negotiations, Members must make every effort to reach agreement on the modalities for the special treatment of LDCs in the negotiations prior to the Cancun Ministerial Conference.

15. As agreed in the Negotiating Guidelines, the assessment of trade in services, in overall terms and on a sectoral basis, will continue to be an ongoing activity in the Special Session for the Council Trade in Services. It will continue to inform the negotiating process. Members will be examining ways in which the ongoing exercise could be improved and given greater focus.

16. Ministers have agreed in Doha that participants would submit their initial offers by 31 March 2003. So far only 30 offers (counting the EC as one) have been received. Members who have not yet

⁴ S/WPGR/7.

⁵ S/WPGR/9.

⁶ S/WPGR/10 and --/11.

⁷ JOB(02)/205 and TN/S/W/13 respectively.

submitted their initial offers must endeavour to do so as soon as possible. It is recognized that the quality of some of the offers leave much to be desired in respect of coverage of sectors and modes of supply as well as the depth of commitments. It should be recalled that the Negotiating Guidelines state that this process shall aim to achieve progressively higher levels of liberalization of trade in services with no *a priori* exclusion of any service sector or mode of supply and shall give special attention to sectors and modes of supply of export interest to developing countries. It shall also take place with due respect for the right of Members to regulate in pursuance of national policy objectives. Considering the final deadline for negotiations of 1 January 2005, the Ministerial Conference might wish to provide guidance, including landmark dates by which Members would improve their initial offers and finally revise them with a view to concluding the negotiations.

17. The negotiations on rule-making under the GATS have been underway since 1995. The lack of progress is of concern. These negotiations are important and we must ensure that they conclude in accordance with their mandate and within the agreed time-frames. On safeguards, Members would need to make every effort to narrow down the gaps between positions. Members must also devote the necessary time and effort to advance the negotiations on domestic regulation under Article VI:4, government procurement under Article XIII and subsidies under Article XV. In order for these negotiations to proceed towards their conclusion, it might be desirable to envisage a meeting of the Special Session of the Services Council devoted to a review of progress by 31 March 2004.
