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## **1 ARTICLE XIX OF THE GENERAL AGREEMENT ON TRADE IN SERVICES**

### **1.1 Text of Article XIX**

#### ***Article XIX***

##### *Negotiations on Specific Commitments*

1. In pursuance of the objectives of this Agreement, Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, 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. 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.

2. 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. 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.

3. For each round, negotiating guidelines and procedures shall be established. For the purposes of establishing such guidelines, the Council for Trade in Services shall carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV. Negotiating guidelines shall establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations, as well as for the special treatment for least-developed country Members under the provisions of paragraph 3 of Article IV.

4. 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.

## 1.2 Article XIX:1 "successive rounds of negotiations"

1. On 9-13 December 1996 in Singapore, the Ministerial Conference endorsed the recommendation that the Council for Trade in Services would develop an information exchange programme<sup>1</sup>, as part of the requisite work to facilitate the negotiations of progressive liberalization of trade in services as mandated by Paragraph 1 of Article XIX.<sup>2</sup> On 11 May 1998, the Council on Trade in Services agreed, on an *ad referendum* basis, on certain aspects concerning the structure and content of the exchange of information exercise.<sup>3</sup>

2. At its meeting on 7-8 February 2000, the General Council took note of a statement by the Chairman recalling that the mandated negotiations had begun on 1 January 2000. The Council agreed that the negotiations be conducted in Special Sessions of the Council for Trade in Services.<sup>4</sup>

3. On 9-14 November 2001, Doha Ministers took note that work had already been undertaken in the negotiations initiated in January 2000 under Article XIX. They agreed that Members shall submit initial requests for specific commitments by 30 June 2002 and initial offers by 31 March 2003.<sup>5</sup>

## 1.3 Article XIX:3 "negotiating guidelines and procedures"

### 1.3.1 General Agreement on Trade in Services (GATS) 2000 negotiations

4. At its meeting on 28 March 2001, the Council for Trade in Services adopted the Guidelines and Procedures for the Negotiations on Trade in Services<sup>6</sup>, which were subsequently reaffirmed by Ministers meeting in Doha on 9-14 November 2001.<sup>7</sup>

### 1.3.2 Assessment of trade in services

5. At its meeting on 25 February 2000, the Council decided that the assessment of trade in services be moved to the agenda of the Special Session. It was agreed that the assessment should be regarded as an on-going process rather than a one-off exercise.<sup>8</sup>

### 1.3.3 Modalities for the treatment of liberalization undertaken autonomously

6. On 6 March 2003, the Special Session of the Council for Trade in Services adopted Modalities for the Treatment of Autonomous Liberalization.<sup>9</sup> The establishment of these modalities is mandated by Article XIX:3 of the GATS.

### 1.3.4 Modalities for the Special Treatment of least-developed country Members in the Negotiations on Trade in Services

7. On 3 September 2003, the Special Session of the Council for Trade in Services adopted modalities for the special treatment of least developed country Members in the context of the services negotiations.<sup>10</sup> The establishment of these modalities is mandated by Article XIX:3 of the GATS.

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<sup>1</sup> [S/C/3](#), para. 47.

<sup>2</sup> [WT/MIN\(96\)/DEC](#), para. 19. See also [S/C/M/17](#), para. 14.

<sup>3</sup> [S/C/M/27](#), para. 3.

<sup>4</sup> [WT/GC/M/53](#), paras. 12 and 39. See also [S/CSS/M/1](#), Section A. For the reports by the Chairman of the Special Session to the TNC, see the document series [TN/S/\\*](#).

<sup>5</sup> [WT/MIN\(01\)/DEC/1](#), para. 15. See also [TN/C/M/1](#).

<sup>6</sup> [S/L/93](#).

<sup>7</sup> [WT/MIN\(01\)/DEC/1](#), para. 15.

<sup>8</sup> [S/CSS/3](#), Section II.

<sup>9</sup> [TN/S/6](#).

<sup>10</sup> [TN/S/13](#).

## 1.4 Post-Uruguay Round sectoral negotiations

### 1.4.1 Movement of natural persons

8. The GATS Decision on Negotiations on Movement of Natural Persons adopted by Ministers at Marrakesh provides for the negotiations on further liberalization of movement of natural persons for the purpose of supplying services to be extended for six months following the entry into force of the WTO. These negotiations, carried out in a Negotiating Group on Movement of Natural Persons, were finally concluded on 28 July 1995.<sup>11</sup> They resulted in six revised Schedules, which were incorporated into the original Uruguay Round Schedules of the Members concerned through the Third Protocol to the GATS<sup>12</sup>, adopted by the Council for Trade in Services on 21 July 1995.<sup>13</sup>

9. The Third Protocol remained open for acceptance by the Members concerned originally until 30 June 1996, with entry into force foreseen "on the 30<sup>th</sup> day after 1 January 1996" for those Members which had accepted it by that date, and for those accepting it after that date, "on the 30<sup>th</sup> day following the date of each acceptance".<sup>14</sup>

10. The Council for Trade in Services subsequently decided to leave the Protocol open for acceptance for a longer period, until 30 November 1996.<sup>15</sup> Belgium failed to accept the Protocol by that date, however. On 23 July 1998, the Council for Trade in Services decided to reopen the Third Protocol for acceptance by Belgium.<sup>16</sup>

### 1.4.2 Financial services

11. The Second Annex on Financial Services provided that during a period of 60 days beginning "four months after the entry into force of the WTO Agreement", Members were free to improve, modify, or withdraw all or part of the specific commitments on financial services inscribed in their Schedules and list measures related to financial services inconsistent with the Most-Favoured-Nation (MFN) principle. At the same time, the Decision on Financial Services adopted by Ministers at Marrakesh provided for extended negotiations in the sector during the six months following the entry into force of the WTO. These negotiations were finally concluded on 28 July 1995.<sup>17</sup> Upon conclusion of the negotiations in 1995, the results consisting of 29 Schedules were incorporated into the original Uruguay Round Schedules through the Second Protocol to the GATS, whose text had been adopted by the Committee on Trade in Financial Services on 21 July 1995.<sup>18</sup>

12. The Second Protocol remained originally open for acceptance by the Members concerned until 30 June 1996, with entry into force originally foreseen "on the 30<sup>th</sup> day following the date of its acceptance by all Members concerned". At the same time, the Protocol provided that if by 1 July 1996 it had not been accepted by all Members concerned, "those Members which have accepted it before that date may, within a period of 30 days thereafter, decide on its entry into force." The Members that accepted the Protocol before 1 July 1996 finally decided to: (i) let the protocol enter into force on 1 September 1996, and, (ii) in order to allow for acceptance of the Protocol by Members which had not yet accepted it, leave the Protocol open for acceptance until 30 November 1996.<sup>19</sup> The latter was confirmed and instrumented by a Decision taken by the Council for Trade in Services on 30 July

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<sup>11</sup> [S/C/M/4](#) and [S/NGNP/9](#).

<sup>12</sup> [S/L/12](#).

<sup>13</sup> [S/L/10](#).

<sup>14</sup> [S/L/12](#), para. 3.

<sup>15</sup> [S/L/28](#). The Decision also provides that, for those Members who accepted it after 30 June 1996, the Protocol would enter into force on the thirtieth day following each acceptance.

<sup>16</sup> [S/L/59](#).

<sup>17</sup> [S/FIN/M/10](#).

<sup>18</sup> The text of the Second Protocol can be found in [S/L/11](#). The text of the decision to adopt the Second Protocol can be found in [S/L/13](#).

<sup>19</sup> See the Communication from Members which have accepted the Second Protocol to the General Agreement on Trade in Services ([S/L/25](#)).

1996.<sup>20</sup> However, Belgium and Brazil failed to accept the Protocol by that date. On 23 July 1998, the Council for Trade in Services decided to reopen the Protocol for acceptance by Belgium.<sup>21</sup>

13. At its meeting of 21 July 1995, the Council for Trade in Services adopted the Second Decision on Financial Services, which provided that during a period of 60 days "beginning on 1 November 1997", Members were free "to modify or withdraw all or part of the Specific Commitments on Financial Services" inscribed in their Schedules and list measures relating to financial services inconsistent with the MFN principle.<sup>22</sup> This latter decision led to another round of negotiations on financial services, which were concluded on 12 December 1997.<sup>23</sup> Upon conclusion of these negotiations, the results consisting of 71 Schedules were incorporated into the original Uruguay Round Schedules through the Fifth Protocol to the GATS, whose text had been adopted by the Committee on Trade in Financial Services on 14 November 1997.

14. The Fifth Protocol remained open for acceptance, by signature or otherwise, by the Members concerned until 29 January 1999, with entry into force originally foreseen "on the 30<sup>th</sup> day following the date of its acceptance by all Members concerned". As in the case of the Second Protocol, the Fifth Protocol provided that if by 30 January 1999 it had not been accepted by all Members concerned, "those Members which have accepted it before that date may, within a period of 30 days thereafter, decide on its entry into force."<sup>24</sup> The Members that accepted the Protocol before the due date finally decided to: (i) let the protocol enter into force on 1 March 1999, and, (ii) in order to allow for acceptance of the Protocol by Members which had not yet accepted it, leave the Protocol open for acceptance until 15 July 1999.<sup>25</sup> The Council for Trade in Services finally decided that the Fifth Protocol remain open for acceptance by the Members concerned until 15 June 1999.<sup>26</sup> However, some of those Members failed to accept the Protocol by that date. In order to allow for the acceptance of the Protocol after the expiry of the deadline, the Council for Trade in Services periodically opened the Fifth Protocol for acceptance upon request by a Member concerned.<sup>27</sup> By 18 March 2016, all Members concerned had accepted the Protocol.

### 1.4.3 Maritime transport services

15. In accordance with the GATS Annex on Negotiations on Maritime Transport Services and the Uruguay Round Ministerial Decision on Negotiations on Maritime Transport Services, negotiations on maritime transport services after the entry into force of the WTO Agreement were carried out in a Negotiating Group between May 1994 and June 1996, aiming at commitments in international shipping, auxiliary services, and access to and use of port facilities. At its meeting of 28 June 1996, the Council for Trade in Services adopted a Decision to suspend the negotiations on maritime transport services and to resume them with the commencement of comprehensive negotiations on services, in accordance with Article XIX of the GATS, and to conclude them no later than at the end of this first round of progressive liberalization.<sup>28</sup>

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<sup>20</sup> See the Decision on Acceptance of the Second and Third Protocols to the GATS ([S/L/28](#)). The Council for Trade in Services had provided as well that in the eventuality that the Second Protocol do not enter into force, Members would be free during a period of 60 days beginning on 1 August 1996 to modify or withdraw all or part of their specific commitments and list measures relating to financial services inconsistent with the MFN principle (See the Decision on Commitments in Financial Services, [S/L/8](#)).

<sup>21</sup> See the Second Decision on the Acceptance of the Second and Third Protocols ([S/L/59](#)).

<sup>22</sup> The text of the adopted Second Decision can be found in [S/L/9](#).

<sup>23</sup> [S/FIN/M/20](#).

<sup>24</sup> The text of the Fifth Protocol can be found in [S/L/45](#). The text of the decision to adopt the Fifth Protocol can be found in [S/L/44](#).

<sup>25</sup> Communication from Members which have accepted the Fifth Protocol to the General Agreement on Trade in Services, [S/L/67](#). The Council for Trade in Services had provided as well that in the eventuality that the Fifth Protocol do not enter into force, Members would be free during a period of 60 days beginning on 1 March 1999 to modify or withdraw all or part of their specific commitments and list measures relating to financial services inconsistent with the MFN principle. See the Decision of December 1997 on Commitments in Financial Services ([S/L/50](#)).

<sup>26</sup> See the Decision on Acceptance of the Fifth Protocol to the General Agreement on Trade in Services ([S/L/68](#)).

<sup>27</sup> See, e.g. Costa Rica and Nicaragua ([S/L/76](#)); Ghana ([S/L/87](#)); Kenya and Nigeria ([S/L/89](#)); Bolivia ([S/L/108](#)); Dominican Republic ([S/L/111](#)); Uruguay ([S/L/112](#)); Poland ([S/L/130](#)); Philippines ([S/L/382](#)); Jamaica ([S/L/395](#)); and Brazil ([S/L/411](#)).

<sup>28</sup> The text of the Decision can be found in [S/L/24](#).

16. Pursuant to the Decision on Maritime Transport Services, Article II of the GATS (MFN) and the Annex on Article II Exemptions shall enter into force for international shipping, auxiliary services and access to and use of port facilities at the same time as the conclusion of the negotiations under Article XIX of the GATS, while any specific commitments on maritime transport services inscribed in a Member's Schedule continue to be effective on an MFN basis.<sup>29</sup> At the time of the suspension of the negotiations on maritime transport services, 35 Members had commitments on maritime transport services.<sup>30</sup>

#### 1.4.4 Basic telecommunications

17. At its meeting at Ministerial level in Marrakesh (12-15 April 1994), the Trade Negotiations Committee adopted the Decision on Negotiations on Basic Telecommunications and included this Decision as well as the Annex on Negotiations on Basic Telecommunications (part of GATS) in the Final Act establishing the WTO. The negotiations resulted in revised commitments of 69 Members, which were incorporated into the original Uruguay Round Schedules of the participating Members by means of the Fourth Protocol to the GATS.

18. The Decision on Negotiations on Basic Telecommunications provided for negotiations on further liberalization of basic telecommunications to be extended beyond the Uruguay Round of Multilateral Trade Negotiations, following entry into force of the WTO. It also established the Negotiating Group on Basic Telecommunications. The Decision also directed the Negotiating Group to conclude the negotiations and make a final report no later than 30 April 1996. It indicated that, upon completion of the negotiations, any resulting commitments were to be inscribed in Members' GATS Schedules of Commitments and enter into force "subject to all the provisions of" the GATS.

19. The Annex on Basic Telecommunications provided that Article II of the GATS and paragraph 2 of the Annex on Article II Exemptions shall enter into force for basic telecommunications (except those which are now listed in Schedules) only on the date of implementation of the results of the negotiations mandated by the Ministerial Decision, or should the negotiations not succeed, on the date of the final report of the Negotiating Group. Also at that time, Members would be permitted to decide whether to list any measure inconsistent with MFN obligation for basic telecommunications. By virtue of these provisions it was legally possible for Members to list Article II exemptions that were not listed at the conclusion of the Uruguay Round, notwithstanding paragraph 3 of Article IX of the Marrakesh Agreement Establishing the WTO concerning waivers.

20. On 30 April 1996, the Council for Trade in Services adopted the Decision on Commitments in Basic Telecommunications<sup>31</sup> and the Fourth Protocol to the General Agreement on Trade in Services<sup>32</sup>. The Decision further extended the negotiations, stating in Paragraph 3 that "during the period from 15 January 1997 to 15 February 1997, a Member which has a Schedule of Commitments annexed to the Protocol, may supplement or modify such Schedule or its List of Article II Exemptions" and that "any such Member which has not annexed to the Protocol a List of Article II Exemptions may submit such a list during the same period". The Decision established the Group on Basic Telecommunications to implement the negotiations mandated in paragraph 3. The negotiations concluded in February 1997 when the Group on Basic Telecommunications issued its final report.<sup>33</sup> Members were given one year for acceptance of the Fourth Protocol and, given sufficient acceptances, the Protocol entered into force on 5 February 1998 giving legal effect to the sectoral commitments as integral parts of the GATS Schedules.

21. The negotiations leading to the Fourth Protocol resulted in basic telecommunications commitments by 69 WTO Members and in commitments by many of these Members to the Reference Paper, a set of telecommunications regulatory principles that were added to the Schedules. For those Members whose acceptance remained outstanding, individual decisions were taken by the Council for Trade in Services to reopen the Protocol for signature by the Members concerned.<sup>34</sup> Two participating Members, Brazil and Guatemala, did not ultimately accept the Protocol. However, Guatemala

<sup>29</sup> [S/L/24](#), paras. 4-5.

<sup>30</sup> [S/C/3](#), para. 32.

<sup>31</sup> [S/L/19](#).

<sup>32</sup> [S/L/20](#).

<sup>33</sup> [S/GBT/4](#).

<sup>34</sup> Subsequent commitments on basic telecommunications were scheduled by Members acceding to the WTO as part of Schedules of Commitments attached to their Protocols of Accession or, in the case of existing Members, were added to their GATS Schedules by other Members by resort to Certification Procedures.

subsequently submitted a revised version of its Protocol commitments by means of GATS Certification Procedures.<sup>35</sup> Commitments on basic telecommunications and to the Reference Paper undertaken by Members subsequent to the conclusion of the Fourth Protocol are not added to the Protocol. Rather, they have been undertaken by means of inclusion in Protocols of Accession or GATS Certification procedures for submitting improvements to Schedules.

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Current as of: March 2020

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<sup>35</sup> [S/L/69](#). The text of the Procedures for the Certification of Rectifications or Improvements to Schedules of Specific Commitments can be found in [S/L/84](#).