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Structure of a Services Agreement

The attached communication is circulated at the request of the Delegation of Singapore to the members of the Group of Negotiations on Services.

STRUCTURE OF A SERVICES AGREEMENT

1 The most essential prerequisite of a Services Agreement is that it should be able to attract the widest possible participation. It should therefore contain provisions that would promote economic growth and the development of the developing countries. Hence its structure should contain built-in dynamism and flexibility that the developing countries would find it economically worthwhile to participate in a Services Agreement. For example, the structure should permit participants to offer sectors/transactions that are commensurate with their level of development and national policy objectives. The corollary is that participants should have the right to select sectors or transactions for progressive liberalisation, and not be compelled to offer sectors which are incompatible with their national and developmental objectives.

Broad Categories of Proposals

2 There seems to be broad acceptance that a Services Agreement would comprise a Framework of concepts and principles that would govern the operation of progressive liberalisation in sectors/transactions, leading to growth and development.

3 There is however some divergence of opinion as to whether there should be separate sectoral agreements OR just individual schedules of offers (or exceptions) that would collectively form at least initially the coverage of the Services Agreement.

4 Irrespective of the two broad approaches, it is essential that there should be common understanding and agreement as to what would constitute the sectors or transactions. Lack of such clear understanding would give

rise to dispute as to what is covered under a sector or an individual offer list.

5 However, pending the outcome of such a common understanding as well as agreement on concepts and principles to be incorporated in the Framework, one could examine in a preliminary manner the possible types of the structure of a Services Agreement that could be adopted to fulfil the objectives that are outlined in paragraph 1 above, particularly in the context of increasing participation of the developing countries.

Framework With Agreed Sectors

6 This approach seeks to achieve, as an instant start, liberalisation in agreed sectors, by applying to those sectors concepts/principles contained in the Framework.

7 However, the shortcomings are:

- a) It would give undue advantage to the major markets. A minor participant is not likely to succeed in including sectors of its export interest.
- b) There would be difficulty in agreeing as to which and how the Framework concepts/principles would apply in specific sectors. There would be numerous exceptions and specific provisions governing each sector. (eg take the case of Telecommunications).
- c) This approach would most likely leave out some major sectors like civil aviation and shipping.
- d) Not many participants are prepared to accede to such an Services Agreement (eg due to inclusion of sectors which they are not ready to open up for progressive liberalization).

Framework With Individual Offer/Exception Schedules

- 8 This approach envisages the following:
- a) Each participant would make its initial offers of sectors/transactions.
 - b) Further concessions could be exchanged through bilateral requests/offers.
 - c) The final individual schedule of offers would be subject to the operation of Framework concepts/principles, but with indication of conditions of market entry (eg surcharges, number of foreign suppliers, etc) specific exceptions, and any other operating conditions after market access is granted.
 - d) Whatever that does not appear in individual offers schedule would not be open to progressive liberalization.
 - e) The country offer schedules would be implemented on an MFN basis.
 - f) There should be a minimum threshold of individual initial commitments or offers.
- 9 This approach has the following advantages:
- a) It would be up to each participant particularly a developing country to offer, supplemented by bilateral requests/offers, as to which sectors/transactions it could comply with the Framework concepts/principles as compatible with its national policy objectives.
 - b) A participant would enjoy market access as indicated in the offer-schedules of other participants as the individual schedules would be implemented on a MFN basis.
 - c) It would achieve a balance of rights and obligations among all participants.

- d) When a participant has satisfied the minimum entry conditions, other participants could not invoke the right of non-application.
- e) This approach would obviate the need of specifying exceptions in sectoral agreements. The Framework concepts/principles would apply to individual offer schedules except where specific exceptions have been made.
- f) It would provide a mechanism for subsequent rounds of negotiations. In the interim, progressive liberalisation is possible through further bilateral requests/offer negotiations, the results of which would be multilateralised.

10 Obviously, there should be agreement as to what would constitute minimum initial commitments (ie for purpose of accession to a Services Agreement). Some examples could be envisaged as follows:

- a) A commitment to comply with the rules/principles as contained in an agreed multilateral Framework for those sectors/transactions initially offered. In circumstances where existing level of protection need be maintained, the developing countries may bind at such existing level, for a fixed period of time, for those sectors/transactions so offered. For those participants which already maintain an open regime on international trade in services, special credits should be given to them.
- b) In exceptional circumstances such as serious balance of payment difficulties, a special time bound waiver could be granted subject to agreement by all other participants.

11 It is recognized that the structure of a Services Agreement could be a combination of the two broad approaches described above. It should not be precluded that subject to the agreement of all participants, the Framework concepts/principles could apply to a specific sector, e.g. Tourism or Construction.

Development Considerations

12 To permit increasing participation of the developing countries, a Services Agreement should allow for flexibility that would permit the developing countries to develop their services capacity including the capacity to export services. It is therefore suggested that in their country offer schedules, the developing countries would have inter alia the following facilities:

- a) They would have a longer time period to implement their offer schedules.
- b) Preferences for domestic service providers over external suppliers would be allowed.
- c) Government incentives to develop their domestic services should be permissible.
- d) There should be safeguard provisions against corporate practices of external service providers which may be detrimental to the development of domestic services in the development countries.