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COMMUNICATION FROM JAPAN

Japanese View on Certain Elements of a Multilateral Framework
for Trade in Services Mentioned at the Mid-Term Review

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

Japanese View on Certain Elements
of a Multilateral Framework
for Trade in Services Mentioned at the Mid-term Review

In line with the schedule adopted by the Trade Negotiations Committee at the Mid-Term Review, the GNS should assemble the elements of a draft Framework Agreement by the end of 1989.

Japan hereby submits the following communication of its views concerning certain concepts and rules which constitute elements of the Framework Agreement.

Such questions as the modality of application of the Framework Agreement to particular sectors, including the question of whether sectoral arrangements based on the general Framework Agreement are needed, should be further examined, bearing in mind the diversity of sectors and relations with existing international organizations, arrangements and disciplines.

Japan reserves its right to elaborate its position in future negotiations concerning concepts and rules discussed in this communication, and other relevant elements to be included in a Framework Agreement.

Japan wishes to express in due course its view on matters such as coverage, modality of reservations, and dispute settlement.

Japan considers that elements such as "market access" or "progressive liberalization" need further legal elaboration, since they are concepts which are not yet fully established in the realm of the GATT.

I. Market Access and Progressive Liberalization

1. Market access

The following points should be given due consideration when drawing up the concept of market access^[1] in the General Framework.

(1) Increasing market access is one aspect of the "liberalization of trade in services", viewed chiefly from the side of the provider, or exporting country, of services. However, realization of increased market access brings about benefits to the consumer as well, such as lower prices due to competition, and improvement in the quality of services provided. It may also bring about such benefits as capital formation and transfer of technology to the importing country.

(2) The realization of a substantial level of market access is a major objective of the services negotiations. We need to place this as the "guiding principle" in our present and future negotiations, and look for practical ways of achieving this. Both request offer and formula approaches have been suggested for the actual modality of negotiations for increasing market access. These approaches, together with the assessment of the balance between liberalization commitments and reservations, need further elaboration and study.

[1] Although Japan presumes that "market access" means the possibility of services providers to provide services to consumers, the meaning of the expression would need further elaboration for common understanding among participants.

3) The other concepts set forth in the Mid-Term Review, namely transparency, progressive liberalization, national treatment, MFN treatment or non-discrimination, can all be considered as principles or rules for realizing a substantial level of market access. However, there may be cases where these principles do not suffice for the realization of market access. In such cases, specific individual rules should be drawn up with a view to reducing or removing the factors inhibiting market access.

In cases where market access cannot be achieved through the application of other basic principles, progressive liberalization may be regarded as a principle or process for gradually reducing such inhibiting factors, which may exist in the form of negotiated reservations or exceptions.

(4) Market access is the guiding principle in the liberalization of trade in services. The Framework Agreement lays down rights and obligations in order to provide participants the opportunity to compete in trade in services. However, the performance of the participants in each market will be determined by market principles in each services sector.

Therefore, the guiding principle of market access in itself does not provide any participant a prerogative to demand review of the rights and obligations already agreed

to in the Framework Agreement just because it has not competed successfully and has not attained a market share which it expected. Such a result-oriented approach is contrary to free trade in services.

In this connection, we should also avoid application of a reciprocal market access concept, in which a participant limits access by another participant to its own market, on the grounds that the latter's market access is not sufficient.

(5) With regard to the application of the concept of market access which is the guiding principle of liberalization of trade in services, further study should be made with due attention to such elements as increasing participation of developing countries, safeguards, exceptions and regulatory situations.

2. Progressive Liberalization

(1) In the Framework Agreement, the principle of progressive liberalization^[1] is reflected in the following two aspects.

First, the Framework Agreement should require as a standard not only stand-still, but also roll-back of existing

[1] Although Japan presumes that "progressive liberalization" means progressively reducing or removing the regulations inhibiting market access, the meaning of the expression would need further elaboration for common understanding among participants.

regulations. As each participant to the GNS has various measures which restrict trade in various service sectors, market access will not be sufficiently realized by simply freezing those measures.

Second, the Framework Agreement should provide a mechanism for realizing progressive liberalization for the period after the end of the Uruguay Round. Concretely, periodical reviews for further liberalization should be conducted. Periodical reviews would also be effective in adjusting the commitments for liberalization under the Framework Agreement to actual changes in trade in services, which may arise from a rapid increase in the importance of trade in services due to further development of the services markets and industries, or from a modification of the form of trade in services due to technological innovation.

(2) In order for participants to make further commitments in market access in line with the principle of progressive liberalization, there remains the important issue of how to assess the liberalization measures and reservations. In the negotiations for the sectoral coverage of the Framework Agreement and during the course of periodical review mentioned above, how should a participant assess the balance between liberalization commitments and reservations made with respect to its existing arrangement?

Should the assessment be made within the sector concerned?
These are important questions which should be addressed
in the course of the coming negotiations.

II. Transparency/National Treatment/MFN/Non-discrimination

1. Transparency

(1) Concept

(a) Transparency is an important element for the realization of market access. As there exist various types of regulations in each country concerning market entry and operations therein, especially in the service sectors, transparency of these regulations is indispensable in order for services suppliers from abroad to operate in a stable manner.

(b) Regulations should basically be published in the respective official languages. Due to the broad and diverse nature of regulations in services, establishment of inquiry points which provide necessary information should be an effective method of securing transparency. The actual functioning of inquiry points need further elaboration.

(2) The scope of transparency

In the Framework Agreement, the requirement for transparency should be applied to as wide a range of regulations as possible, for the following reasons:

Business activities concerning services such as cross-border transactions, establishment and commercial presence, can be extremely diverse, and it is often very difficult to distinguish between regulations concerning services industries pertaining to trade in services and those not pertaining to trade in services.

(3) Regulations on services are laid down not only by the national government, but also by various regional and local authorities, in order to meet the regional necessities. In addition, due to the highly professional and technical nature of some services sectors, there are cases where technical standards are set by private organizations. Since these regulations and standards stipulated by local authorities and private organizations can go into detail, it is not practical to expect the national government to consistently make all these regulations available. Accordingly, when stipulating transparency in the Framework Agreement, one idea would be to endeavour to establish inquiry points for providing information concerning such regulations.

(4) Prior consultation or prior notification

Due to the fact that legislative procedures differ from country to country, obligatory prior consultation or prior notification of new regulations, in our view, is not appropriate.

2. National Treatment

(1) Concept

As mentioned in I.1.(3) above, national treatment may be considered as one of the principles for realizing market access. In other words, discrimination between national and foreign service suppliers constitutes a barrier to the realization of market access, and national treatment would remove this discrimination. Therefore, the principle of national treatment should be stipulated and maintained as an important rule in the Framework Agreement.

(2) Measures subject to national treatment

With respect to the application of this rule, all measures affecting market access, i.e., all measures relating to trade in services covered by the Framework Agreement, should be subject to examination. However, it should be noted that, in consideration of immigration policies, the principle does not require the abolition of entry regulations concerning the movement of persons, which by its very nature, does not lend itself to national treatment.

(3) Relation to existing national laws

(a) Article III on national treatment is included in Part Two of the General Agreement, which is to be implemented "provisionally" and "to the fullest extent not inconsistent with its (existing) legislation", through a protocol

concerning provisional application or through each protocol of accession. It would be realistic to render consideration to this point with respect to the Framework Agreement.

(b) However, any domestic regulation which restricts national treatment should not be left unchecked, but some sort of mechanism should be applied whereby the restriction may be diminished through negotiation.

One way to achieve this would be through application of the transparency rule. By having regulations published, we may keep track of any regulations restricting national treatment, as well as deter the introduction of any modifications which increase the restrictions on national treatment.

Secondly, through a progressive liberalization mechanism, a review of existing restrictive measures could be conducted periodically coupled with negotiations for its reduction or removal.

(4) The treatment of reservations

(a) Quite apart from the transitional measures stated in (3) above, some participants to the Framework Agreement may wish to make reservations on the application of national treatment itself, for example with respect to specified service sectors, measures or activities.

(b) Such reservations are not desirable, but even in exceptional cases where they are accepted, it is essential

to have them published to secure transparency and to subject them to future negotiations in line with the principle of progressive liberalization.

3. MFN treatment or non-discrimination

(1) Concept

(a) MFN/non-discrimination is a principle which accords a participant to the Framework Agreement benefits that are accorded to any other participant without discrimination.

This principle will serve to provide, in a universal manner to all the participants, the benefits of market access achieved in the Framework Agreement, as well as the benefits to be achieved in future negotiations for market access in specific sectors.

(b) We consider that the Framework Agreement should adopt the unconditional MFN principle. With regard to the imbalances in the level of market access among the participants which could lead to the problem of "free ride", they should be addressed in future negotiations on market access to be conducted under the progressive liberalization mechanism.

(2) The relation to existing reciprocal agreements and national reciprocal regulations

(a) GATT Article I requires that MFN treatment be accorded "immediately and unconditionally". However, as the Framework Agreement would cover various kinds of rights

and obligations, we may envisage situations where it is not possible to apply the treatment to all of them unconditionally the moment the Agreement enters into force. In order to encourage more participation in the Framework Agreement by countries having reciprocal agreements, or national reciprocal regulations, in difficult circumstances certain minimal reservations may have to be negotiated.

(b) Needless to say, such reservations made with respect to specified services sectors, measures or activities, should also be subject to future negotiations within the context of progressive liberalization.

(3) Regional economic integration

Regional economic integration aimed at liberalization in trade in services could provide benefits if adequately implemented. It should, however, be conducted in line with the relevant provisions of the Framework Agreement to be negotiated. In this connection, it is Japan's strong view that the benefits of economic integration should be open to other participants of the Framework Agreement, and Japan reserves its position for future examination of this matter.