

**NON PAPER
ON
COMPLEMENTARY METHODS FOR THE SERVICES NEGOTIATIONS**

POSSIBLE ELEMENTS

INTRODUCTION

Article XIX GATS calls on Members to enter into successive rounds of negotiations with a view to achieving a progressively higher level of liberalization. It further states that such negotiations shall be directed towards the reduction or elimination of the adverse effects on trade in services of measures as a means of providing “effective market access”.

After more than five years of negotiations the Chairman of the Special Session of the Council for Trade in Services noted in his report of July 2005 to the TNC. that it was “widely acknowledged that the overall quality of initial and revised offers is unsatisfactory and that *few, if any, new commercial opportunities would ensue for service suppliers*” [emphasis added]. He further noted that most Members feel that the negotiations are not progressing as they should and that many delegations stated that, in order to facilitate progress Members should explore all negotiating methods available within the parameters of Article XIX of the GATS and the Negotiating Guidelines, i.e. bilateral, plurilateral and multilateral approaches.

The following sets out possible elements for putting into effect the plurilateral and multilateral methods for negotiations foreseen by Article XIX(4) GATS and paragraph 11 of the guidelines and procedures for the negotiations on trade in services agreed in 2001 (S/L/93) as a complement to the current “request-offer” approach. It should be noted that such methods fully respect the existing structure and principles of the GATS, including the right to specify sectors and modes of supply in which commitments will be undertaken, just as they are fully consistent with the Doha Development Agenda, the Negotiating Guidelines, the modalities for the treatment of LDCs and the July Package. Bilateral, plurilateral and multilateral negotiating methods are mutually supportive. Their combined use is expected to lead to a more substantive outcome, and notably to commitments better responding to the interests expressed by the different Members, in particular developing countries.

COMMITMENTS TO BE UNDERTAKEN BY ALL MEMBERS

Basic principles

1. The aim of a multilateral approach is to provide a common baseline of commitments for the services negotiations and thus bring these negotiations more in line with other negotiating areas under the DDA, such as Agriculture and Non-agricultural Market Access. A formula based approach to the services negotiations could enhance the efficiency of and transparency in the current negotiating process while at the same time ensuring a set of commitments across a broad spectrum of sectors and subsectors and in all four modes of supply.
2. A formula approach including quantitative targets, such as numbers of subsectors to be committed, could help extend the scope of scheduled commitments, but since such targets provide no insight into the quality or depth of such commitments a formula would also need to include qualitative elements in order to ensure that commitments offered are meaningful.
3. For the purposes of this multilateral method, Members will agree to take commitments in a

minimum number of subsectors as indicated in point 5 below within the services sectoral classification list (W/120), except for financial services where subsectors will be chosen within the list of the GATS annex on financial services. The starting point for these commitments are Members' current schedules of specific commitments.

4. In line with the "bottom up" approach of the GATS, Members must retain the right to designate the subsectors in which they desire to undertake commitments. In determining the subsectors, Members should give priority to those areas that are the most relevant from an economic development perspective, in particular the infrastructure related services sectors, and to areas where other Members have presented requests with a particular focus on sectors where the largest number of requests have been received. In addition, special attention shall be given to sectors and modes of supply of export interest to developing countries.

Cross sectoral elements

5. The minimum number of subsectors to be committed under this formula shall be as follows:
 - a. Developed country Members shall offer commitments in X subsectors.
 - b. Developing country Members, with the exception of LDCs, shall offer commitments in Y subsectors.
 - c. In line with their capacity, LDCs should be encouraged to schedule commitments in a limited number of subsectors.
6. The number of subsectors mentioned in points 5a and 5b can be reduced by a maximum of Z% if, for the corresponding number of subsectors, a Member has already taken commitments in line with the modal elements indicated below.
7. Each Member will by [] notify to the CTS-SS the list of subsectors where it intends to take commitments as a result of this multilateral method. Where appropriate, the notification will also specify the list of subsectors for which credit is claimed in accordance with point 6 and include all necessary information in this regard.
8. In accordance with their individual level of development. Members shall be entitled to make the commitments subject to implementation periods of up to [5] years.
9. Economic needs tests applying in sectors offered should be clearly inscribed and shall indicate whether they are discriminatory or not and the main criteria on which the test is based.

Modal elements

10. Commitments offered by Members in the list of subsectors they have chosen shall reflect the following modal elements.
11. Mode 1: Members undertake to offer Mode 1 commitments in x% of the subsectors chosen, wherever this mode of supply is deemed technically feasible and without requiring commercial presence.
12. Mode 2: Members undertake to offer commitments in y% of the subsectors chosen.
13. Mode 3: Members undertake to offer commitments in z% of subsectors chosen and, as the case may be, not to introduce or to remove in those subsectors foreign ownership restrictions. Where restrictions are maintained, foreign ownership will be allowed up to at

least 51%.

14. Mode 4: In z% of subsectors where commitments are offered further to this multilateral method, Members undertake, as the case may be, not to introduce or to remove economic needs tests for at least three of the following categories: Business Visitors (BV), Intra-corporate transferees (ICTs), Contractual Service Suppliers (CSS) and Independent Professionals (IPs).

COMMITMENTS TO BE UNDERTAKEN BY A CRITICAL MASS OF MEMBERS

1. The aim of the plurilateral approach is to supplement the multilateral approach by negotiating a higher level of commitments in a number of sectors/subsectors of particular interest to Members in a critical mass of markets. Thus in sectors/subsectors of key interest to Members they shall negotiate commitments that go beyond what could be achieved through the multilateral approach described above from other Members with a view to securing agreement from a “critical mass” of countries to undertake such commitments.
2. Interested Members should agree by [] on a core set of commitments for the sector/subsector concerned, for example in the form of model schedules, that would have to be undertaken by all participants on the basis of a critical mass.
3. The various informal Friends Groups that already exist in various services sectors could provide the point of departure for such a plurilateral approach, although this work should be open to all interested Members.

REQUEST – OFFER APPROACH

1. In accordance with the negotiating guidelines, the request-offer approach will continue as currently conducted although Members should explore possible means for intensifying it. The request-offer approach will be particularly useful for dealing with specific/punctual interests of individual Members that cannot adequately be addressed through the two complementary methods described above.
2. Members who have not yet submitted their initial/revised offers should do so as soon as possible.
3. The Hong Kong Ministerial should set a date for further improved offers and a date for final schedules.