

**MODALITIES FOR THE TREATMENT OF AUTONOMOUS LIBERALIZATION**

Note by the Chairman

Revision

Please find attached a revised draft of both the Modalities for the Treatment of Autonomous Liberalization and the statement by the Chairman. This revision has been prepared on the basis of discussions at meetings of the Special Session of the Council for Trade in Services as well as the various informal consultations I have conducted with Members. It is my view that the attached texts constitute a good basis for an agreement on this important issue.

Both a clean copy of the new texts and a comparison with respect to the previous draft (Job(02)/35/Rev.2) have been attached.

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Modalities for the Treatment of Autonomous Liberalization

**DRAFT**

**I. INTRODUCTION**

1. These modalities for the treatment of autonomous liberalization measures undertaken by a Member since previous negotiations are established pursuant to Article XIX:3 of the GATS, paragraph 15 of the Doha Ministerial Declaration (WT/MIN(01)/DEC/1), and paragraph 13 of the Guidelines and Procedures for the Negotiations on Trade in Services (S/L/93).<sup>1</sup>
2. For the purposes of these modalities, a "liberalizing Member" is a Member seeking credit for an autonomous liberalization measure; and a "trading partner" is a Member from whom credit is being sought.
3. An "autonomous liberalization measure" is a measure
  - (a) subject to scheduling under Part III of the GATS, and/or leading to the termination of an MFN exemption,
  - (b) compatible with the MFN principle,
  - (c) undertaken by the liberalizing Member unilaterally,<sup>2</sup> since previous negotiations, in accordance with Article XIX of the GATS, and
  - (d) applicable to any or all service sectors.

**II. CRITERIA FOR ASSESSING THE VALUE OF AUTONOMOUS LIBERALIZATION MEASURES**

4. In assessing the value of an autonomous liberalization measure, a Member may use the following illustrative criteria:
  - (a) sectoral coverage,
  - (b) liberalizing nature of the measure concerned (e.g. elimination of measures restricting market access; elimination of existing measures which are inconsistent with national treatment and/or MFN),
  - (c) the date of entry into force and the duration of the measure,
  - (d) share of the sector in the total trade of the trading partner,
  - (e) share of the trading partner in the total trade in the sector autonomously liberalized by the liberalizing Member,

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<sup>1</sup> These modalities are without prejudice to the rights and obligations of Members under the GATS.

<sup>2</sup> It is understood that liberalization measures undertaken as part of economic reform programmes, including those under the auspices of the International Monetary Fund and the World Bank, should be considered as "autonomous liberalization measures" for the purposes of these modalities, in so far as they meet the criteria set out in this paragraph.

- (f) importance and impact of the autonomous liberalization measures on the liberalizing Member's economy,
- (g) market potential in the liberalizing Member for the trading partner,
- (h) opportunities for the expansion of foreign participation in the sector after the introduction of the measure,
- (i) whether the measure in question has already been scheduled and, if not, whether the liberalizing Member is willing to do so.<sup>3</sup>

5. To facilitate the assessment of the value of an autonomous liberalization measure, the liberalizing Member and its trading partner may agree to use either a qualitative or a quantitative approach (for example, formulae, improvement indices, ranking methods), or a combination of both approaches.

6. In assessing the value of credits, a Member may use the criteria and approaches set out in paragraphs 4 and 5 above, as appropriate.

7. In applying the above approaches and criteria, a Member shall take into account the level of development and the size of economies of individual Members, both overall and in individual sectors.

### **III. PROCEDURES**

8. The application of these modalities may be advanced bilaterally, plurilaterally, or multilaterally. The granting of credit for autonomous liberalization measures shall be advanced through bilateral negotiations.

9. A liberalizing Member shall make the autonomous liberalization measure for which credit is being sought known to its trading partner. The liberalizing Member may, if it deems it appropriate, also notify such a measure to the Special Session of the Council for Trade in Services. It is understood that such a notification neither guarantees any right for credit, nor implies any obligation on the part of the liberalizing Member to bind the notified measure.

10. An autonomous liberalization measure notified or made known to a trading partner should contain information based on the relevant criteria set out in Part II of these modalities, and specify the credit being sought. The credit to be sought may take the form of,

- (a) a liberalization measure to be undertaken by a trading partner in sectors of interest to the liberalizing Member under the GATS,
- (b) refraining from pursuing a request addressed to the liberalizing Member, or
- (c) any other form which the liberalizing Member and its trading partner may agree upon.

11. A liberalizing Member claiming credit for an autonomous liberalization measure shall be given adequate opportunity to discuss its request with its trading partner. If the trading partner considers that an autonomous liberalization measure is of little or no trading value, it should provide information on the evaluation as early as possible to allow time for the liberalizing Member to request further consultations.

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<sup>3</sup> A measure's legal certainty and predictability would be greatly enhanced with a liberalizing Member's readiness to bind it at the conclusion of the current negotiations. This aspect should be duly taken into account when assessing both the value of specific autonomous liberalization measures and the corresponding credit.

12. Any Member may bring to the attention of the Special Session of the Council for Trade in Services any matter that relates to the application of these modalities.

#### **IV. DEVELOPING COUNTRIES**

13. Pursuant to the objectives of the GATS, as stipulated in the Preamble, Article IV, and Article XIX:2, and in line with paragraph 2 of the Doha Ministerial Declaration, these modalities shall be used *inter alia* as a means of promoting the economic growth and development of developing countries and their increasing participation in trade in services.

14. In the application of these modalities, and in recognizing and granting credit pursuant to these modalities, Members shall take fully into account the flexibility provided for individual developing country Members under the provisions referred to in paragraph 13 above, as well as the level of development of developing country Members in relation to other Members. Special consideration shall be given to the least-developed country Members.

## Statement by the Chairman

### DRAFT

1. We have come to a very advanced stage of a rather long and laborious journey. We have been discussing issues related to autonomous liberalization for almost three years, actually since the start of talks on the establishment of negotiating modalities and procedures. I believe are close to an agreement now, thanks to everybody's involvement and commitment.
2. Liberalization of trade in services is a continuous process, that goes further and quicker than GATS negotiations, which by their very nature, are held at intervals. In the meantime, countries continue to liberalize and introduce significant domestic regulatory reforms. How to treat such autonomous liberalization once negotiations are resumed is an important question we all face. As has been repeatedly stated – and rightly so – the development of specific modalities for the treatment of autonomous liberalization in the context of the current round of services negotiations is of prime importance to WTO Members, particularly the developing ones.
3. The adoption of these modalities today would be a timely and important event. Since the submission of initial requests at the end of June, the negotiations have taken a crucial step forward. We have moved from a purely multilateral exercise to a more direct one, which relies heavily on bilateral negotiations. I don't need to elaborate on the bilateral negotiations as such, and how important they are for the final outcome and success of this round of negotiations.
4. The modalities that we are about to adopt have a number of very significant components which provide the necessary balance. All the aspects of these modalities are equally important. Nevertheless, I feel compelled to address and underline certain elements related to these modalities.
5. These modalities are an important element of the Work Programme established by all our Ministers in Doha. As such, all the principles and arrangements agreed upon by Ministers are applicable to these modalities. Therefore, as stated in paragraph 49 of the Ministerial Declaration, the negotiations – and in fact these modalities as an integral part there of – "shall be conducted with a view to ensuring benefits to all participants and to achieving an overall balance in the outcome of the negotiations."
6. Also, as stated in paragraph 50 of that Declaration, "the negotiations and the other aspects of the Work Programme shall take fully into account the principle of special and differential treatment for developing and least-developed countries".
7. In applying these modalities, therefore, Members are to be guided by these principles, and act accordingly. The enunciation of important principles, like the ones I have just evoked, will not represent much unless Members translate them into appropriate results in bilateral negotiations. In fact, the modalities do not create any legal obligations nor do they establish any automatic right to credit or recognition. After all, it is not by chance that Article XIX of the GATS, which provides us with the original negotiating mandate, carries the title of "negotiation of specific commitments". Equally important, as clearly indicated in Article IV of the GATS, "the increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments".
8. As you may remember, during the course of discussions on these modalities, concerns were raised by recently acceded Members in relation to their participation in this round of negotiations. However, questions were also raised by other Members regarding the appropriateness of addressing such concerns in the context of the modalities for the treatment of autonomous liberalization.

9. As I already said, both the GATS and the Doha Ministerial Declaration recognize that these negotiations shall aim at promoting the interests of all participants on a mutually advantageous basis, at ensuring benefits for all of them, and at securing an overall balance of rights and obligations.
10. It is fair to acknowledge that in several cases liberalization measures bound by recently acceded Members in their accession processes are more extensive than commitments of original Members. In fact, Members might recall that in paragraph 9 of the Doha Ministerial Declaration, Ministers noted the extensive market-access commitments already made by these countries on accession and stated that these accessions will greatly strengthen the multilateral trading system. The fact that those commitments are recent and extensive may imply, in some cases, significant effort and adjustment-related cost and, therefore, less room to undertake many more commitments at this stage.
11. Recognizing the particular situation of these Members, it is understood that the provisions I evoked earlier – particularly paragraphs 9 and 49 of the Doha Ministerial Declaration – should be taken into account in the course of the ongoing negotiations, when requests are made to recently acceded Members.
12. I would like then to propose that the Council take into account this statement and consequently adopt the text of the modalities for the treatment of autonomous liberalization measures.