

**Council for Trade in Services
Special Session**

**ELEMENTS REQUIRED FOR THE
COMPLETION OF THE SERVICES NEGOTIATIONS**

Report by the Chairman

1. At the meeting of the Special Session of the Council for Trade in Services on 28 September 2007, several Members requested that I start a consultation process on the elements needed to conclude the services negotiations in the context of the DDA single undertaking, which could be reflected in a possible text for adoption by Members. Accordingly, I have conducted a series of informal consultations in different formats, including open-ended informal meetings of the Special Session. Discussions have focused on various proposals submitted by groups of Members on how such elements could be reflected in a possible text.¹ The purpose of this report is to reflect the outcome of my consultations so far.

2. Discussions have revealed considerable convergence on a number of elements to be included in a possible text. However, consensus has yet to be reached on the precise language to be adopted. These elements are contained in paragraph 4 of this report. On a few other elements, significant divergences persist. These are contained in paragraph 5 of this report, for the purpose of further discussion. They appear in the textual form in which they were proposed, given the absence of convergence on their inclusion in a possible text. It is understood that the final acceptability of any text would depend on the elements it would eventually contain and the way in which they would be expressed.

3. It should also be noted that the delegations of Bolivia, Cuba and Venezuela took the position that they would not join a consensus on a text. The remainder of this report addresses the substantive elements raised by Members in their proposals.

4. The common elements identified in delegations' proposals seem to represent a broad area of convergence among Members. Many of those elements are direct reiterations of existing language in provisions of the GATS as well as other instruments relating to the DDA negotiations. These elements are not subject to any disagreement. However, their presentation in a selective manner, in a particular sequence or in a new context, may lead to problems of interpretation and perceived balance. I therefore suggest that, to the extent possible, these elements be covered through the reaffirmation of Members' commitment to the GATS and other related instruments as expressed in sub-paragraph (a).

¹ Four groups of Members submitted room documents: (1) "Text Contribution: Doha Development Agenda Services Negotiations", undated, from Argentina, Brazil, China, India, Pakistan and South Africa; (2) "Services Negotiations: Text Contribution to the Chairman's Consultations", 30 January 2008, from Chile; Hong Kong, China; Peru; Singapore and Turkey; (3) "Outline of an SVE position on Possible Elements of a Services Text", 23 January 2008, from Antigua and Barbuda, Barbados, Dominica, Dominican Republic, El Salvador, Fiji, Grenada, Guatemala, Honduras, Jamaica, Mauritius, Mongolia, Nicaragua, Papua New Guinea, Paraguay, Solomon Islands, St. Kitts and Nevis, St. Vincent and the Grenadines, and Trinidad and Tobago; and (4) "Text Contribution to the Chairman's Consultations: DDA Services Negotiations", undated, from Australia, Canada, EC, Japan, Korea, New Zealand, Norway, Chinese Taipei, Switzerland, and the United States.

Accordingly, the following language could serve as a basis for further consideration of the elements on which convergence has emerged:

- (a) Members recall and reaffirm the negotiating mandates and objectives as stipulated in GATS Articles IV and XIX, the Doha Ministerial Declaration, the Hong Kong Ministerial Declaration, the Guidelines and Procedures for the Negotiations on Trade in Services adopted by the Special Session of the Council for Trade in Services on 28 March 2001 and the Decision of the General Council adopted on 31 July 2004. Members reiterate that the negotiations shall be intensified and proceed to their conclusion in accordance with the Objectives and Approaches set out in Annex C of the Hong Kong Ministerial Declaration.
- (b) Members recall that the request-offer approach is the main method of negotiation and that, in addition to bilateral negotiations, request-offer negotiations should also be pursued on a plurilateral basis. Accordingly, and pursuant to paragraph 7 of Annex C of the Hong Kong Ministerial Declaration, 21 collective requests were submitted by co-sponsors to other groups of Members in the following sectors and modes: Air Transport; Architectural, Engineering and Integrated Engineering Services; Audiovisual Services; Computer and Related Services; Construction Services; Distribution Services; Education Services; Energy-Related Services; Environmental Services; Financial Services; Legal Services; Logistics Services; Maritime Transport Services; Postal and Courier Services; Services Related to Agriculture; Telecommunication Services; Tourism Services; Cross-Border Supply (Modes 1 and 2); Mode 3; Mode 4; and MFN Exemptions. On the basis of these requests, 21 related plurilateral groups convened four rounds of meetings. Since the Hong Kong Ministerial, participants also held six rounds of bilateral request-offer meetings.
- (c) Members have participated actively in the request-offer negotiations. They exchanged indications on possible new commitments that may be reflected in the next round of revised offers, in response to various individual and collective requests. Some Members considered progress achieved so far in the services negotiations was satisfactory compared to other areas of the DDA. Others took the view that so far progress fell well short of responding adequately to their requests. Members shared the view that major strides needed to be taken in order to reach a successful conclusion of the negotiations. They acknowledged that the outcome of these request-offer negotiations would eventually have to be assessed by each participant, including in relation to other areas of the single undertaking.
- (d) Members reaffirm that the services negotiations are an essential part of the DDA. They recognize that an ambitious outcome in services would be integral to the overall balance in the results of the DDA single undertaking. Accordingly, the negotiations shall aim at a progressively higher level of liberalization of trade in services with a view to promoting the economic growth of all trading partners, and the advancement of developing and least-developed countries. With due flexibility for individual developing countries, Members shall, to the maximum extent possible, expand the sectoral and modal coverage of commitments and improve their quality. In doing so, they shall be guided by the objectives contained in paragraph 1 of Annex C. In this regard, particular attention will be given to sectors and modes of supply of interest to developing countries.
- (e) In accordance with paragraph 5 of Annex C of the Hong Kong Ministerial Declaration, Members are called upon to develop disciplines on domestic regulation pursuant to the mandate under Article VI:4 of the GATS before the end of the current round of negotiations. Members welcome the progress achieved since the Hong Kong Ministerial Conference and, in particular, that the negotiations have

moved into a text-based phase. In light of the extensive and constructive discussions that have taken place, we call upon the Working Party to intensify its work. Members invite the Chairman to continue to consult on drafting revisions, with a view to developing and adopting text before the end of the negotiations.

- (f) Members reaffirm their commitment as made in the Hong Kong Ministerial Declaration to conclude negotiations on GATS Rules as mandated in Articles X, XIII, and XV. Members take note of the efforts made since Hong Kong, including through the submission of specific and concrete proposals, to facilitate consideration and engagement in all three areas. Proposals have been submitted on the need for emergency safeguard measures so as to enable more liberal market access commitments; on the need for government procurement disciplines, including a framework for commitments; and on the need for information exchange on subsidies and development of a definition of subsidies. Recognising that divergences still remain, Members are cognisant of the importance attached by some delegations to the objectives and principles contained in these proposals. While there has been more focused work, efforts must be stepped up for enhanced engagement with the objective of advancing the work in the three areas as expeditiously as possible.
- (g) In order to conclude the negotiations in a timely fashion, Members shall submit revised offers by [.....].
- (h) Final draft schedules of commitments shall be submitted by [.....].
- (i) Members shall fulfil the requirement laid out in paragraph 9 (a) of Annex C of the Hong Kong Ministerial Declaration regarding the development of appropriate mechanisms for according special priority to LDCs. They shall strive to do so prior to the submission of revised offers.
- (j) Members shall continue to give due consideration to proposals on trade-related concerns of small economies.
- (k) Members shall complete the consideration of proposals on Special and Differential treatment referred to the Special Session of the Council for Trade in Services by the Special Session of the Committee for Trade and Development with a view to making clear recommendations for a decision by the General Council.
- (l) Members recognize the special situation of recently-acceded Members who have undertaken extensive market access commitments at the time of accession. This situation will be taken into account in the negotiations.²

5. The following texts proposed by delegations, although including some non-controversial elements, also contain elements on which significant divergences persist. Further discussion on these texts is needed. For this reason, I did not feel in a position to propose any compromise language. Consequently, these texts are reproduced below as originally proposed by delegations:

- (a) Services is an essential part of the Doha Development Agenda. The same level of ambition and political will as reflected in the Ag and Nama modalities is required for services.³

² This language is reproduced from paragraph 58 of the Hong Kong Ministerial Declaration. The ultimate treatment of this proposal will depend in part on how the issue of RAMs will eventually be treated on a horizontal basis.

³ "Text Contribution to the Chairman's Consultations: DDA Services Negotiations", undated, from Australia et al.

- (b) In order to advance these negotiations, in responding to bilateral and plurilateral requests, the next offers will adhere to GATS Article XIX and other aspects of the negotiating mandate by, *inter alia*:
- (i) achieving a progressively higher level of services liberalisation, in line with Members' development situation, with appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, 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;
 - (ii) reducing or eliminating the adverse effects on trade in services of measures as a means of providing effective market access, by offering commitments, with limited exceptions, that while respecting the existing structure and principles of the GATS:
 - reflect current levels of market access and national treatment
 - and provide new market access and national treatment in sectors where trade impediments remain;
 - (iii) securing an overall balance of rights and obligations under the Agreement;
 - (iv) increasing the general level of specific commitments undertaken by Members under this Agreement.⁴
- (c) One way for Members to operationalize the elements (...) is for Members to include in their next offers:
- (i) a broader range of sectors and modes of supply; and
 - (ii) deeper commitments for these sectors and, to the extent possible, full commitments (i.e. without Market Access and National Treatment limitations), taking into account the provisions for developing country Members in GATS Article XIX.⁵
- (d) Provide market access to sectors and modes of supply or export interest to developing Members, such as Modes 1 and 4, as indicated in bilateral and plurilateral requests, in accordance with Article IV of GATS.⁶

⁴ "Text Contribution to the Chairman's Consultations: DDA Services Negotiations", undated, from Australia et al.

⁵ "Services Negotiations: Text Contribution to the Chairman's Consultations", 30 January 2008, from Chile et al.

⁶ "Text Contribution: Doha Development Agenda Services Negotiations", undated, from Argentina et al.