

Brazilian Statement on Complementary Approaches to the Services Negotiations

Special Session of the Council for Trade in Services 29th and 30th September 2005

1. The Delegation of Brazil welcomes the suggestions and proposals regarding possible complementary approaches to the services negotiations presented so far. We believe that they have provided useful inputs to the discussions. At the same time, we note that some of the proposals do not seem to take duly into account the need to respect the architecture and the flexibilities built into the GATS. The discussions in this area are guided by the Doha Declaration, the Guidelines and the Procedures for the Negotiations on Trade in Services (S/L/93), the Guidelines for the Scheduling of Specific Commitments (S/L/92) and the Decision Adopted by the General Council on 1 August 2004 (“July Package”). To depart from the mandate and the parameters of the negotiation would be counterproductive, and could lead to opposite results than those intended, for instead of energizing the services negotiation, it could derail them in the short time available before Hong Kong.

2. In this context, and after careful examination of the proposals circulated by EC, Japan, Australia, Switzerland, Chinese Taipei, Korea and New Zealand in the informal consultations of the Council for Trade in Services held on the 13th, 21st and 28th September, we have decided to present the following considerations to the formal meeting of Special Session of the Council for Trade in Services:

Compatibility considerations

3. Most of the proposals presented so far rely on the introduction of quantitative and qualitative parameters for Members to schedule commitments. We are not convinced that such parameters would be compatible with the flexibilities provided in the GATS and the Guidelines. Article XIX (2) of the GATS, provides that “the process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transaction, progressively extending market access in line with their development situation and, when making access to their market available to foreign services suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV”. It is hard to reconcile quantitative/qualitative parameters that would apply equally to all Members – or at least to sets of Members – with the flexibilities granted to individual Members.

4. Paragraphs 4, 11 and 12 of the Guidelines provide additional guidance. Paragraph 4 states that “the negotiations shall take place within and shall respect the existing structure and principles of the GATS, including the right to specify sectors in which commitments will be undertaken and the four modes of supply”. Paragraph 11 establishes that “liberalization shall be advanced through bilateral, plurilateral or multilateral negotiations”, but leaves no doubt that “the main method of negotiation shall be the request-offer approach”. We are concerned that the benchmarks, as

proposed, would invert the clear priority stated in the Guidelines. Paragraph 12 reiterates the same elements contained in the GATS paragraph XIX (2).

5. Furthermore, it remains unclear how such mandatory benchmarks on a minimum number of sectors/subsectors, as well as formulas for market access and reductions on limitations scheduled in the four modes of supply, can be made compatible with the built-in flexibilities of GATS. Until such time as this matter can be satisfactorily clarified, the request-offer approach will have to remain the main modality of negotiation, and we must take care not to undermine it.

Feasibility considerations

6. One aspect that we will have to address in future consultations is the need for an assessment as to the extent to which it may be feasible to delineate and agree on parameters that could properly capture the inherent complexity and diversity of individual schedules and individual Members, without departing from the built-in flexibilities of the GATS.

A round for free for developed countries

7. It is of great concern to Brazil that some of the complementary approaches presented so far rely on the notion that the level of commitments taken in the Uruguay Round should be factored into the current negotiations. Uruguay Round commitments represent the balance of concessions achieved in those negotiations, where services concessions were offset by very important concessions in other areas. The concept of “credits” to be granted in the Doha Round, based on the schedules of the Uruguay Round, subverts the spirit and the letter of the GATS. The implementation of these approaches could lead to a “round for free” for developed countries in

services and turn the developing countries into the main, and perhaps the only, contributors to the present services negotiations. Such an outcome would not be compatible with the provisions of Article IV and XIX of GATS, where flexibility is established in favor of developing countries, not against them. It would also lead to significant reduction in the level of ambition of the services negotiations.

Proposals on classification

8. We agree with the importance of enhanced clarity and comparability that would accrue from the recourse to common classification; however, efforts aimed at harmonizing Members' classifications must be approached in a manner that is consistent with the flexibilities of the GATS. To do otherwise would run counter to paragraphs 23 and 24 of the Guidelines for the Scheduling of Specific Commitments (S/L/92).

Flexibilities for Developing Countries

9. The complementary approach must differentiate between developed and developing countries in terms of commitments. We must abide by the basic premise of Article XIX (2) of the GATS, i.e., that all developing countries enjoy additional flexibilities vis-à-vis developed countries. There is no legal basis for treating developed and developing countries alike under GATS, just as there is no legal basis for differentiation between non-LDC developing countries.

Incompatibilities with LDCs modalities

10. As far as the treatment of the LDCs is concerned, very few of the proposed complementary approaches presented so far seem to adequately take into account the "Modalities for the Special Treatment for Least

Developing Country Members in the Negotiations on Trade in Services” (TN/S/13). Paragraphs 4 and 5 of those modalities require Members to exercise restraint in seeking access to LDCs markets and to avoid requesting LDCs to undertake additional commitments under Article XVIII of the GATS on regulatory issues which may go beyond their institutional, regulatory, and administrative capacities.

Ambiguities related to some concepts

11. In future consultations, we hope that additional ideas and further refinement regarding concepts such as “critical mass” and “assessment of improvements” will allow a more comprehensive assessment of the proposals.

Mode 4

12. Brazil believes that one of the main elements to be corrected in the course of these negotiations is the imbalance in the level of commitments by mode of supply. Mode 4 is under-committed in comparison with Modes 1, 2 and 3. This anomaly should be a core concern in the current GATS negotiations, since the movement of natural persons has been highlighted by developing countries as their main export interest, as contained in items “c” and “d” of Annex C of the July Package. In this regard, the categories of contractual services suppliers and independent professionals merit special consideration. A good reference to further discussions of complementary approaches can be found in the document JOB (05)/131 which presents an assessment of Mode 4 commitment in the recently circulated revised offers. All these critical elements can be properly addressed without departing from the architecture of the GATS.

Conclusion

13. The perception that the current bilateral request-offer method is not producing satisfactory results – a perception that is common to many negotiating areas – does not imply that we need to deviate from the architecture of the GATS. Much as we want to advance, the conceptual difficulties cannot be brushed aside. We need to continue the intensive discussion we had in the last two weeks in order to understand the implications of the new approaches. Brazil remains committed to the services negotiations and will examine in a constructive spirit each and every proposal aimed at defining a substantive and balanced services package for Hong Kong.

Thank you