REPORT BY THE CHAIRMAN OF THE GROUP OF NEGOTIATIONS ON SERVICES TO THE TRADE NEGOTIATIONS COMMITTEE

Introduction

As you requested, I am presenting my assessment of the present situation in the Group of Negotiations on Services (GNS) and my views on outstanding matters that should be addressed on a priority basis when the GNS resumes its work in September.

There have been three meetings of the GNS since the beginning of May. These were on 27 May-6 June, 24-28 June and 10-25 July. Ambassador David Hawes of Australia was nominated and agreed to assist me in these negotiations. In the meetings of the GNS, work has proceeded on the basis of the text submitted to the Brussels Ministerial meeting (MTN.TNC/W/35/Rev.1) and the initial offers tabled by participants.

This is my assessment of the situation in each of the main areas currently under negotiation in the GNS.

Scheduling of specific commitments

Consultations under the Chairmanship of Ambassador Hawes have made considerable progress in clarifying what needs to be scheduled when a country undertakes a specific commitment in a sector or sub-sector, and how such commitments should be scheduled.

In that context, Articles XVI (market access) and XVII (national treatment), both of which have an important bearing on matters relating to scheduling, are being re-drafted. In this process, a number of concerns with respect to Article VI on domestic regulation have also been addressed. Article VI will be re-drafted in the light of the progress made in dealing with Articles XVI and XVII. Part of Article XVIII may also have to be reviewed in order to assure consistency with these changes.

While there are still outstanding matters relating to scheduling, Ambassador Hawes tells me that he does not consider these to be serious obstacles to participants advancing the work on initial commitments and, in particular, revising and clarifying offers in the light of the progress made on Articles XVI and XVII.
Application of the most-favoured-nation principle

Further useful discussion of Article II has led to a clearer understanding of the kind of measures for which participants may seek exemption from the m.f.n. principle. In this respect, two informal notes served to clarify why some participants may seek an exemption from the m.f.n. provision, how to deal with exemptions in a legal sense, and how to minimize the impact of any exemptions on trade in services. A strong m.f.n. provision is essential to a strong agreement.

The discussions have addressed, among other things, the motivation behind the various requests for exemptions, the legal options for providing for exemptions, the time-bound nature of exemptions, the need for a review mechanism and ways to discipline eventual resort to exemptions from the application of m.f.n.

In order to advance our work, a number of participants indicated that more information was necessary in order to have a better understanding of how to proceed. They indicated that they were prepared to submit, on a confidential basis, information relating to those measures for which they may eventually request an exemption from the m.f.n. provision. In developing solutions to the questions before us, such information relating to participants' intentions will be of considerable assistance to me in attempting to have a clearer understanding of how to proceed in this critical area.

Labour mobility

Consultations have led to agreement that a labour mobility annex is necessary. The new Annex is now entitled Annex on Movement of Natural Persons Providing Services under the Agreement. Participants have refined some elements of the original Annex. In addition, an understanding has been reached that the Annex is to deal with both the temporary movement of natural persons who are service providers of a Party, and those who are employed by a service provider of a Party. Important decisions are still to be taken in order to complete work on this Annex.

Sectoral annexes

Further discussion has taken place within the GNS on the basis of MTN.TNC/W/35/Rev.1 and country submissions. There have been discussions of both the Telecommunications Services Annex and the Financial Services Annex with the participation of both sectoral and trade experts. Further work on annexes has been scheduled for the next meeting of the GNS in September.

Negotiations on initial commitments

As of now, thirty-five initial offers have been tabled by participants and there has been a multilateral review of these offers conducted in the GNS.
During the course of last week, there were intensive bilateral consultations in preparation for the exchange of concessions. This process is continuing this week. This work will be intensified with the tabling of requests.

Regarding negotiating guidelines, procedures for the negotiation of initial commitments have been agreed by the GNS. In parallel, there have been discussions of substantive guidelines for negotiations of initial commitments based on the draft sent to Ministers in Brussels. In view of their inter-related nature, Articles XVIII (negotiation of commitments), XIX (application) and IV (increasing participation of developing countries) have also been examined in conjunction with the draft substantive guidelines.

While some progress was made in these discussions, I am unfortunately not in a position to report to you that agreement has been reached in the very important area of substantive guidelines. What progress has been made is reflected in a new version of the relevant parts of draft Article XVIII. I am giving high priority to reaching agreement on these guidelines.

Other Articles

Work has also been undertaken on other articles of the Agreement: in particular Articles I (scope and definition), XXII (consultation) and XXIII (dispute settlement and enforcement) and XXXIV (definitions). Furthermore, a new version of the classification list of services (as contained in document MTN.GNS/W/120) has been made available by the secretariat.

Future Work

In order to fulfil the GNS objective of completing the Agreement by the end of the year, we have to achieve important results in all three main areas of the negotiations: the thirty-five draft articles of the Agreement, those annexes which participants consider necessary to take account of sectoral specificities, and an overall satisfactory level of initial commitments.

The dates for our next meetings have been set and the items to be taken up on the agenda to a large extent establish the priorities for future work on the following lines.

Starting on 17 September, there will be a discussion of maritime transport services and on 19-20 September there will be further work with a view to completing the Telecommunications Services Annex and the Financial Services Annex.

In the week of 23 September, a number of other matters relating to the Agreement will be under consideration. Of these agenda items, I assign primary importance to settling outstanding matters relating to substantive guidelines; in particular, completing work on Articles IV and the relevant
parts of Article XVIII, along with the completion of the guidelines themselves.

Further, the work accomplished by Ambassador Hawes on scheduling should be carried forward and, in particular, the work on Articles VI, XVI and XVII should be completed. These Articles are critical to completion of an agreement on which measures are to be scheduled and how such measures should be scheduled. Work on other Articles relevant to scheduling (including VII, XIV, XIX, XX and the appropriate parts of XVIII) should also be advanced during the next meeting.

Priority must also be assigned to moving closer to agreement on how to deal in a satisfactory manner with requests for any measures for which an eventual exemption from the m.f.n. provision may be sought. Bringing this work to a successful conclusion has been linked to the acceptability of commitments to liberalize.

Furthermore, it is important that work is completed on the Annex on Movement of Natural Persons Providing Services under the Agreement (including Article I). Participants need to know how to deal with this important mode of delivery in the process of making offers and eventually scheduling commitments.

Making progress on these articles, and on the remaining elements of the Agreement, would greatly facilitate the important and continuing work on initial commitments to which I also assign a particularly high priority; in particular, work relating to the submission of offers, the improvement of offers, and responding to requests for improvement in offers should be accelerated. In this respect, I draw the attention of the Committee to the fact that participants who have submitted offers are encouraged to present initial requests bilaterally by 20 September.

Concluding Remarks

While significant progress has been made in all areas of the agreement since May of this year, we must not lose sight of the fact that the work to be completed is substantial. Even with the most positive impetus at the political level, the completion of the technical work will take all the time available to us. Multilateral negotiations on trade in services is a totally new area where negotiators are confronted with new and sometimes unexpected challenges.

The conclusion which I draw from this is that an even greater effort is required both here in Geneva and in capitals to advance the work on all three pillars of the Agreement: the articles, the annexes and the offers and requests.

Further, we have heard recent declarations at the highest political level about the need to complete negotiations successfully by the end of the year. This kind of political guidance must be translated into greater
flexibility in the negotiating positions of participating countries and into clear instructions for negotiators to seek the necessary compromise to advance the process.

In September, negotiators should not only be refreshed after the break between meetings, but they should also have clear mandates to engage in the compromises necessary to achieve a successful outcome by the end of this year.