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Council for Trade in Services

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COMMUNICATION FROM AUSTRALIA

Review of Article II Exemptions

Questionnaire on the List of MFN Exemptions (from Financial Services to Transport Services)

The attached paper has been received from the delegation of Australia with the request that it be circulated to Members of the Council for Trade in Services.

Australia supports the objectives for the review of MFN exemptions proposed by Hong Kong, China, in its paper of 8 May:

- (a) to improve the clarity of existing exemptions;
- (b) to enhance their transparency;
- (c) to consider their necessity; and
- (d) to review their consistency with the WTO/GATS obligations.

We consider that a review structured along these lines would give Members an opportunity to assess options, and to reconsider whether the measures concerned are the most effective and least trade-restrictive available.

I. GENERAL QUESTIONS

We note the general questions raised by Hong Kong, China, in relation to all MFN exemptions, and wish to propose two additional questions:

1. A number of Members have created an exemption for "All countries", or similar, on the basis of reciprocity. In the interests of transparency, we ask Members to list the countries with which they have reciprocal agreements, and the basic terms of the agreements. Examples include:

- Austria (p 75), Bulgaria (p 143), Colombia (p 78), Cuba (p 100), EC (p 93), Honduras (p 133), Mauritius (p 83), Pakistan (p 83), Peru (pp 84, 135), Philippines (p 85), Slovak Republic (p 87), Swaziland (p 138), Thailand (p 139), Turkey (p 127), USA (p 142).

2. We would like clarification of the instances in which only some Members of a specific regional agreement have listed an exemption for that agreement. (a) What are their reasons for listing

it, when other Members of the same agreement have not found it necessary to do so? (b) Could these exemptions be covered by GATS Article V? Examples include:

- **Brunei, Singapore (pp 76, 86), ASEAN – financial**
- **Cote d'Ivoire, Senegal (pp 79, 85), WAEMU – financial**
- **Honduras, Nicaragua (pp 81, 83) – financial**
- **South Africa, Swaziland (p 88), Common Monetary Area Agreement – financial**
- **USA (pp 90, 91) – financial**
- **Mexico (p 92) – tourism**
- **Venezuela (p 113), Andean Group - maritime freight transport**
- **Bolivia, Colombia and Peru (pp 129, 130, 135), Andean Group - land transport**
- **Costa Rica, (p 130), Treaty of Central American Integration - land transport**
- **Egypt (p 131) - Arab League - road transport**

II. FINANCIAL SERVICES

3. **USA (p 90 - first row)** has an exemption relating to insurance measures according differential treatment. How is this assessed and implemented? To which countries does it apply?

III. HEALTH-RELATED AND SOCIAL SERVICES

4. **Cyprus (p 92):** Why has Cyprus taken out this exemption on human health services, rather than those Members which grant preferential treatment to Cypriot citizens?

IV. TRANSPORT SERVICES

A. MARITIME TRANSPORT SERVICES

As specified in paragraph 4 of the Decision on Maritime Transport Services of 3 July 1996 (S/L/24), Article II of the GATS and the Annex on Article II Exemptions are suspended for international shipping, auxiliary services, and access to and use of port facilities until the conclusion of the next round of services negotiations. Paragraph 4 does not apply, however, to the MFN exemptions of Members who maintained specific commitments in maritime transport. Thus, as noted in paragraph 39 of S/C/W/62, of the 26 Members with MFN exemption lists in maritime transport services, only 14 have exemptions actually in force.

We note that a large proportion of both active and suspended exemptions are phrased in a very broad and generic way and cover an undefined range of existing and future measures. Moreover, the vast majority of exemptions do not specify the intended duration and are described as "indeterminate", "indefinite" or "unlimited". Australia questions whether such broad generic exemptions, particularly those covering future measures, are in accordance with scheduling

guidelines. We also encourage Members to specify the intended duration of exemptions in line with the guidelines set down in the Annex on Article II Exemptions.

A large proportion of MFN exemptions in this sector reflect the suspended status of maritime transport services negotiations. Other exemptions relate to maritime-specific issues such as the UN Convention on a Code of Conduct on Liner Conferences, and cabotage. We expect these issues to be resolved when negotiations resume, and have not addressed them here.

5. **New Zealand (p 104):** Please explain the policy rationale for this measure - why can only Members from the listed countries satisfy "requisite qualifications"?

6. **Thailand (p 108):** Please supply more detail on the exemption, specifically to which countries the measure applies and why the duration is indefinite. Please confirm that, as detailed in Thailand's 1999 APEC IAP, that Thailand intends to lift this exemption between 2001-2005.

7. **Turkey (p 112):** Please explain how the specified tax exemptions "lower costs and create favourable conditions for the provision of services" in the sector.

B. INTERNAL WATERWAYS

8. **Bulgaria, Czech Republic, EC, Romania, Slovak Republic, Switzerland (pp 114-116):** The exemption lists in this sector seem to be designed to reflect the relationship between the EU and adjacent countries. In the interests of transparency, could the EC and other Members with exemption lists in this sector please update the relevant details, specifically the countries to which the exemptions apply, and whether they could be covered by Article V?

C. AIR TRANSPORT

As observed in S/C/W/59, MFN exemptions in this sector are designed to ensure reciprocity. We acknowledge that these exemptions reflect long-established bilateral practice, but we draw Members' attention to the principle that such exemptions should not exceed a period of 10 years. We encourage Members to consider the utility of their MFN exemptions during forthcoming sessions of the Air Transport review.

D. RAIL TRANSPORT

9. **Bulgaria, the Czech Republic and the Slovak Republic (pp 126-127)** have identical exemptions which cover current and future agreements regulating traffic rights and operating conditions. With which countries are these agreements in operation and could they be covered by Article V?

10. **Turkey (p 127):** Please provide more detail on the measures covered by the exemptions, in particular what steps currently excluded parties would need to take in order to benefit from them. We would also be interested to learn why MFN treatment in this case is undesirable.

E. ROAD TRANSPORT

11. **Austria (pp 128-9):** Could Austria please advise which of these exemptions are still current, after EU accession?

12. **South Africa (p 138):** Why is reservation of cabotage to South African registered vehicles and operators covered under MFN exemptions, rather than under sector-specific commitments?

13. **Thailand (p 139):** Please confirm whether, as detailed in Thailand's 1999 APEC IAP, that this exemption will be removed before 2005.
