

WORLD TRADE ORGANIZATION

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PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Trade and Investment

Communication from Korea

The following communication, dated 20 July 1999, has been received from the Permanent Mission of Korea.

Background

1. Foreign direct investment (FDI) is one of the main engines of economic growth. Promotion of FDI is, therefore, crucial to the sustained growth of the world economy. A stable, transparent and predictable environment for investment is a prerequisite for achieving this goal.
2. The existing network of bilateral and regional investment arrangements is effective to some degree in creating a favorable climate for foreign investment but has fundamental limitations. The discrepancies in disciplines of these arrangements, which are often mutually incompatible, may make the world investment environment more complicated and distort investment flows. Multilateral rules on investment can serve as an institutional mechanism that is effective in resolving such problems, thus promoting FDI. Considering the ever closer interface between trade and investment, investment is an issue that deserves a rightful place in the WTO. The rule-based multilateral trading system can be further strengthened with the establishment of WTO rules on investment.
3. WTO rules on investment should reflect the different realities faced by each Member so as to represent an overall balance of interests among Members, including in particular, development interests of developing countries. Therefore, the need to pursue higher level of liberalization and protection should be balanced with the need to provide flexibility for host countries in formulating their own policies.

Proposal

- (a) Objectives
4. Negotiations should aim at establishing WTO rules on investment in the form of a stand-alone multilateral agreement ("the Agreement"). It may be necessary to harmonize the Agreement with investment-related provisions of the existing WTO agreements such as the GATS, TRIMs and TRIPS.

5. The Agreement should aim at facilitating flow of international investment through enhanced transparency and predictability. Such a goal, however, should be reconciled with the need to respect host country's right to set its own policies, in particular development policies of developing countries.

(b) Key elements

Scope

6. The Agreement should focus on FDI. The WTO is not an appropriate forum for tackling the issue of short-term capital flows. Likewise, caution should be applied in dealing with portfolio investment in the light of its implications for financial security.

Investment liberalization and protection

7. The fundamental WTO principles of most-favored-nation treatment and national treatment should be adopted as guiding principles of the Agreement. At the pre-establishment phase, however, a bottom-up (positive list) approach of the GATS appears to be an appropriate model to follow. Once a company is established locally, national treatment should be granted with limited exceptions.

8. The Agreement should establish a reasonably high standard of investment protection by consolidating key elements of protection included in a variety of existing bilateral and regional arrangements. However, the Agreement should preserve the host country's right to regulate according to its unique economic situation as long as the regulations are compatible with the Agreement.

Transparency

9. Foreign investors are unlikely to invest in a country where they cannot ascertain the laws, regulations and administrative procedures that would apply to their investments. Therefore, rules on transparency should be developed and included as a core component of the Agreement. Given the limited capacity of many developing countries, the Agreement should also include provisions for technical assistance to aid countries desiring to enhance the overall level of transparency of their investment regime.

Performance requirements and investment incentives

10. The Agreement should address the concerns about performance requirements and investment incentives with a view to minimizing their distortive effects. On the other hand, their potential value as domestic policy tool should not be overlooked. Transparency in the host country's related laws and regulations could be a minimum requirement to this end.

Dispute settlement procedures

11. The existing WTO dispute settlement procedures should be applied to the Agreement. In view of the inter-governmental nature of the WTO system, the Agreement should focus on disputes between WTO Members, to the exclusion of State-investor disputes.

Development dimension

12. About 40 percent of the world's FDI is made in developing countries, and more than 10 per cent of FDI flows from developing countries. These figures clearly indicate the significance of the developing world in FDI. Therefore, the Agreement should duly reflect the interests of developing countries and development dimension should be an integral part of the Agreement.