

服務貿易理事會文件 S/L/80，29 October 1999

執行服務貿易總協定第 21 條之程序

(承諾表之修正)

1999 年 7 月 19 日經服務貿易理事會採認

修正或撤回之通知

1. 會員打算依第 21 條修正或撤回其承諾表(稱修改之會員)，必須在其修正案或撤回案計畫開始執行之三個月前，通知秘書處，由秘書處以密件分送該通知給所有其他會員。會員打算修正或撤回承諾表之個案，必須列入服務貿易理事會下次會議之議程討論。
2. 該通知必須包含擬修正或撤回之承諾表，對於每一承諾表之通知必須指明全部或部分修正或撤回、擬執行該修正案或撤回案之日期、及修正案之本旨(the exact nature of any proposed modification)。

補償談判

3. 任一會員認為其依本協定下之利益可能受此修正案或撤回案影響(稱受影響之會員)必須向修改之會員提出書面請求，且同時透過秘書處通知所有其他會員。該利益之請求必須於秘書處分送上述第 1 段提及之通知日起 45 天內提出。倘於該期限內無受影響之會員提出請求，修改之會員經依第 20 段至 22 段完成確認程序後，且必須向秘書處提交通知執行日期，以利分送 WTO 會員，即可逕行執行該修正案或撤回案。
4. 修改之會員與任何依上述第 3 段表示為受影響之會員必須於可針對受影響之利益提出請求之最後一天起算三個月內達成協議。談判期間可依雙方同意後得予展延，協議之條件，包含展延期限，必須透過秘書處通知所有其他會員。
5. 當依第 21 條第 2(a)段規定完成談判時，修改之會員必須將由相關會員所簽署之聯合信，併同由相關會員撰寫之談判結果報告寄送予秘書處。秘書處將以密件分送該信件及報告予所有會員。
6. 已與所有依上述第 3 段規定表示為受影響之會員達成協議之修改會員，必須於談判完成後 15 天內，依第 21 條規定向秘書處寄送一最終談判報告，並由秘書處以密件分送予所有會員。在依第 20 段至第 22 段規定完成確認程序後，修改之會員將可執行談判所同意且於報告所陳述之變更事項；該

會員必須向秘書處通知其執行日，由秘書處分送所有會員。該等變更必須不超過初始通知之修正案或撤回案，且必須包括談判所同意之補償性調整。

仲裁

7. 倘修改之會員與依上述第 3 段規定表示為受影響之會員於第 4 段提及之談判期限屆滿前未達成協議，該受影響之會員可要求仲裁。仲裁之請求必須於談判期間屆滿後 45 天內，以書面向修改之會員與秘書處提出。
8. 倘依上述第 3 段規定表示為受影響之會員未及時依第 7 段提交仲裁要求時，修改之會員在完成第 20 段至第 22 段規定之確認程序後，即可執行修正案或撤回案。若僅與部分受影響之會員達成協議，而非與全部受影響之會員達成協議時，且無未提出仲裁之請求，修改之會員經依第 20 段至第 22 段規定完成確認程序後，且修正案或撤回案及談判所同意之補償性調整，不超過初始通知之修正案或撤回案之情形下，可依上述第 6 段規定之程序執行。修改之會員必須通知秘書處修正案或撤回案之執行日期，由秘書處分送 WTO 會員。
9. 倘受影響之會員依第 7 段規定及時提交仲裁請求，修改之會員在接獲仲裁團體之裁決並依裁決執行前，不得執行任何修正案或撤回案。
10. 仲裁團體必須經相關會員同意下組成，倘參與仲裁之會員在提出仲裁要求 20 天內無法同意組成仲裁團體，WTO 秘書長得依任何相關會員之要求，於 10 天內諮詢相關會員後，組成仲裁團體。仲裁團體除相關會員同意由其他不同奇數組成外，必須由 3 個仲裁人組成。仲裁團體必須挑選與仲裁事項相關之法律、經濟、金融或技術專家，包括協定之專家。除非相關會員同意外，仲裁團體不得由任何參與仲裁會員之國民組成。當參與仲裁之會員為開發中國家會員，倘該開發中國家會員要求時，則仲裁團體必須包括至少一名來自開發中國家會員之仲裁人。
11. 仲裁團體適用爭端解決規則與程序瞭解書之執行規則；可向任何相關來源尋求資訊，並與專家諮詢取得相關意見。仲裁團體必須通知參與仲裁之會員有關與專家諮詢之情形。仲裁團體就考量中之相關事項，不得與任何一方會員進行單獨聯繫。

12. 任何受影響之會員盼行使其補償權利，必須參與仲裁。然而，若一受影響之會員已與修改之會員依上述第 4 段規定達成協議時，可決定不參與仲裁，然而其亦視為已參與有關修正案或撤回案之仲裁。
13. 除參與仲裁之會員自提出仲裁要求日起 10 天內同意者外，仲裁團體之職權如下：“審查由修改會員或由要求仲裁之受影響會員所提出之補償性調整，並尋求一權利與義務之平衡，以維持相互利益承諾之水準與談判前之特定承諾表對貿易利益之平衡。於進行審查時，仲裁團體必須考量修改會員與任何受影響會員依上述第 4 段進行談判所達成之任何協議”。
14. 仲裁團體必須於仲裁團體組成之 3 個月內，透過秘書處向參與仲裁之會員提出裁決。
15. 當仲裁程序已依上述第 7 段至第 14 段進行，修改之會員必須於完成第 20 段至第 22 段確認程序後，依據仲裁團體之裁決，執行修正案或撤回案；且必須通知秘書處執行日期，並由秘書處併同仲裁案之裁決分送 WTO 會員。
16. 倘修改之會員未依仲裁案之裁決執行其修正案或撤回案時，則任何參與仲裁之受影響會員可在符合仲裁裁決之情形下，修正或撤回實質相當之利益。雖不符合第 2 條之規定，此項修正或撤回之利益僅能針對修改之會員執行。
17. 受影響之會員必須於採取該等措施權利之 1 個月前，通知服務貿易理事會其欲依第 16 段所採取之措施。
18. 如修改會員遵守第 14 段仲裁團體之裁決，依第 16 段所採取之修正案或撤回案必須終止。
19. 修改會員於任何時候均可通知秘書處撤回其依本協定第 21:1 條及前述第 1 段所為之通知。於秘書處接獲該撤回之通知時，第 21 條及該等程序即終止，且修改之會員必須遵守本協定第 3 部分及其承諾表之承諾。

特定承諾表修正程序之正式事項

20. 依據第 21 條進行修正服務貿易總協定附件之有效承諾表，必須經過確認後方能生效。承諾表草案必須明確指出修正細節並通知秘書處，由秘書處分送給所有會員。倘無任何會員對承諾表修正草案以其未確實反映依第 21 條所採行動之結果，及/或該修正案或撤回案之內容超過其初始提案通知之內容為由，提出異議時，該修正案自分送日 45 天後，或由修改會員所指定較晚之日期生效。提出異議之會員應儘可能具體指明修正案引致其提出異議

之事項。於 45 天期限屆滿，倘無異議提出，秘書處必須對所有會員通知完成確認程序，並指明修正案生效日期。

21. 任何會員有意提出異議必須向秘書處提出通知，由秘書處分送所有會員，並必須以與修改之會員儘速達成雙方滿意之解決方案為目標，進行談判。當異議一經通知，若提出異議之會員撤回該異議或異議期限屆滿時(以較晚日期為準)，則確認程序即視為完成。當不只一個異議提出時，且所有提出異議之會員均撤回異議時，視為完成確認程序。撤回必須向秘書處通知，秘書處將通知所有會員撤回異議及完成確認程序之情事，並指明修正案生效日期。
22. 若依第 21 段之談判致使原提出確認之承諾表草案有所變更時，修改之會員必須立刻通知秘書處，由秘書處分送所有會員。依第 20 段之規定，於分送日起算 15 天內或由修改之會員所指定較晚之日期，若會員未提出異議，該修正案即生效。提出異議之會員應儘可能具體指出修正案引發爭議之事項，若於 15 天屆滿，並無異議，則秘書處必須通知所有會員已完成確認程序，並指明修正案生效日期。若已提出異議，則必須依第 21 段所敘之程序進行。

一般條款

23. 會員在採用此等程序時必須完全考量個別開發中國家(特別是那些低度開發國家)之特殊情況。
24. 本程序自生效日三年後失效，服務貿易理事會應依任何會員之要求檢討本程序之執行情形。在該等檢討時，服務貿易理事會可修改本程序之任一條款，包括仲裁條款。

29 OCTOBER 1999

PROCEDURES FOR THE IMPLEMENTATION OF ARTICLE XXI OF
THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

(MODIFICATION OF SCHEDULES)

Adopted by the Council for Trade in Services on 19 July 1999

Notification of Modification or Withdrawal

1. A Member intending to modify or withdraw a scheduled commitment in accordance with Article XXI (the "modifying Member") shall transmit a notification to that effect, no later than three months before the intended date of implementation of such modification or withdrawal, to the Secretariat which will distribute the notification to all other Members in a secret document. The intention by a Member to modify or withdraw scheduled commitments shall be included in the agenda of the next meeting of the Council for Trade in Services.
2. The notification shall include a list of the commitments which it is intended to modify or withdraw. For each such commitment the notification shall indicate whether the intention is to modify or to withdraw it, in whole or in part; the proposed date for implementing such modification or withdrawal; and the exact nature of any proposed modification.

Negotiations on Compensation

3. Any Member which considers that its interests under the Agreement may be affected by the proposed modification or withdrawal ("affected Member") shall communicate its claim in writing to the modifying Member and at the same time notify it to all other Members through the Secretariat. Such claims of interest must be made no later than 45 days after the date of circulation by the Secretariat of the notification referred to in paragraph 1 above. If by that date no Member has submitted a claim that it is an affected Member, the modifying Member shall be free to implement the proposed modification or withdrawal, after completing the certification procedure under paragraphs 20 to 22 and shall submit a notification of the date of such implementation to the Secretariat, for circulation to the Members of the WTO.
4. The modifying Member and any affected Member which has identified itself under paragraph 3 above shall negotiate with a view to reaching agreement within three months following the last date on which such a claim of interest may be made. This period of negotiation may be extended by mutual agreement and the terms of such an agreement, including the period of extension, shall be notified to all other Members through the Secretariat.
5. Upon completion of each negotiation conducted under paragraph 2(a) of Article XXI, the modifying Member shall send to the Secretariat a joint letter signed by the Members concerned, together with a report concerning the results of the negotiations which shall be initialled by the Members concerned. The Secretariat will distribute the letter and the report to all Members in a secret document.
6. A modifying Member which has reached agreement with all Members that had identified themselves under paragraph 3 above shall, no later than fifteen days after the conclusion of the negotiations, send to the Secretariat a final report on negotiations under Article XXI, which will be distributed to all Members in a secret document. After completing the certification procedure under paragraphs 20 to 22, such a modifying Member will be free to implement the changes agreed upon in the negotiations and specified in the report, and it shall notify the date of implementation to the Secretariat, for circulation to the Members of the WTO. Such changes shall not

exceed the modification or withdrawal initially notified and shall include any compensatory adjustment agreed upon in the negotiations.

Arbitration

7. If the modifying Member and a Member that had identified itself under paragraph3 above do not reach agreement by the end of the period of negotiations referred to in paragraph4, such an affected Member may request arbitration. Such a request shall be made in writing to the modifying Member and the Secretariat no later than 45days after the end of that period.
8. If no Member that had identified itself under paragraph3 above submits a timely arbitration request under paragraph7, the modifying Member shall be free to implement the proposed modification or withdrawal, after completing the certification procedure under paragraphs20 to22. In cases where agreement has been reached with some but not all affected Members and no request for arbitration has been made, the modifying Member shall be free to implement in accordance with the procedures of paragraph6 above, after completing the certification procedure under paragraphs20 to22, the proposed modification or withdrawal with the compensatory adjustments agreed upon in the negotiations, but not exceeding the proposed modification or withdrawal initially notified. The modifying Member shall notify the date of implementation to the Secretariat, for circulation to the Members of the WTO.
9. If an affected Member submits a timely arbitration request under paragraph7, the modifying Member shall not implement any modification or withdrawal until it has received the arbitration body's findings and is in conformity with those findings.
10. The appointment of the arbitration body shall be subject to mutual agreement of the parties concerned. If the parties to the arbitration cannot agree on the arbitration body within twenty days from the date of request for the arbitration, the arbitration body shall be appointed at the request of any party by the Director-General of the WTO, after consulting the parties, within ten days thereafter. The arbitration body shall consist of three arbitrators, unless the parties agree to a different uneven number. The

arbitration body shall be chosen from among persons with relevant legal, economic, financial or technical expertise, including expertise in the agreement, with respect to the matter referred to the arbitration body. Except as the parties otherwise agree, the arbitration body shall not consist of citizens of any of the parties to the arbitration. Where a party to an arbitration is a developing country Member, the arbitration body shall, if the developing country Member so requests, include at least one arbitrator from a developing country Member.

11. The "Rules of conduct for the understanding on rules and procedures governing the settlement of disputes" shall apply. The arbitration body may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. The arbitration body shall inform the parties to the arbitration of any consultations with experts. There shall be no *ex parte* communications with the arbitration body concerning matters under consideration by the arbitration body.
12. Any affected Member that wishes to enforce a right that it may have to compensation must participate in the arbitration. However, if an affected Member having reached an agreement with the modifying Member under paragraph 4 above were to decide not to participate in the arbitration, it shall nonetheless be deemed to have participated in the arbitration with respect to the modification or withdrawal in question.
13. The arbitration body shall have the following terms of reference unless the parties to the arbitration agree otherwise within ten days from the request for arbitration:

"To examine the compensatory adjustments offered by (name of modifying Member) or requested by (affected Member requesting the arbitration) and to find a resulting balance of rights and obligations which maintains a general level of mutually advantageous commitments not less favourable to trade than that provided for in Schedules of specific commitments prior to the negotiations. In such examination, the Arbitration body shall take into account any agreement reached, in negotiations under paragraph 4. above, between the modifying Member and any affected Member".

14. The arbitration body's findings shall be communicated to the parties to the arbitration through the Secretariat within three months of the appointment of the arbitration body.
15. When an arbitration has been conducted in accordance with paragraphs 7 through 14 above, the modifying Member shall be free to implement a modification or withdrawal which is in conformity with the findings of the arbitration body after completing the certification procedure under paragraphs 20 to 22, and shall notify the date of implementation to the Secretariat for circulation to the Members of the WTO together with the findings of the arbitration.
16. If the modifying Member implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, any affected Member that participated in the arbitration may modify or withdraw substantially equivalent benefits in conformity with those findings. Notwithstanding Article II, such a modification or withdrawal may be implemented solely with respect to the modifying Member.
17. The affected Member shall notify the Council for Trade in Services of the measures it intends to take in accordance with paragraph 16, one month before exercising its right to take these measures.
18. Modifications or withdrawals implemented in accordance with paragraph 16 shall be terminated if the modifying Member complies with the findings of the arbitration body under paragraph 14.
19. The modifying Member may withdraw at any time its notification under Article XXI:1 of the Agreement and paragraph 1 above, by notice to the Secretariat. Upon receipt of such a withdrawal, Article XXI and these procedures shall cease to apply and the modifying Member shall be obligated to maintain the commitment in question in conformity with its Schedule and Part III of the Agreement.

Formal aspects of the procedures for modification of schedules of commitments

20. Modifications in the authentic texts of Schedules annexed to the GATS which result from action under Article XXI, shall take effect by means of Certification. The draft schedule clearly indicating the details of the modifications shall be communicated to the Secretariat for circulation to all Members. The modifications shall enter into force upon the conclusion of a period of 45 days from the date of their circulation or on a later date to be specified by the modifying Member, provided no objection has been raised by a Member on the ground that the draft schedule does not correctly reflect the results of the action under Article XXI and/or that the modification or withdrawal contained in the draft schedule exceed those initially notified. A Member making an objection should to the extent possible identify the specific elements of the modifications which gave rise to that objection. At the end of the 45-day period, if no objection has been raised, the Secretariat shall issue a communication to all Members to the effect that the Certification procedure has been concluded, indicating the date of entry into force of the modifications.
21. Any Member wishing to object shall submit a notification to that effect to the Secretariat for circulation to all Members and shall enter into consultations with the modifying Member with a view to reaching a satisfactory resolution of the matter as soon as possible. When an objection has been notified, the Certification procedure shall be deemed concluded upon the withdrawal of the objection by the objecting Member or the expiry of the period in which objections may be made, whichever comes later. Such a withdrawal shall be communicated to the Secretariat. When more than one objection has been raised, the Certification will be deemed concluded upon the withdrawal of the objections by all objecting Members. The Secretariat shall issue a communication informing all Members of the withdrawal of the objection(s) and the conclusion of the Certification procedure, indicating the date of entry into force of the modifications.
22. If the consultations referred to in paragraph 21 result in any changes to the draft schedule submitted for Certification, the modifying Member shall promptly submit them to the Secretariat for circulation to all Members. This modification shall enter into force provided no objection has been raised by a Member within 15 days from the

date of its circulation or on later date to be specified by the modifying Member, on the grounds referred to in paragraph20. A Member making an objection should to the extent possible identify the specific elements of the modification which gave rise to that objection. If no objection is raised by the end of the 15-day period, the Secretariat shall issue a communication to all Members to the effect that the Certification procedure has been concluded, indicating the date of entry into force of the modifications. If an objection has been raised, the procedure described in paragraph21 shall apply.

General Provisions

23. In the application of these procedures Members shall take full account of the special situations of individual developing countries, in particular the least developed countries.
24. Following the lapse of three years from entry into force of these Procedures, the Council for Trade in Services shall, at the request of any Member, review the operation of these Procedures. In such a review, the Council for Trade in Services may agree to amend any of the provisions of the Procedures, including those relating to arbitration.
