

Collective Request on MFN Exemptions (Audiovisual Services)

I. Introduction

As set out in the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC), Ministers have agreed that Members should be guided, to the maximum extent possible, by the objectives therein in making their new and improved commitments (paragraph 1 of Annex C). Specifically, paragraph 1(e) of Annex C sets out the following objectives –

- “(e) MFN Exemptions
 - (i) removal or substantial reduction of exemptions from most-favoured-nation (MFN) treatment
 - (ii) clarification of remaining MFN exemptions in terms of scope of application and duration”

Paragraph 7 of Annex C also provides that request-offer negotiations should also be pursued on a plurilateral basis based on collective requests.

2. The Most-Favoured-Nation (MFN) principle is the cornerstone of the WTO Agreements that underpins the multilateral trading system. Any departure from the MFN principle derogates from the principle of non-discrimination and potentially undermines the value of any market access openings or liberalization bindings. Even though the GATS has allowed circumscribed and time-limited exemptions for specific measures under Article II and the Annex on Article II Exemptions when the GATS first enter into force at the end of the Uruguay Round negotiations, all these exemptions must meet the provisions of the Annex and should be reviewed from time to time, be in principle not more than 10 years in duration and, in any event, be subject to negotiation in subsequent trade-liberalizing rounds.

3. The co-sponsors of this request consider that the removal and reduction of MFN exemptions is an indispensable element in the overall progress of the services negotiations as well as the quality of individual offers. In particular, the co-sponsors recognize that there are many MFN exemptions where the conditions which created the need for these exemptions no longer prevail, many exemptions which are no longer needed or have never been invoked, many exemptions which are inconsistent with the GATS or incompatible with the principle of progressive liberalization, and many exemptions which are already covered by other provisions in the GATS or where no exemption is required. In order to make meaningful progress in the negotiation of MFN exemptions, the co-sponsors submit this collective request for the removal, reduction and clarification of MFN exemptions.

II. General Provisions

4. Further to paragraphs 25 through 27 of the Hong Kong Ministerial Declaration, and in accordance with paragraphs 7 and 11 (b) of Annex C of the Hong Kong Ministerial Declaration, the co-sponsors are pleased to present the delegation of **India** with this collective request on MFN exemptions. This request is presented on behalf of the following

interested Members: **the People's Republic of China, Hong Kong China, Japan, Mexico, and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.**

5. This request identifies specific objectives for removal, reduction and clarification of MFN exemptions, while recognizing the flexibilities provided for individual developing country Members in accordance with Article XIX.2 of the GATS. The aforementioned interested Members are also deemed to be recipients of this request.

6. The making of this request is without prejudice to the position of any of its co-sponsors on the interpretation of the GATS in relation to MFN exemptions specifically Article II and the Annex on Article II Exemptions, on the validity or otherwise of any MFN exemptions including their duration, and on the mandated review of MFN exemptions in accordance with the Annex on Article II Exemptions.

7. In accordance with paragraph 7 of Annex C of the Hong Kong Ministerial Declaration, this collective request is intended to complement, and not supersede the bilateral request-offer negotiations and the specificity of bilateral requests.

8. The aforementioned interested Members reserve the right to modify the content of this request. Additional interested Members may also be identified in the future.

III. Objectives

9. Having regard to the objectives in paragraph 1(e) of Annex C to the Hong Kong Ministerial Declaration, the co-sponsors seek to achieve the following objectives in respect of individual MFN exemptions under this request -

- (a) To eliminate the MFN exemption from the list of MFN exemptions in offers.
- (b) Where immediate removal of the MFN exemption is considered not possible at this juncture -
 - (i) to set down a specific expiry date for the exemption;
 - (ii) to reduce the scope of measures which are inconsistent with Article II and which require the exemption; and/or
 - (iii) to undertake to eliminate the conditions which created the need for the exemption or phase out the measures which require the exemption by a specific timeframe; and/or
 - (iv) to undertake to review the exemption on a regular basis with a view to its reduction and eventual elimination.
- (c) To clarify any MFN exemption that remain in the list of MFN exemptions in respect of the following -
 - (i) Description of measures: The column on "Description of measure indicating its inconsistency with Article II" should identify clearly,

specifically, precisely and only the measures which are inconsistent with Article II and the specific elements which are inconsistent with Article II. Reference should also be made to any specific legislation or international agreement under which the measures are taken and for which the exemption was inscribed.

- (ii) Countries to which the measure applies: The column on "Countries to which the measure applies" should identify clearly, specifically and only the names of the countries to which the measures covered by the exemption applies. In particular, the list should refer only to specific names of countries. Where the list refers to countries in international agreements or other arrangements, the names of such countries involved in such agreements or arrangements should be listed.
- (iii) Intended duration: The column on "Intended duration" should specify a specific timeframe or duration during which the exemption applies and after which the exemption will expire. This is without prejudice to the position of any co-sponsors on the duration of MFN exemptions which, in accordance with the Annex on Article II Exemptions, should not exceed a period of 10 years in principle.
- (iv) Conditions which created the need for the exemption: The column on "Conditions which created the need for the exemption" should identify clearly and precisely the conditions which necessitated the exemption when the exemption was introduced. The specification should enable the clear determination of whether the conditions which created the need for the exemption still prevail. In particular, the specification should refer, where applicable, to conditions under which the exemption would no longer be needed, or to any reviews by the Member concerned of the exemption for the conditions necessitating it.

IV. Collective Request

10. The co-sponsors hereby request the recipient delegation to specifically undertake the objectives in paragraph 9 above, with particular focus on the MFN exemptions in audiovisual services set out in the second attached list to this request. MFN exemptions which have been offered to be removed in the latest offer of the recipient delegation are not included in this request on the understanding that they continue to be removed in further offers. The co-sponsors intend to pursue the negotiations of such MFN exemptions in the context of plurilateral negotiations to be conducted specifically in respect of audiovisual services.

11. The co-sponsors recognise that MFN exemptions are being pursued in certain collective requests in respect of specific sectors or modes (these currently include: legal services, architectural/engineering/integrated engineering services, telecommunications services, audiovisual services, maritime transport services and air transport services). With a view to avoid duplication of work, individual co-sponsors intend to pursue the negotiations of MFN exemptions in those specific sectors or modes in the context of the relevant plurilateral negotiations. This notwithstanding, the co-sponsors reserve the right to pursue the

negotiations of MFN exemptions in any appropriate forum, whether bilaterally, plurilaterally or multilaterally.

12. Notwithstanding the above, the making of this request does not preclude any of its co-sponsor from pursuing any MFN exemptions in any other plurilateral negotiations or otherwise. Individual co-sponsors also reserve their rights to address the recipient Member of this request in respect of any specific MFN exemptions that have not been specifically listed in this request.

V. Plurilateral Request-Offer Negotiations

13. The co-sponsors of this collective request intend to invite the recipient delegation in a plurilateral discussion of this request. Such a meeting will be organized in Geneva during the Services cluster taking place from 27 March to 7 April 2006.

VI. Enquiries

14. Any comments regarding this request, including written questions of a technical nature in advance of the plurilateral meeting, may be addressed to the delegation of Hong Kong, China as the co-ordinating Member of this collective request at:

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COLLECTIVE REQUEST ON MFN EXEMPTIONS (AUDIOVISUAL SERVICES)

Member	Sector or sub Sector	Description of measure indicating its inconsistency with Article II	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
India	Audiovisual Services	Measures which define norms for co-production of motion pictures and television programmes with foreign countries and grant national treatment to motion pictures and television programmes co-produced with foreign countries which maintain a co-production agreement with India.	All countries	Indefinite	The agreements aim at the promotion of cultural exchange.