

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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COMMUNICATION FROM CANADA

Transparency

The following communication is circulated at the request of the delegation of Canada to the members of the Group of Negotiations on Services.

TRANSPARENCY

Introduction

It is widely recognized that the service industries are among the most heavily regulated areas of most domestic economies. Although some of this regulation is intended to impact on trade, in many cases the regulation takes place strictly for domestic policy purposes. Not only do domestic regulatory authorities generally not intend to make trade policy; often, they are not even aware of the effect that their rules have on international trade. Nevertheless, domestic regulation often does result in serious - albeit unintentional - trade distortions.

It is not realistic to expect that services trade can be liberalized through the widespread elimination of domestic regulatory activity. Regulation is and will remain a necessary instrument for achieving each government's social and economic objectives. We should, however, work toward reducing the negative impact of regulation on international service transactions while recognizing each country's need to regulate domestically. One way of accomplishing this is through greater transparency in the regulatory process.

Regulatory transparency can be viewed both as an ancillary concept in services trade liberalization and as an important liberalizing principle in its own right. As an ancillary concept, transparency is necessary both for carrying out multilateral trade negotiations and for implementing an agreement. Services trade negotiations can be successful only if the participants have a clear view of the obstacles to trade for which solutions should be sought. Moreover, once an agreement has been reached, the application of the transparency principle is essential in order to assess whether the parties to the agreement are meeting their obligations. If difficulties do arise in implementing the agreement, the consultation procedures which normally accompany transparency provisions are an important means for settling disputes.

As a liberalizing principle in its own right, transparency can provide several benefits:

- the publication of regulations gives businesses, (both domestic and international), the information that they need to operate efficiently and to comply with the regulations;
- advance notice of regulatory changes allows businesses to plan effectively and to adjust to a changing regulatory environment;

- consultation provisions allow other governments as well as interested parties in the private sector to make regulators aware of the implications of the regulators' actions for business. This can assist domestic regulators to assess alternatives

for minimizing their negative impact on domestic business and international trade while still achieving their domestic regulatory objectives. They can thus regulate more efficiently.

These advantages can significantly outweigh the costs of transparency, which consist mainly of a loss of regulatory flexibility.

Possible Elements of an Agreement

With the above-noted potential benefits of regulatory transparency in mind, we suggest that an agreement to liberalize international services trade might include the following types of transparency provisions. (Note: Below, "Party" means a country that has acceded to the agreement; "party" means an individual or a corporation.)

Coverage

The transparency provisions could apply to rules and practices established in:

- statutes;
- subordinate legislation (or "regulations");
- administrative procedures;
- orders;
- guidelines;
- manuals; and
- administrative and quasi-judicial decisions,

affecting particular sectors, as well as those of cross-sectoral scope, through measures having an impact at the border, or affecting operations in the domestic market.

Advance Notice

The agreement might require each Party to give early notice, in a designated publication, of all proposed regulatory measures in such a manner as to allow interested parties to become familiar with them.

In addition, each Party could be required to notify other Parties, through the agreed international secretariat, of the substance of a proposed regulatory measure, as well as the policy objective and the rationale for the measure.

Provision of Copies

The agreement could require each Party, upon request, to provide copies of statutes, regulations and policy instruments, adopted or proposed, to other Parties and to interested parties.

Consultation

The agreement could require each Party to allow reasonable time for other Parties and for interested parties to make comments in writing concerning a proposed regulatory measure. As well, each Party could be required to discuss the comments upon request, and to take the written comments and the results of the discussions into account.

Publication

Each Party could be required to ensure that regulatory measures that have been adopted are published promptly in such a manner as to enable interested parties to become acquainted with them.

Enquiries

The agreement could require each Party to ensure that an enquiry point exists that is able to answer all reasonable enquiries from interested parties in other Parties concerning regulatory measures adopted or proposed.

When providing advance notice of a proposed regulatory measure, each Party could be required to identify an enquiry point.

Cross-Notification

The agreement could provide that each Party may advise the agreed international secretariat of any regulatory measure proposed or adopted by another Party which the advising Party considers should have been the subject of an advance notification as set out above.

Consultation following Cross-Notification

The agreement could require each Party, upon request, to discuss with any Party and with any interested party a regulatory measure proposed or adopted that has been the subject of a cross-notification.

Exceptions

It may be appropriate to include in the agreement a provision exempting a Party from the advance notification requirement in the event that an urgent problem of safety, health, environmental protection or national security arises or threatens to arise. Moreover, it may be necessary to take account of special rules applying to some legislative processes, such as budget secrecy.