

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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COMMUNICATION FROM INDIA

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

STATEMENT OF INDIA AT THE GNS MEETING
ON 23 FEBRUARY 1987

1. The Group on Negotiations on Trade in Services is now holding its first meeting after having adopted the programme for the Initial Phase of Negotiations on 28 January 1987. In a very important sense, therefore, this marks the beginning of a new substantive phase of work. We have agreed that a general debate structured around the elements to be addressed in the Initial Phase should take place at this meeting. In the view of my delegation, it will be necessary and desirable to state clearly at this stage the commonly understood parameters of our work and also the underlying assumptions.

2. Those of us who were, so to say, "present at the creation" have a special responsibility in this regard. Any oversight in this regard could lead to ambiguity and avoidable delay in the whole process of negotiations. Worse still, such confusion or misunderstanding could impair the solid foundation of consensus and confidence on which is based the Punta del Este mandate to the GNS and also, if I may add, the elaboration of the programme for the Initial Phase of Negotiations.

3. Even at the cost of some repetition, let me, for purposes of record, start with the restatement of the unique structure of the Uruguay Declaration as well as the special nature of the decision-making at the Punta del Este meetings. Part I of the Declaration concerning Negotiations on Trade in Goods is a decision of the CONTRACTING PARTIES; Part II of the Declaration relating to Negotiations on Trade in Services is, however, a decision of the Ministers representing individual participating governments - it is not a decision of the CONTRACTING PARTIES or, for that matter, of governments as contracting parties. The Declaration as a whole has been adopted by Ministers, as Ministers meeting on the occasion of the special session of the CONTRACTING PARTIES. The Trade Negotiations Committee set up to carry out the Multilateral Trade Negotiations is the creature of the Ministerial meeting and not of the CONTRACTING PARTIES. The Negotiations on Trade in Goods are the GATT negotiations proper whereas the Negotiations on Trade in Services are clearly separate from those negotiations and have to be conducted on the basis of the Ministerial decision at Punta del Este.

4. The Uruguay Declaration, as a whole, has been adopted as "a single political undertaking launching the Uruguay Round". This concept of a single political undertaking has to be distinguished from the concept of "a single undertaking" which has been used in Part I in regard to the Negotiations on Trade in Goods. The distinction has been well established in the statement that Ambassador Tran made in the TNC meeting on 28 January 1987. While the Negotiations on Trade in Goods constitute one organic and legal undertaking, the globality of the Uruguay Round of MTN's has been recognized only in a political or qualitative sense, not in a

legal, quantitative or organic sense. The singleness of the political undertaking has to be seen only in terms of:

- (a) the unity of time and place provided by the Punta del Este meetings;
- (b) the establishment of the Trade Negotiations Committee;
- (c) the same time-frame for the two processes of negotiations; and finally,
- (d) the provision that the decisions on the implementation of the respective results of the negotiations will be taken at the Ministerial meetings on the pattern of the Punta del Este meetings.

No other linkage - legal, procedural or otherwise - has been envisaged in the two different processes of negotiations.

5. It should be clear, therefore, how erroneous it is to refer to these negotiations as GATT negotiations. More important, such a description endangers the very basis of the consensus embodied in the Ministerial Declaration on Trade in Services. Similarly, it can be easily seen how the theme of cross-linkages between concessions in the area of goods and concessions in the area of services is totally unwarranted. There is no basis also for visualizing point-to-point correspondence in the progress of the two different processes of negotiations on goods and services. As we shall see when we examine the substantive aspect, any such insistence would only be counterproductive not only for the negotiations on trade in services but also for negotiations on trade in goods.

6. Coming to the substance of the Punta del Este mandate on negotiations on trade in services, it is abundantly clear that the aim of the negotiations is not merely to establish a multilateral framework of principles and rules for its own sake. Indeed, it is too much to see in this mandate any endorsement of a priori relevance of the rules and principles governing the trade in goods. There is no reference to the concepts of "elimination" and of "unpracticability". Ministers also wisely left out any reference to "standstill" in their decision, for they knew very well that there was no "benchmark" with reference to which one could "standstill" nor any identified field of reference to which "standstill" could apply. And still we hear calls for "standstill". It is necessary to recall this because there is an increasing tendency to draw on the experience in the areas familiar to trade policy experts in GATT, merely because there is lack of adequate knowledge or appreciation of the problems and content of the unfamiliar and new areas. While one can understand, if not excuse, such a tendency, it is not possible to accept tendentious interpretations of the Ministerial mandate.

7. The aim of the exercise of negotiations on trade in services is very clearly stated in the mandate itself. Simply put, the aim is to promote economic growth of all trading partners and development of developing countries through expansion of trade in services under conditions of

transparency and progressive liberalization. Nowhere has the mandate put forward liberalization per se as the aim of the negotiations. The reference to liberalization has been qualified by the adjective "progressive" and the whole phrase has been mentioned only as one of the conditions for expansion of trade. Those who equate this qualified reference in the shape of one of the conditions as the main aim of the negotiations are, in effect, re-writing the mandate.

8. There is another area of serious confusion. Even if progressive liberalization has been accepted as one of the conditions for expansion of trade, nowhere has such liberalization been equated with dismantlement of national regulations. Indeed, there are recognized restrictive business practices, particularly of transnational corporations which amount to serious barriers to trade. The conditions of transparency and progressive liberalization will, in the context of trade in services, apply more pertinently in regard to such barriers. It is important to clarify this because the only reference to national laws and regulations which appears in the mandate is with the express purpose of ensuring that any multilateral framework that may emerge, shall have to respect the policy objectives of such laws and regulations. The approach put forward by some that one should start with the inventory of national laws and regulations, seen as obstacles to trade in services, is, therefore, not consistent with the mandate.

9. Equally there is no warrant in the mandate for starting an open-ended scrutiny of all national regulation in services and subjecting it to multilateral determination of its appropriateness or legitimacy. All such regulation, by definition, is appropriate and legitimate. Indeed, attempts to question its legitimacy in the context of negotiations on trade in services lack legitimacy or appropriateness in terms of the agreed decision.

10. The national laws and regulations applying to services are, in developing countries particularly, for the most part, intended to apply to intra-border activities and transactions. It is because of this that their policy objectives have to be not only taken for granted but fully respected when we are considering the question of trade in services. It is only in so far as such laws and regulations impinge on cross-border trade in services that one could visualize consideration of how and, to what extent, they affect expansion of trade. It is possible that existence of such laws and regulations makes for expansion of trade rather than restricting it. There can be no a priori generalization that all regulation is bad and deregulation is always good. My delegation does not subscribe to such a thesis. The Ministers meeting in Punta del Este certainly did not propound it.

11. Some of the confusion seems to arise from a more fundamental misconception. We are here to negotiate on "trade in services"; and, "trade" here means international trade, and not internal trade, much less production and distribution of services within the national borders.

Stretching the concept of trade to bring in its ambit the whole series of operations involving investment, production and distribution of services within the national borders puts too much strain on logic as well as imagination. The attempt is indeed stupendous - but one is reminded here more of Prokroustes than of Hercules. What surprises one is that while the trading principles in regard to goods are so frequently cited in our discussions as a model, the concept of national borders which is crucial to such trade is so easily overlooked. Much of the confusion, and hopefully, the controversy, could be avoided, if we confine ourselves to our subject matter of international trade in services i.e. trade in services that takes place across the national frontiers.

12. It should now be clear how important definitional issues are. We, therefore, find ourselves unable to agree with one distinguished delegate who said yesterday that we should not start with formal definitional issues as that would amount to waste of time. The situation is, in our view, exactly the opposite. Unless we arrive at a clear, common understanding of what we imply by trade in services, we would only be talking at cross-purposes. No amount of beating about the bush would help us in reaching the concrete phase of negotiations in the absence of commonly accepted definitions.

13. The element of coverage of sectors of trade in services is, in our view, the next important area of work. Once we are clear in our definition, as serious negotiators, we would like to have before us the list of different sectors in which the participants would be interested. Indeed, tabling of such lists would enable each and every participant to see what is of importance and benefit to him more clearly. At the same time, it should be possible to have from such a list of sectors some idea regarding the possible overall balance of advantages that would emerge from expansion of trade in services in those sectors.

14. This is not merely a question of knowing more specifically the interests of the trading partners. If the objective of development of developing countries is to be achieved, the enumeration of sectors of trade in services will have to be first tested in terms of whether, and to what extent, expansion of trade in such services would promote development of developing countries. It is not enough to generalize that international competition is good and that it would lead to maximization of welfare all around. Apart from the theoretical weakness of such propositions, the hard experience of many newcomers on the scene of trade has been to the contrary and this applies not only to the experience of what are now known as developing countries but also to that of some of the industrialized countries who were, at a particular stage in their growth, relative newcomers on the scene of international trade. First, the aim of development has to be understood as seen by the developing country concerned, and not in terms of some mysterious handiwork of an invisible hand operating through idealised market processes. Second, it has to be recognized that identification of the possibilities for expansion of trade in services as attempted so far by some industrialized countries is purely

in terms of their own national interest. It is no wonder, therefore, that we come across listing of service sectors which are predominantly capital or technology intensive. It is also a fact that the transnational corporations who are even more dominant in trade in services than trade in goods are most interested in the removal of the so-called barriers in terms of the national regulations and adoption of international agreement on the model of the General Agreement which seeks to minimize the rôle of government, freezes the existing level of barriers, sets in motion a process for negotiations to reduce such barriers and generally, leaves the area free for the operators. If one were to assume a state of affairs in which such transnationals were equally distributed among all participants, were operating with the sole purpose of promoting the development of developing countries and were acceptable to developing countries as the principal, if not the only means, of their development, then perhaps the relevance of an approach advocated by some in terms of liberalization per se could be consistent with the goal of development. Unfortunately, however, this is not the case. Therefore, it is necessary to establish the ground work for negotiations in terms of specific sectors and also to ensure that there is no compartmental, arbitrary or whimsical definition of what constitutes services. The trade in services should encompass free access of skilled and unskilled workers from the developing countries into the developed countries' markets for services. All labour and labour-intensive services which could be traded across the borders will have to be incorporated in the listing of such sectors. Even with such inclusion, the balance of advantages may not be even from the point of view of developing countries. It is here that the mandate poses a real challenge to the negotiators.

15. We agree with some of the observations made in the course of yesterday that the objective of development and economic growth should be treated together and should permeate the entire approach to the possible multilateral framework including the sectoral disciplines. We believe that we should not base our approach on assumptions borrowed from familiar areas of trade in goods supplemented by carving out of exceptions in terms of special and differential treatment for developing countries. The objective of development should not be considered as an adjunct or an afterthought. The approach to the multilateral framework itself should be such as to ensure the achievement of this objective and it is here that one intensely feels the inadequacy of the GATT model.

16. This brings us to the third important element, viz. existing international disciplines and arrangements in the area of services. It is quite clear that those areas in which we already have international arrangements or agreements, e.g. civil aviation or telecommunications, will have to be closely examined in terms of their limits and potentials. It is only after exhausting such examination that we will be able to see, whether and how far we need to incorporate those sectors in a new multilateral framework or a sectoral discipline. It is possible that we may come to a common conclusion that nothing additional needs to be done or only some marginal strengthening or modification may be necessary in the existing arrangement. Such possibilities cannot be ruled out ab initio.

17. From another point of view also, it is important to look at the existing agreements and arrangements in the area of services. They may furnish us with alternative approaches or models which may be more appropriate to our mandate. One specific case may be mentioned here. The UNCTAD Code of Conduct for Liner Conferences is a model which is also for expansion of trade in shipping geared to the objective of development and equitable growth. There is no reason why such models should not be found applicable in other areas of trade in services also. At any rate, my delegation is in favour of a much more eclectic approach in this regard than some other delegations who have expressed, directly or indirectly, almost an exclusive preference for the model of the General Agreement on Tariffs and Trade.

18. Lastly, considering the rôle of the transnational corporations and the restrictive business practices that they adopt, any framework or sectoral discipline that we can think of for trade in services would, in our opinion, remain woefully inadequate if it does not deal with this problem frontally and squarely. Without developing appropriate concepts and provisions to remove such restrictive business practices and control and moderate the rôle of the transnational corporations, a framework for expansion of trade might ultimately become a framework for growth of transnational corporations rather than for development of developing countries.

19. We have confined our present statement to the general aspects of the problem and have refrained from going into specific details of each of the elements that have been identified for being addressed in the initial phase of negotiations. We have done this because we believe that the general debate should facilitate exchange of views and examination of the general aspects of the problem. Without such a thorough examination, the discussion on specifics might be disoriented. We would, however, like to come back to each of the specific elements as necessary in the context of the general debate in this meeting as well as in the future meetings of this Group.

20. Before concluding, my delegation would like to refer to one general point. We are aware that industrialized countries have been addressing the subject of trade in services for some years. The fact that they account for the overwhelming bulk of export and import of services speaks for itself. Also, the countries of OECD have a much higher degree of economic integration and parallelism of economic structures and policies, if not harmonization. This conditions their approach in a particular direction. We have no quarrel with their following that approach. All we would like to point out is that it would not be correct to generalize those circumstances and transpose the model that they might have found useful or appropriate for their conditions, to our present context of negotiations on trade in services. We cannot escape the responsibility that the Ministers have entrusted to us, which is of exploring and, hopefully, reaching our own multilateral framework geared to economic growth of all of us and the development of developing countries.

21. If we wish this endeavour to succeed, there are some simple do's and don'ts that, in our view, we would have to observe. First, we have to ensure strict adherence to our mandate - its wording, its parameters and its underlying assumptions. Second, if we want to build this mandate and develop it further, we have to do it by the golden rule of consensus and not by unilateral re-interpretation from time to time. Third, we have to avoid preconceived models and approaches. Fourth, we have to eschew the idea of point-to-point correspondence in the progress of two different processes of negotiations on goods and services. And last, considering the enormity and complexity of the task before us, we have to hasten slowly.