

**MULTILATERAL TRADE  
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THE URUGUAY ROUND**

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Concepts for a Framework Agreement in Services

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

### Introduction

The Ministerial Declaration calls for negotiations to establish a multilateral framework of principles and rules for trade in services. The United States believes that the GNS should concentrate its efforts on the elaboration of such a framework and work towards agreement on this framework as soon as possible. Early agreement on a framework and its coverage will allow the GNS maximum scope for subsequent negotiation on individual sector agreements.

In order to assist the GNS in its efforts to elaborate a framework of principles and rules for trade in services, the United States sets forth in this paper a number of considerations and concepts to facilitate this process. To date, there have been useful discussions in the GNS on several concepts of great relevance to a framework agreement, including those of transparency, non-discrimination and national treatment. The United States has taken into account these discussions in formulating its views on these concepts. In addition, the United States believes that there are additional concepts which should be reflected in a framework agreement.

This paper begins with a discussion of general considerations that should be taken into account in elaborating the framework and then proceeds to a discussion of a number of specific concepts.

### General Considerations

The United States believes that the following general considerations should be given great weight as work proceeds on the elaboration of a framework for trade in services:

- (1) The framework should be designed to achieve a progressive liberalization of a wide range of services sectors in as many countries as possible.
- (2) The framework should recognize the sovereign right of every country to regulate its services industries. At the same time, it should be agreed that the framework is intended to deal only with those measures whose purpose or effect is to restrict the access and operations of foreign service providers. The framework must ensure against the adoption or application of measures whose purpose or effect is restrictive or distortive of trade.

- (3) Under the framework there should be agreement by countries to avoid adopting new restrictive measures on foreign service providers and to apply the framework to the greatest extent possible to existing measures.
- (4) The framework should be of benefit to every country, regardless of its stage of economic development. It should therefore result in a progressive and time-phased liberalization of world services markets which contribute to development in a positive way, without compromising any individual country's development objectives. This will provide a more competitive environment within all services markets, enabling local consumers to utilize services bearing the most advanced technology with the lowest possible prices.
- (5) The framework should apply to the cross border movement of services as well as to the establishment of foreign branches and subsidiaries for purposes of producing or delivering the service within the host country.
- (6) The coverage of the framework should be broad but flexible. In this regard, once the content of the framework has been agreed, the GNS initially should attempt to extend its coverage to a wide range of services sectors. Using the framework as a point of reference, the GNS should then attempt to negotiate individual sector agreements as needed. These would provide additional, more detailed rules and should allow for greater precision and flexibility in attaining appropriate degrees of liberalization, depending on the sector in question.

### Specific Concepts

#### Transparency

The general objective of including obligations on transparency in a services framework agreement is to ensure that government measures affecting service industries are developed and maintained in a clear and predictable manner and that information on such measures is readily accessible and is made known to all interested parties on an equal basis. Since measures used by governments to control services industries are often promulgated for reasons unrelated to trade, it is necessary to provide a structure that allows for the examination of such measures, existing and future, directed at services and service providers and affecting the coverage of a services framework agreement. Such a structure would allow for the identification of both intended and unintended effects of government measures on the access and treatment of foreign services and service providers to a particular market.

Obligations on transparency should be twofold: (1) The obligation to publish proposed and final rules and regulations affecting services and subject to certain exceptions to provide interested parties the opportunity to comment on proposed rules and regulations. The advance publication requirement would not be required in the case of emergency measures to protect fiduciary, health, safety, and national security. The same is true for measures undertaken by courts and legislatures, where the timing and substance of a measure cannot always be determined in advance. The opportunity for comments by interested parties in advance of the regulation would not extend to a review of the proposal by an international body. It would be available to private parties and interested governments within a reasonable review period set by the regulator. Once they are legally effective, laws and regulations whose content are considered to be inconsistent with the framework could be subject to review under the traditional notification/consultation procedure referred to below; and (2) The obligation to notify other countries through an agreed procedure a certain category of government measures affecting services. Measures subject to this notification procedure would include those that the notifying country itself recognized as potentially having an adverse impact on the trade of others, either through its own internal assessment or by virtue of the measure having been called to its attention by other signatories. Measures having been so notified would be subject to consultations.

#### Non-discrimination

In general, signatories to the framework agreement should extend the benefits of agreement unconditionally to all signatories. Although the widest possible adherence of countries to the framework agreement is the most desirable, it is inevitable that some countries may elect not to become signatories. The United States believes that the benefits of the framework agreement need not be extended to non-signatories. It should be recognized that some countries will not be capable of applying the obligations of the framework agreement to some service sectors. In this regard, the United States offers the following preliminary observations. There could be flexibility allowed for signatories to take exceptions to the coverage of the agreement. However, the number and extent of these exceptions should be limited. One possible approach would be that signatories, upon entry into force of the framework agreement, could invoke non-application to those countries that have taken exceptions excessively. This would avoid upsetting the balance of rights and obligations of the framework agreement.

### National Treatment

The concept of national treatment should be a fundamental element of a framework agreement. National treatment should generally require that foreign service providers receive treatment no less favorable in like circumstances than that accorded to domestic service providers with respect to government measures affecting the service sector in question. The primary objective of national treatment is to prevent discrimination against foreign service providers as compared with their domestic counterparts. At the same time, the concept allows governments to take measures affecting services on a non-discriminatory basis in order to fulfill domestic policy goals.

In most cases, national treatment for foreign service providers would be treatment identical to that provided to domestic service providers in the service sector in question. Occasionally, differences in institutional structures and regulatory systems may require a modified approach to national treatment, which should be allowed under the framework such as in the case of national security considerations and fiduciary responsibilities. However, such treatment would have to be at least equivalent in effect. Parties would be obligated to substantiate such equivalency both in terms of establishing the necessity for non-identical treatment and ensuring that there is no disguised violation of the national treatment principle.

The concept of national treatment should also apply in a number of specific situations related to doing business in services. These include, but are not limited to:

- o Access to Local Distribution Networks. Many service industries rely on access to local distribution networks to effectively deliver their product to customers. Equal and non-discriminatory access to the means of distribution and delivery, such as transportation and telecommunications networks, are essential to all service providers.
- o Access to Local Firms and Personnel. The ability to deal with local firms and personnel on a contractual basis or otherwise is critical to the production, marketing and delivery of some services. Foreign service providers should have the option, but not be forced, to form partnerships locally when it facilitates participation in a market.

- o Access to Customers. Direct access of foreign service providers to domestic customers and of domestic customers to foreign providers can provide critical communication and information needed to effectively participate in a services market.
- o Access to Licenses. Service industries often require licenses and other operating authorizations. Foreign service providers should have non-discriminatory access to such licenses and authorizations.
- o Right to Use Brand Names. The right to sell under a brand name is important to effectively market some services. Foreign service providers should be allowed this right on the same basis as their domestic counterparts.

National treatment alone will not assure a liberal international trading regime in services. For example, regulators will sometimes impose market needs tests that limit or prohibit new entrants, whether foreign or domestic, into a given market. In some cases in the past, regulators have effectively cartelized a given services market by denying the issuance of new licenses for decades. National treatment obviously has no value in these instances from the standpoint of trade liberalization. While in a few instances regulators have established a legitimate need to limit the number of participants, a framework agreement should provide for a degree of foreign participation if such restricted circumstances recur. Another related issue exists with respect to establishment or investment requirements imposed on foreign service providers where such requirements bear no relationship to legitimate regulatory needs. Where there is no reasonable basis to require local establishment or investment, service providers should be able to sell their service across the border.

#### Discipline on State Sanctioned Monopolies

Governments sometimes choose to provide services through a single monopoly entity which can be either a state enterprise or a private party. The framework agreement should provide disciplines governing the behavior of such a monopoly entity in its capacity as a sole service provider as well as in its activities when engaged in competitive services. It should also assure that appropriate compensation to affected signatories or their affected entities is provided when a government decides to transform the provision of a service from a competitive to a monopoly environment.

The framework should not interfere with a government's sovereignty to provide a service by way of a monopoly. It should, however, oblige the monopoly entity to provide its service to foreign-based users on a non-discriminatory basis with respect to price, quality, and quantity.

Special disciplines should be established to guard against abusive and anti-competitive practices of monopoly entities that also engage in competitive services. The framework should prohibit the monopoly entity from cross-subsidizing its competitive services with monopoly revenues. There should also be safeguards to prevent the monopoly entity from denying its monopoly service to potential customers that are also offering a service in competition with the monopoly entity.

### Subsidies

The provision of subsidies by governments to their service providers can distort international trade in services. The services framework should therefore contain rules governing the use of such subsidies, whether they be domestic or export subsidies.

The rules should take account of the fact that such subsidies can have adverse effects on foreign competitors in the foreign competitor's own market; in third country markets; and the market of the country providing the subsidy. The rules might be analogous to some of the approaches existing for trade in goods in various GATT instruments. For instance, the framework could prohibit the use of export subsidies to service providers altogether and set out in an illustrative list specific examples of such export subsidies. As for domestic subsidies, there might be an obligation to seek to avoid those domestic subsidies that could have an injurious effect on service providers of other signatories.

The signatories should provide a mechanism for the resolution of disputes over the interpretation of the subsidy provisions. Authority to take offsetting measures equivalent to the impact of the injurious subsidy would be allowed. However, countervailing duties, in the traditional sense are not viewed as a practical way of dealing with subsidy practices, given the different means of trading services across borders.

### Non-discriminatory Accreditation Procedures

Services frequently require the presence of a provider to effectively produce and convey the service. Governments, and in some cases, self-regulating professional bodies, often impose extensive requirements for minimum standards of competence and ability in order to perform the service. Such measures arise from a legitimate concern for consumer protection and the desire to maintain the highest professional standards. However, these measures can sometimes extend beyond the legitimate standards of assuring competence and ability to perform a service and constitute an unjustifiable barrier to accreditation by foreign applicants.

A services framework should therefore discourage licensing measures that are unrelated to competence and ability to perform. It should also prohibit those measures whose purpose or effect is to discriminate against foreign providers of licensed services.

More specific rules for individual professions would be reserved for the sectoral agreements dealing with any such professions.

### Consultation/Dispute Settlement

The services framework should contain appropriate consultation and dispute settlement provisions. Such provisions might be similar in concept to Articles XXII and XXIII of the General Agreement or on similar provisions of the various Non-tariff Measure Agreements. Improvements in the traditional GATT dispute settlement mechanisms negotiated in the Uruguay Round should be taken into consideration by the GNS.

### Conclusion

The considerations and concepts set forth in this paper represent, in the view of the United States, a solid basis for the elaboration of a framework agreement to govern the conduct of international trade in services. In the U.S. view, such a framework should be negotiated and, if possible, implemented at an early stage of the Uruguay Round. The framework could then be the point of departure for the negotiation of sectoral agreements during the later stages of the Round.

While participants in the GNS should continue to deepen their analysis of all the elements of the 1987 work plan of the GNS, the focus of these various elements should now be directed toward the elaboration of the framework, as called for in the Ministerial Declaration.