MULTILATERAL TRADE NEGOTIATIONS
THE URUGUAY ROUND

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Draft Submission

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

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Draft Submission Presented by Switzerland

1. Introduction

The Punta del Este Declaration provides for the establishment of a multilateral framework of principles and rules for trade in services, with a view to expansion of such trade under conditions of transparency and progressive liberalization. The framework shall also respect national policy objectives. Bearing in mind the nature of the subject, there seem to be three essential points that must be made:

- the multilateral framework must not seek to impose a general liberalization or oblige countries to adopt a uniform behaviour. Instead, its objective will be to offer them the possibility of progressively liberalizing their trade in services, by establishing the multilateral consequences of the agreements they will have negotiated for the purpose. It will also lay down the criteria for such liberalization and exclude certain types of behaviour that are incompatible with it. In a form that will have to be defined in due course, the legal framework in question would be a counterpart of the General Agreement, which likewise did not require immediate liberalization by the contracting parties, but seeks to open the way for them to negotiate tariff cuts by establishing the modalities and legal conditions.

- Secondly, it is clear that the principles underlying this framework must be comparable to those of the General Agreement, in particular freedom of trade and equal treatment of contracting parties. It is important that the two régimes - for trade and for services - should not be incompatible. Their consistency must therefore be ensured, if not in form at least in substance.

  However, this does not in any way mean that the application of the provisions, instruments and mechanisms of the GATT should simply be extended to services. However ill-defined it may be, the nature of services would not lend itself to that. To a large extent, traditional trade policy intervenes "at the border". Physically and geographically, that is where the State intercepts, taxes or controls goods as they enter or leave the country. But this filter does not catch most services. In order to act on services, it is necessary to intervene at the stage where they are produced or provided. In order to bear upon the necessary instruments for this purpose, an international discipline must have adequate and original mechanisms which traditional trade policy does not offer.

- Thirdly, and in view of the above considerations, a readiness to innovate is essential. This applies first of all to the opening of markets for services, which should concern factors of

production and/or to the provision of services, and therefore must go far beyond the corresponding provisions of the General Agreement. It will be necessary clearly to define the scope of such openness and specify the grounds and modalities for whatever reservations are considered necessary. This need to innovate also applies to another fundamental problem, namely that of equal treatment of parties (the most-favoured-nation clause and non-discrimination). Do we even know what favourable treatment as regards services really is? Admittedly, the most-favoured-nation clause of the General Agreement likewise does not define such treatment for goods (but confines itself to providing for its application).

However, this silence is explained, at least initially, by the fact that the concept was so trivial that it could remain implicit: the more a barrier was reduced towards zero level, the more the treatment concerned was favourable. A 1 per cent customs duty is more advantageous than a 10 per cent duty. But what is the case when, as in the services sector, barriers are not, or only rarely, quantifiable? One might be tempted to seek a new definition. But this would be to overlook the fact that the more or less favourable nature of treatment is often a matter of largely subjective appreciation which may depend on the general context and the temporary situation of a country. This appreciation will therefore inevitably vary over time. Is it then realistic to try to cater for it, and thus run the risk either of failure or of reaching results that would be ineffectual because they would correspond to the smallest common denominator, which would in any event soon be overtaken by events?

2. Multilateral framework

In view of the foregoing, the multilateral framework for trade in services could comprise the following elements:

2.1 Scope

At this stage, it would suffice to provide that the multilateral framework should apply to all services sectors. It is well known that no satisfactory definition or statistics exist in the services area. Concerted action is therefore desirable so as to progress in this field. But the detailed determination of such action should not be a prerequisite for the negotiations and the implementation of the framework. It could be undertaken in parallel with the negotiations and, if necessary, completed within the institutional framework that emerges from the Uruguay Round.

2.2 Mechanism

2.2.1 The principle of equal treatment: optional most-favoured nation clause ("OMFN")

With regard to non-quantifiable measures applied in the services sphere, it is difficult, if not impossible, to define in advance, and once and for all, what "favourable" treatment should be. A starting point could therefore be the idea that agreements concluded between two or more countries are considered - by definition, as it were - to represent "progress", at least as regards the countries parties to such agreements. In that case, all or some countries, as the case may be, might wish to become parties to that "progress".

The "OMFN" would consist in giving any third country which deemed it desirable and advantageous the right to become a party to the agreement concerned, which would thus become applicable to it. In order to exercise this optional right (or option) and enjoy the advantages stemming from the agreement in question, the country or countries concerned would in exchange have to offer a counterpart that is formally identical to that furnished by the country or countries parties to the initial agreement. The exercise of this option would not depend in any way on the material value - in economic or trade terms - of such counterpart (it will be recalled that under the present MFN any concession is automatically and quite unconditionally extended to all contracting parties).[1]

It will also be observed that the agreements negotiated under the OMFN régime will make it possible to define the specific scope of equivalent treatment, and even of the national treatment corresponding to the subjects dealt with.

2.2.2 Negotiating rules

Such rules would in particular be necessary with respect to the negotiation of bilateral agreement and their extension

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[1] The general principle of non-discrimination cannot be combined with the OMFN mechanism. The latter implies that countries which forego joining an agreement accept that it will not be applied to them ("institutional discrimination"). On the other hand it would be wise to provide explicitly that no country should be deliberately injured by the autonomous measures taken or by agreements intended specially for that purpose by third parties ("intentional discrimination"). Furthermore, the treatment accorded to countries not members of an agreement should not discriminate between them.

to third countries that so request. In view of the very different initial situations from country to country, consideration might also be given to granting a third country the right to enter into negotiations with the party or parties to an initial agreement in the event that it wished to reach agreement on a counterpart other than that provided for in the initial agreement. In that case, rules could also be drawn up concerning the definition of the counterpart and the measurement of equivalence of concessions.

2.2.3 Initial application

In order to encourage the conclusion of initial liberalisation agreements, each participating country would be required to present a list of sectors with respect to which it is ready to enter into negotiations with any other participating country that so requests. These lists will have to be mutually balanced, while taking account of the situation of the less advanced countries. It might be provided that these lists will be expanded at more or less regular intervals.

2.2.4 Special régimes

The above mechanism should also be able to be applied towards and between unified economic areas. However, the agreements relating to services between participants mutually linked by agreements covered by GATT Article XXIV would not be considered initial agreements in the sense described above, in so far as they constitute an organic development of a trade régime governed by Article XXIV. Nevertheless, nothing will prevent a party to such an agreement from linking itself with a third country on the same subject and according to the mechanisms provided for by the multilateral instrument.

2.3 Accompanying provisions

In this connection, it might be appropriate to spell out the provisions governing general competition applicable, for example, with respect to State monopolies, subsidies, anti-dumping and so forth, as well as the rules relating to standards.

2.4 Surveillance, dispute settlement, sanctions

Provisions relating to these concepts should also be established. In this connection, the provisions on transparency should also be specified, bearing in mind the desired objective and the functioning of the multilateral framework.

2.5 Exceptions

It may be necessary to define exceptions concerning, for example, the protection of public health, the service consumer and security.

2.6 Safeguards

The need to provide safeguard possibilities and define their conditions and modalities should also be examined.

2.7 Transitional provisions

Transitional provisions may be necessary. Furthermore, a list should be drawn up of existing bilateral or multilateral agreements or, as appropriate, of their components, which would be considered as initial agreements in the context of the multilateral framework.