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COMMUNICATION FROM SWEDEN ON BEHALF OF
THE NORDIC COUNTRIES

Discussion Paper
A Possible Structure for an Agreement on Services

The following communication has been received from the delegation of Sweden on behalf of the Nordic countries, with the request that it be circulated to the members of the Group of Negotiations on Services.

Discussion paper

A possible structure for an agreement on services

The Nordic countries have in previous submissions MTN/GNS/1 and 26 outlined our view on how negotiations might most productively be organized and on how a few basic concepts for an agreement on trade in services interrelate. In this paper the Nordic delegations present some ideas on how a services agreement might look.

General considerations

As has already been pointed out by some delegations the task of drawing up a framework agreement on trade in services bears some similarities to what the drafters of the GATT faced some 40 years ago. Two of the main problems confronting the GNS were also present at the inception of the GATT. There were major statistical inadequacies to grapple with (problems still remain) and opinions differed on definitional questions (do we as yet have an agreed definition in the GATT of what is trade in goods?). This is not to belittle these and other problems in the GNS. They are indeed more pronounced than is and was the case in respect of goods.

There are several important differences between trade in goods and trade in services. The most important one is derived from the physical properties of goods. Goods can normally be stored and moved across borders as separate units. Tradeable services are on the other hand to a much larger extent integrated parts of an activity. Exports and imports of services very often require the movement of personnel across border and/or some form of commercial presence. Without pretending that statistics on trade in goods are perfect (remember the inexplicable "black hole" in world trade) it is clear that our knowledge of trade in services is far more inadequate. There is also a lack of understanding of some basic concepts and operational definitions.

This fluid state of affairs has consequences both for the type and method of negotiation. Despite its problems, both at the outset and over the years, the GATT has functioned well both as a basic framework on trade rules and disciplines and as an effective platform for progressive trade liberalization.

In our view the future agreement on trade in services should perform the same role. It is unrealistic to assume that an agreement on trade in services, as if with one stroke of a magic wand, would eliminate all barriers to trade and achieve full trade liberalization. The framework would rather be the stepping stone for embarking on a more substantial liberalization of trade in services. It would also provide the institutional locus to expand trade in services and, possibly, to make hitherto non-traded services internationally tradeable.

Under - but separate from - the general framework which might be characterized as an "umbrella agreement" there would be a number of specific sectoral or activity related agreements among interested parties. The membership in the sector/activity agreements need not and will almost

certainly not comprise all the members of the "umbrella agreement". The number of signatories may also vary between the various sectoral agreements.

One should aim at as wide a membership as possible in the general framework. The reason for this is that the general framework should provide the institutional forum for the future development of more comprehensive and specific multilateral rules for liberalization of trade in services.

To start with, the general framework should impose certain obligations in the field of transparency and exchange of information. Additionally, we would like to see a commitment not to discriminate between suppliers of services from other parties i.e. an MFN clause on the obligations under the general framework, a commitment to endeavour to apply regulatory measures with the least possible impact on trade and some form of stand-still provision on the introduction of new trade restrictions. The general framework should also cover provisions on consultations and dispute settlement.

With regard to a number of important elements such as MFN, national treatment, establishment, safeguards, subsidies and government procurement - one can see arguments for putting them in the general framework but also for dealing with them in sectoral agreements. Our preliminary preference was to develop a comprehensive general framework containing the above-mentioned principles. The problem that we have encountered is, however, that e.g. a safeguards clause or provisions on subsidies or national treatment in a general framework would probably not be identically applicable to trade in all sectors. Thus it is tempting to propose a relatively lean general framework and develop specific variants of the above-mentioned principles in each sector or activity agreement. At the same time, without some general indication of the principles that should be covered in sectoral agreements, overall coherence might be lost. It can therefore be argued that the general principles should be dealt with in the general framework

but in such a manner that it does not imply a commitment to undertake measures in any specific area. The principles should also be formulated in such broad terms that all service sectors could be covered.

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At our present stage of negotiations we believe that it is important to focus mainly on the general framework and adopt a very flexible attitude towards the more detailed modalities of subsequent stages. For example, it may not be possible to draw a strict distinction between sectoral and more activity oriented approaches. Both sectoral arrangements and certain specific activity regimes may very well be negotiated in parallel (that was the case in the Tokyo Round, cf. Civil Aircraft Agreement and e.g. the Subsidies Code). In order to see the possible relations between general and more specific approaches, some thoughts on subsequent stages of negotiations are also provided in the general outline sketched below.

A possible structure for a general framework agreement on services and subsequent sector/activity agreements

1. The basic level - the general framework

The general framework should in principle cover the whole sphere of services. Commitments should be of a clearcut and simple nature. They should introduce certain principles and disciplines to take into account when regulating trade in services on national levels, including county and local government levels e.g. in federal states, and set the foundation for multilateral work in the area. The framework should provide a basis for progressive liberalization as well as the promotion of growth and development. To these ends the general framework should contain the following elements:

- A preamble with general objectives: This part could include some of the language of the second paragraph of the Punta del Este Declaration as well as an equivalent

of the GATT preamble (in which "goods" would be substituted for "services" and "substantial reduction of tariffs and other barriers to trade" would be substituted for "a reduction of regulations having a negative impact on trade").

Development considerations could be covered by the preamble. Taken into account the level of commitments outlined above, the aim of which is to apply to all parties alike, there would be no need for a specific clause on special and differential treatment. Development aspects could also be mentioned in protocols of accession.

Furthermore, the preamble might mention the possibility that sectoral or activity agreements include additional or more specific objectives.

- Institutions: Even if the agreement as such in principle is separate from the GATT there are bound to be a multitude of material links to the GATT. The institutional structure should therefore not only be compatible with that of the GATT, but for economic and efficiency reasons a joint secretariat could certainly be motivated.
- Principles: The following principles should be applied at the basic level:

MFN: All benefits granted under the provisions of the general framework by one party to any other party to the agreement should be accorded to all other parties. This should not preclude higher levels of commitments to be applied among interested parties within the framework of sectoral or activity agreements or in the context of regional economic integration (cf para 2 below).

Regulations: Any regulatory mechanism should not impose restrictions to trade in services beyond those required to meet legitimate national regulatory objectives.

"Standstill": Some form of standstill commitment on a best endeavours basis. Any new regulation should comply with the principles defined above.

- Definitions/coverage: The general framework should cover all cross border trade as well as commercial presence.
- Transparency: The general framework should comprise a reasonable level of transparency to be accepted across the board by all parties. Transparency is of great importance in order to survey the implementation of the agreement as well as to provide suppliers with information on "the rules of the game". Each party should therefore be required to set up an enquiry point on national regulations.

Subject to national security and commercial confidentiality concerns parties should agree to share information about rules governing trade in services through the national enquiry point or on the basis of counter notifications. Parties should also agree to take part in consultations upon request on any information thus provided.

Transparency could also be improved through studies undertaken by the Secretariat.

A secondary transparency requirement, but no less important, is institutional. It is important to ensure the signatories of the general framework broad insight into the deliberations under the specific sectoral agreements.

- Consultations/dispute settlement: As stated above parties should be prepared to take part in consultations on any regulatory measures. Such consultations should upon request be open to all interested parties. Taking into account the relatively low level of actual commitments in

the general framework, "dispute settlement" in the traditional sense would probably rarely be called for. To ensure that any possible disputes are adequately dealt with, a mechanism would probably nevertheless have to be set up.

- Negotiations: There should be a provision for future negotiations at regular intervals on improvements and possible expansion of the general framework.
- Sectoral/activity agreements: The general framework should set down modalities for the subsequent negotiations on sectors or activities. It would furthermore specify the flow of information from the sectoral agreements to the executive body of the general framework agreement, thereby contributing to the institutional transparency mentioned above.

It follows from the general approach suggested that the executive body can not take decisions that in any way alter the rights and obligations derived from specific sectoral/activity agreements.

- General Exceptions: National security and commercial confidentiality.

2. Subsequent level(s): Sectors and activities

A very flexible approach as to the formal connexions between the general framework and later negotiated agreements should be taken at this stage. What could be stated at present is that all sector/activity agreements to be negotiated must be compatible with the general framework and based on its principles. As has been stated above, at this stage it does not seem desirable to embark on too elaborate discussions on "post framework" negotiations.

Such agreements could inter alia cover the following elements:

- Institutions: Since the levels of commitments will be higher and more specific on this stage and since the agreements would be separate undertakings among interested parties, not necessarily comprising all members of the general framework, they should have their own institutional set-ups. However, the combined secretariat function of the GATT and the general framework on services as outlined above should be used.
- Principles: Principles/commitments could i.e. comprise the following:

MFN treatment amongst signatories, including provisions to cover regional economic integration.

"National treatment", perhaps defined as equal or equivalent treatment, where appropriate with more precise interpretations (and possible exceptions). In case certain types of regulations could be identified, where national treatment could be agreed on across the board, this could be included in the general framework at a later stage.

"Standstill" in some form, if more precise or restrictive than the general framework commitment.

- Definitions/coverage.

Sector/activity to be defined.

Commercial presence and/or establishment, to the extent such rules affect trade in services concerned.

Investments, to the extent such rules affect trade in services concerned.

Mobility of "key personnel".

Government procurement.

Subsidies and dumping.

- Consultations/dispute settlement will be more important on this level and provisions could be more elaborate, Procedures may have to be "tailor made" depending on the contents of sector/activity agreement.
- Exceptions may have to be more specific along with more specific commitments.
- Safeguards_clause.
- Transparency - a higher level of transparency, e.g. comprising advance notification, time for comments etc., may be agreed upon on this level.
- Review/further_negotiations.
- Conditions_for_accession/transitional provisions (time-bound gradual adjustments to the provisions of the agreement, where appropriate taking into account development concerns).