

**MULTILATERAL TRADE
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THE URUGUAY ROUND**

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COMMUNICATION FROM ARGENTINA

Elements for a Possible Framework Agreement on Trade in Services

The attached communication has been received from the delegation of Argentina, with the request that it be circulated to the members of the Group of Negotiations on Services.

This document is a response to the decisions adopted in Part II of the Ministerial Declaration of Punta del Este and concerning the implementation of results.

Introduction

The political commitment made by countries at Punta del Este and the inclusion of the subject of trade in services in that context point to the sector's growing importance in international trade in the coming decades.

At this stage in the negotiations it is therefore necessary to prepare, through the multilateral framework, the future structure for trade in services, endeavouring to maintain a suitable trade balance within the sector that will prove acceptable to the interests of all parties. This multilateral framework will condition future developments in this area as a whole, and must reflect the objectives laid down by the Ministers.

In connection with this last point, the set of principles and rules to be agreed should respect the national policy objectives contained in the laws and regulations which countries apply to the services sector. Furthermore, it is necessary to promote the economic growth of all countries and the development of developing countries through the expansion of trade in services. Consequently, aspects such as transparency and progressive liberalization are elements which must evolve gradually as the above-mentioned objectives are fulfilled.

In the final analysis, liberalization of trade in services will take place according to the limitations imposed by the realities existing in specific sectors of that trade.

Clearly, the commitment undertaken by parties in Part II of the Punta del Este Declaration is to seek to establish a multilateral framework; hence our contribution to this subject.

I. NATIONAL POLICY OBJECTIVES

A first question is the extent to which it will be guaranteed that the national laws and regulations applied in the services sector in the light of national policy objectives will be respected and not eroded either through disciplines of the multilateral framework or through possible sectoral disciplines.

The multilateral framework should include the general principle that laws and regulations which pursue national policy objectives are not to be questioned. This general principle should also be reflected in a specific provision or provisions governing the future sectoral disciplines. There should be an option for developing countries to establish, at the sectoral level, their specific national policy objectives.

In short, there should be two stages for establishing these criteria; the multilateral framework which sets the general criterion, and establishes procedures for parties to define their national policy objectives; and a clause allowing developing countries to avail themselves of a second option of defining policies at the level of the future sectoral disciplines.

II. THE CONCEPT OF DEVELOPMENT

For a developing country such as Argentina, the way in which the concept of development is included in the multilateral agreement is crucial.

First of all, we all recognize the emphasis and prominence accorded to this issue in the decision adopted in Part II of the Ministerial Declaration on the Uruguay Round.

Secondly, for a developing country the concept of "development" goes far beyond mere economic growth: it must reflect not only quantitative progress but also active participation in trade. It is therefore necessary not only to establish and determine the elements which would allow developing countries to have an independent decision-making capacity regarding issues relating to trade in services, but also to ensure those countries a larger share and better integration, in that trade, and the security and capability to adapt to new circumstances in international trade.

Taking these first elements into account, we may distinguish a number of ideas which will certainly be discussed and which we believe may provide important elements for a preliminary elaboration of the concept of development.

It is impossible wholly to foresee today the possible developments in international trade in services, and therefore the multilateral framework, whose principal objective is to establish permanent rules and principles for that trade, should contain elements flexible enough to allow for the developing countries' needs in terms of adaptation and participation.

It is also necessary to consider a provision or provisions allowing developing countries to adopt measures to regulate certain services activities relating to economic development. These arrangements should not be confused with ad hoc exceptions such as balance-of-payments measures etc., and should be automatically extended by other parties. In connection with these provisions, however, mechanisms relating to transparency (notification, consultation) might be provided for in order to avoid negative effects for some or all member countries.

Finally, another general element should also be taken into account in this connection, relating directly to the continuing process of adaptation to new trading conditions that might arise for developing countries from possible regulations in the area of trade in services. Some comments and suggestions may be made in this connection:

- (a) The necessary instruments to enable those countries to participate progressively and actively in the world export trade must be guaranteed. Hence, firstly, developing countries should be granted suitable latitude to put into practice all policy instruments required to facilitate the export of services. This involves action in the realm of export promotion, in the broad sense, allowing various activities aimed at stimulating export flows;
- (b) The possibility of measures by developed countries to facilitate imports of services from developing countries should also be encouraged. Such measures should provide a permanent stimulus by developed countries to facilitate the integration of developing countries in these new trade flows. An example of this type of encouragement would be the extension of the prohibition on protection within an integration arrangement among developed countries to exporting developing countries;
- (c) The developing countries' need to adopt ad hoc, short-term measures to enable services to be imported as inputs for the subsequent export of similar or different services should be taken into account, without a possible criterion of selectivity as regards potential suppliers of such inputs implying a breach of the principles of the general framework by developing countries;
- (d) Another element to be considered from the standpoint of developing countries is the extent to which the trading structures that develop with the progressive liberalization of trade in services will involve capital flows.

Therefore, developing countries, in their natural situation as recipients (importers), should be able to realize the foreign-exchange balances of specific projects connected with trade in services, and have the power to regulate part of the flow of foreign exchange generated by that trade, taking into account the financial cost of a project for the receiving country;

- (e) Joint action between developing and developed countries can be envisaged. Nothing in the agreement should hinder the promotion of joint ventures;

- (f) Provision should also be made for the fact that the diversification and growth of trade in services for developing countries is closely linked with the process of transfer of technology.

Thus, it will be necessary to ensure suitable access to technology, and that trade in services is accompanied by undertakings for the transfer of technology. Furthermore, rules must be drawn up to ensure that legislation relating to intellectual property does not impose monopoly rights over the transfer of technology. Other elements that should be discussed are:

- (a) The question of restrictive business practices, and in particular the practical application of the set of principles and rules already agreed within UNCTAD;
- (b) The question of whether or not it is necessary to establish rules of conduct for transnational enterprises in connection with the impact of their activities in developing country markets.

III. DEFINITION

In order to determine the exact scope of the rules to be agreed, it seems necessary to agree on a definition of trade in services or a service transaction. There are two choices here:

- (a) To work on a technical definition, which would involve analysing, among other things, such issues as whether or not the right of establishment subsumes the transaction criterion, and discussing the treatment of agreements that already exist in the services area.
- (b) To agree that the rules and principles of the agreement should apply to the negotiations aimed at establishing sectoral disciplines. In this way it would be possible to establish an open-ended annex in which the sectors covered by the exercise could be detailed. This would also imply introducing some kind of mechanism for decision-making in this area by an executive body administering the convention.

IV. PRINCIPLES

It is understood that a framework agreement on trade in services should include the principles which, while placing signatories on an equal footing, provide for the complexity and specific characteristics of that trade.

Despite their acknowledged general application, it should be recognized that their extension to specific sectoral disciplines calls for some degree of adaptability.

UNIFORM TREATMENT

On the basis of the above considerations, we think the discussion can be focussed on the principle of equality of opportunity of market access. In our view, within a possible multilateral framework it would be possible to imagine an "ab initio" equality of all signatories supplying a service, regardless of the degree of openness of the market or the specific service sector in question.

Under this approach, the element of "protection", understood to mean the placing of foreign and domestic suppliers on an equal footing, would not be questioned as such. The existence of uniform treatment should not in itself imply a reduction of barriers to trade in services, since the latter should be the object of sectoral disciplines.

In short, the objective of uniform treatment is that it should be applied without discrimination among foreign suppliers. Furthermore, uniform treatment should ensure a balance in the treatment of factors of production. This general principle should be defined specifically when determining the need to establish sectoral disciplines; all of which is without prejudice to the observations contained in Section II above.

V. UNFAIR PRACTICES

This chapter should not be confined to the examination of issues relating to export practices, suitably reflecting the different situation of developing countries, but should also cover some further elements which it is worth at least mentioning. These should include clauses relating to the prohibition of limiting or prohibiting exports of services in any way, and clauses guaranteeing access to sources of services and technology.

Governments should be in a position to take action in the case of unfair practices on their domestic market: for example, if an attempt is made to gain total or partial control of the services market through a price war.

VI. INTEGRATION AGREEMENTS AMONG DEVELOPING COUNTRIES

Specific provisions should guarantee that the possible advantages accruing in this area for developing countries which wish to embark on integration processes, or have already begun or completed them, are not impaired or called into question.

VII. PROCEDURE FOR PROGRESSIVE IMPLEMENTATION

The process of transparency and consultation may mean that certain national rules and regulations are not fully in agreement with the general provisions of the framework agreement. It might therefore be appropriate to provide for practical procedures to be used by parties in order

gradually to adjust their national provisions. Clearly, this procedure does not concern the laws and regulations that are considered to pursue national policy objectives as described in Section I.

This concept of bringing national provisions into line could be linked with the time-limits for entry into force, progressive acceptance and so forth. In this case, the possibility of technical assistance and co-operation for developing countries should also not be ruled out.

VIII. OTHER ELEMENTS OF THE FRAMEWORK AGREEMENT

Other elements to be provided for in a multilateral framework should include the following:

- (a) Transparency: Transparency is an instrument and not in itself a principle of the agreement; it is rather a means of monitoring compliance with obligations under the multilateral framework. Thus, obligations in this respect would only concern the provision of information relating to the individual obligations entered into under the framework. Procedures connected with the possible exercise of sectoral disciplines should be dealt with specifically.
- (b) Consultations and dispute settlement:
- (c) Exceptions (security, health, public morals, etc.)
- (d) Balance of rights and obligations.
- (e) Emergency measures (e.g. safeguards, balance of payments).

IX. INSTITUTIONAL ASPECTS

The application of a multilateral framework and the implementation of sectoral disciplines will require the establishment of an executive body to administer the agreement.