

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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COMMUNICATION FROM THE UNITED STATES

PROCEDURES FOR REACHING AND IMPLEMENTING
A MULTILATERAL FRAMEWORK FOR TRADE 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.

Procedures for Reaching and Implementing a Multilateral
Framework for Trade in Services

1. In October 1987 the United States presented a discussion paper (MTN.GNS/W/24) setting forth concepts for a framework agreement to govern trade in services. This paper elaborates on the procedures for reaching such an agreement as well as on procedures for negotiating the reduction or elimination of measures that are not otherwise liberalized under the framework. In preparing this paper the United States has benefitted considerably from the discussions in the GNS relating to the structure of a services framework and from the written submissions of the Nordic Countries, the European Community, Argentina, Mexico, Switzerland, Canada and Australia.

2. A key procedural issue to be resolved is the sequence in which negotiations should be carried out leading to a framework agreement and other steps toward a progressive liberalization of services trade by the end of the Uruguay Round. Different views have been expressed as to the issue of sectoral coverage under the framework, the relationship of the various provisions of the framework, and the possibility for negotiating supplemental agreements that take into account the peculiar features of some services industries. This paper focuses on issues of this type. While the basic concepts of the framework agreement were examined in the U.S. submission in October and are thus not covered in this paper, we nevertheless reiterate one aspect of the contents of a framework agreement here -- namely, an effective framework agreement must contain both procedural as well as substantive obligations. This means that while the primary emphasis of the framework agreement is to establish a solid, rule-based foundation providing for the progressive liberalization for international trade in services, it should also set forth procedures for the subsequent removal of obstacles found not to be consistent with the principles of the framework. It should be remembered that the trading system is without a comprehensive set of rules with respect to services trade, and the Punta del Este Declaration provides the opportunity for establishing meaningful rules in this area.

Negotiations in the GNS - A Three Phase Process

3. Negotiations can be visualized as a three phase process for purposes of putting some order in reaching decisions. It is inevitable that the phases described below will overlap, or that later stages of negotiation will require new examination and modifications to the conclusions of an earlier phase. However, this basic sequence could best assist the process of fulfilling the Punta del Este mandate. Phase one would be characterized as the "general rules drafting phase"; phase two might be termed the "sectoral coverage phase"; and phase three could be termed the "further liberalization phase". The United States believes that all phases must be completed successfully by the end of the Uruguay Round.

Phase One

4. This involves the negotiation of the rules and disciplines that would be incorporated in a framework whose provisions are generally applicable to a wide range of services industries. The United States has provided its views on the contents of such a framework in MTN.GNS/W/24.

5. While the rules of the framework should apply to all existing and future regulatory measures affecting covered services industries, a procedure is proposed in Phase Two that would allow signatories to notify reservations for those measures they are unable to bring into conformity with the framework. A commitment to negotiate the possible elimination of these reservations would be embodied in the framework. Any non-conforming existing measures not so notified under Phase Two would have to be brought into conformity with the provisions of the framework either upon its entry into force or within a specified time thereafter.

Phase Two

6. Once signatories have agreed in principle on the general substantive content of the framework agreement, the negotiation would enter the phase of establishing sectoral coverage of the agreement. The United States believes that, in the absence of a common understanding as to what sectors are encompassed by the term "services", it will be necessary to reach agreement on a common list of specific services industries to which the framework agreement would be applicable in all signatory countries. If

insurance is a covered sector, for example, it might be commonly understood to include the underwriting of property/casualty, life and reinsurance. However, it would be necessary to make clear whether related activities such as insurance brokerage, claims adjustment and risk management are covered. Existing or planned systems of classification of services may be of assistance in specifying a final coverage list. This phase of negotiations would include a thorough discussion of some of the principal sectors of interest to the GNS. In this regard, there have been no procedures established for developing a list of sectors that would be covered by a framework agreement.

7. To deal with this, the United States proposes a procedure, as a preliminary step in the undertaking of Phase Two, that may launch a sectoral discussion process without compromising any strategic concerns that could make countries reluctant to notify suggested industries for coverage under the framework. Under this procedure, all participants in the GNS would notify anonymously to the GATT Secretariat those sectors they believe should be subject to the rules and obligations of the framework agreement. From these anonymous notifications the Secretariat would prepare a consolidated list of all sectors notified, which would constitute a point of departure from which the negotiation on sectoral coverage could be launched.

8. From the consolidated list, negotiations would be undertaken to arrive at an agreed list of services sectors subject to the framework. The U.S. objective as noted above, is to arrive at a uniform list of services sectors subscribed to by all countries. Procedures must be developed to add new sectors to the list subsequent to the Uruguay Round.

9. Subsequent to reaching agreement on the sectoral coverage of the framework agreement, participants would be allowed to notify reservations with respect to existing measures (government regulation) in covered sectors that will not be brought into conformity with the framework agreement upon entry into force of the agreement. Measures for which reservations are taken would be the object of subsequent negotiations, during the Uruguay Round and in future rounds, aimed at their reduction/elimination or phase-out on a reciprocal basis over a specific period of time.

10. The reservations procedure might also be structured so as to allow countries not to be bound by certain measures that under existing regulation conformed to the provisions of the agreement. Such a procedure should be undertaken by countries only in circumstances where they determine it is necessary to achieve the desired balance of commitments by all participants in the framework.

This form of reservation, which is analagous to an applied tariff that is unbound, would provide signatories with a form of leverage that may be appropriate to balance concessions under the framework, depending on how many reservations other countries notify. All reservations would be set forth as schedules to the framework. To discourage excessive reservations, signatories could invoke the right of non-application to another signatory that excessively notified reservations under the framework, thereby upsetting the balance of rights and obligations governments assume to exist legally when the framework enters into force.

11. Discussions on sectoral coverage may also lead to a decision among participants to include some "interpretive notes" to the framework that would clarify its application to individual service sectors, for all signatories. Some interpretive notes might take the form of sectoral annexes that would be considered as integral components of the framework agreement.

12. In very limited instances, interested parties may wish to establish a separate sectoral agreement with rules that are legally apart from the provisions of the framework agreement.

13. There might also be separate sector agreements among interested parties that would provide for further degrees of liberalization for a particular sector that is otherwise covered by the framework. The United States foresees that these supplementary agreements would arise in rare instances because the general framework agreement should contain sufficient obligations so as to minimize the need for any such supplementary agreements.

14. The principles established in the first phase, together with the list of covered services sectors, and any accompanying interpretive notes agreed in the second phase, would constitute an integral part of the framework and bind all signatories. At this stage of the negotiations, the framework could enter into force. Any separate sectoral agreements of the kind described above would be outside the framework contract, and, of course, would extend obligations solely to those participants who become signatories to them.

Phase Three

15. This phase would involve negotiations among signatories aimed at the progressive liberalization of measures not otherwise liberalized in phases one and two. Measures subject to negotiation in this phase would consist of those laws and regulations signatories notified as reservations to the framework agreement. The consultation/dispute settlement mechanism would provide procedures allowing for the resolution of differences between parties as to whether a measure is in conformity with the framework.

16. Part of the obligation assumed by signatories to the framework would be to engage in negotiations to reduce or eliminate the non-conforming measures notified under the reservations provision. Such negotiations would offer signatories the opportunity to bring about the reduction of measures by providing incentives to obtain a balance of concessions over a broad range of sectors covered by the framework. This makes the framework a more dynamic document than a structure of individual sector agreements where leverage is limited in a negotiation to developing a balance of concessions solely within the sector itself.

17. The United States believes that the Ministerial Declaration will be fully satisfied only if all three phases described in this paper are completed during the Uruguay Round. The final phase, of course, will itself establish a process for agreeing to a series of negotiations in years subsequent to the Uruguay Round deadline. However, a meaningful first step in the reduction of non-conforming measures on a reciprocal basis by all signatories can and should be undertaken before the end of 1990.