

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNS/W/45
11 July 1988

Special Distribution

Group of Negotiations on Services

Original: French

COMMUNICATION FROM SWITZERLAND

The following communication, dated 8 July 1988, is circulated at the request of the delegation of Switzerland to the members of the Group of Negotiations on Services.

The present document aims to clarify and develop certain elements of the Swiss submission dated 11 December 1987 (MTN.GNS/W/30) which nevertheless remains valid. It also endeavours to take account of discussions in the Group of Negotiations on Services (GNS) as well as of other submissions presented so far.

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I. General considerations

In accordance with the Declaration of Punta del Este, the principal objective of the GNS must be the elaboration of a multilateral framework comprising principles and rules, with the aim of promoting expansion of trade in services, through progressive liberalization while respecting national policy objectives.

Switzerland considers it essential that such a framework should be of a truly multilateral character. Such character must be reflected in liberalizing action at two levels: on the one hand, at the level of a collective commitment in regard to principles, rules of behaviour and procedures, and on the other hand at the level of the rights and obligations that will result for all contracting parties¹ to such agreements regarding trade in services as may be concluded under the auspices of that framework.

Through such action and the dynamic process that it will set in motion, the framework will open the way for progressive liberalization and for extension of trade in services, not only in the course of the Uruguay Round but after its conclusion.

¹The term "contracting party" is used here to designate the parties to the multilateral framework concerning trade in services.

Lastly, respect for national policy objectives does not exclude common principles, provided that approximation of national legislation and practices must not necessarily be achieved at one stroke, but can result from continuing efforts by each of the contracting parties to fulfil its commitment to apply the common principles in an increasingly general and advanced manner.

II. The multilateral framework

II.1 Structure

Taking into account the foregoing and the objectives already enumerated in the earlier submission (MTN.GNS/W/30), it would be desirable that the multilateral framework comprise the following chapters:

- Principles
- Rules for autonomous behaviour
- Rules for negotiation of agreements
- Rules for competition
- Safeguards
- Institutional provisions
- Dispute settlement
- Transitional provisions.

II.2 Principles

In order to avoid useless formalization and any perpetuation of the gap that can exist temporarily between the common objective and national policies or practices, Switzerland proposes the following approach: the principles enumerated below should define the general orientation that contracting parties undertake to give to their national legislation and practices in regard to services, and likewise to any international agreements they conclude in that area. Actions contrary to those principles must be banned. On the contrary, all future government actions must be inspired by those principles. If their implementation cannot be immediate, it will therefore be progressive and will be achieved by putting into practice the rules and mechanisms set forth below.

In this perspective, contracting parties would subscribe to the following principles:

- Access to markets will be improved so as to allow open competition consistent with the relevant multilateral rules between national and foreign services and suppliers (access to markets);
- Conditions of access and of competition will not be deliberately less favourable for one or more foreign services or suppliers than for other comparable foreign services or suppliers (non-discrimination);

- The treatment applicable to foreign services and suppliers admitted to the national market will be identical or equivalent to that applied to comparable national services or suppliers (national treatment);

These principles apply to the autonomous evolution of national legislation and practices as well as to their contractual evolution. Their implementation will imply the necessary transparency for legal security.

II.3 Rules for autonomous behaviour

In this respect, the commitment of contracting parties could be defined as follows: notwithstanding national provisions in force, contracting parties undertake to promote the fullest possible application of the above principles. In particular, they undertake to take account of them in any amendment or renewal of their national provisions. In no case will they introduce new provisions that would set off in their legislation a trend contrary to those principles.

II.4 Rules for negotiation of agreements

The following rules would be designed to promote implementation of the principles set forth above through agreements:

- Any agreement concerning trade in services negotiated between contracting parties must be consistent with application of the above principles.
- Subject to the following paragraphs, such agreements will be applicable only between the parties that have formally subscribed to them.
- Nevertheless, any party to such an agreement will extend its applicability to any third contracting party (or to any group of third contracting parties) which so requests and offers the counterpart furnished by the other party or parties upon conclusion of the said agreement.
- If a contracting party already linked to one or more other contracting parties (or group of contracting parties) concludes a more favourable agreement with a third contracting party (or group of third contracting parties) on the same subject, the partner or partners to the initial agreement may benefit from application of the new agreement on the conditions stipulated in the paragraphs above.
- Agreements on services shall not be designed nor framed in such a way as to hamper unduly or to prevent exercise of the right envisaged in the preceding paragraph by a third contracting (or group of third contracting parties).

- The right to participate in agreements shall apply provided the main object of the agreement is the exchange of services or the commitments regarding services can be dissociated from the other elements of an agreement.
- This right is likewise applicable by and in respect of unified economic areas. However, it may not be invoked in respect of agreements on services concluded between parties linked together by an agreement falling within Article XXIV of GATT, to the extent that the agreement in question constitutes an organic development of a trade régime covered by Article XXIV and that exclusion of that right does not constitute a disguised restriction on international trade in services.

In order to foster negotiations between contracting parties in regard to services, the following additional provisions could be envisaged:

- Contracting parties will furnish a list of sectors and/or measures on which they are disposed to negotiate with any contracting party that so requests. Those lists will form an integral part of the multilateral framework and will be updated every (X) years. Contracting parties will have the right to declare that they do not apply the present framework in respect of a contracting party that has not presented any list or has presented a list the content of which is appreciably below the general level, it being understood nevertheless that contracting parties shall not expect from developing countries lists that are inconsistent with their development needs.
- Any contracting party may at any moment request any other contracting party to enter into negotiations on services. Any contracting party shall endeavour to respond positively to such a request, it being understood that if a contracting party is already a party to an agreement on the same subject or if that subject is included in the list it has filed under the above paragraph, it shall not refuse to enter into negotiation with the contracting party that has so requested.
- Under the present contractual framework, the rights of a contracting party may likewise be invoked in respect of a contracting party that has concluded an agreement with a country that is not a contracting party to the said framework.

II.5 Rules for competition

Since the general principles call for the exercise of open competition consistent with the relevant multilateral provisions, it would be desirable to establish rules concerning:

- The application to trade in services of provisions of the type of those of the General Agreement in regard to subsidies and anti-dumping measures, and likewise rules on technical barriers to trade;

- State monopolies, which should neither be established nor modified in such a way as to withdraw all or part of trade in services from the coverage of the present multilateral framework.

II.6 Safeguards

One could envisage elaborating a clause regarding the staging over time of any unexpected effects of new commitments deriving either directly from the multilateral framework or from agreements concluded under its auspices, and likewise provisions concerning measures tolerated in the event of difficulties of a structural character.

II.7 Institutional provisions

In order to ensure full implementation of the principles and mechanisms agreed upon, institutional provisions would have to be adopted in regard to transparency, surveillance, and also the procedure and follow-up action for dispute settlement:

- Any new provisions adopted or any new practices introduced in regard to services must be notified, including any amendment of existing legislation or regulations, and likewise any agreement on the subject. Each such notification will include an explanation as to progress made through the relevant innovation in implementing the principles stipulated in the present multilateral framework.
- Any contracting party which considers that a new provision or practice or a new agreement of another contracting party has not been notified in accordance with the above provisions, may bring the matter to the attention of that other contracting party. If the legislation, practice or agreement in question is not then notified promptly, the contracting party can itself bring it to the attention of the Committee on Services.
- The Committee on Services, in which all contracting parties will be represented, will examine the notifications received. It will ensure that any new provision or practice and any new agreement respects the principles established in the present multilateral framework.

II.8 Dispute settlement

Any contracting party which considers that another contracting party is not respecting obligations under the present multilateral framework or those resulting from agreements contracted under its auspices, may initiate a procedure of consultation and then of dispute settlement. This procedure could be based on that established by the contracting parties to GATT. In the event of infringement of the rules, the Committee on Services should make provision for sanctions.

II.9 Transitional provision

It might be desirable, during the Uruguay Round of negotiations, to agree on existing bilateral or plurilateral agreements that would, in part or in their entirety, be considered as initial agreements in terms of the multilateral framework.

III. Concluding remark

It is understood that if certain subjects were to be included on all the "lists of availability for negotiation" - or at least on a majority of them - presented in accordance with the above provisions, nothing would prevent agreements on the subjects in question from being negotiated already in the course of the Uruguay Round.

In the immediate future, it would nevertheless be appropriate to reach agreement rapidly on the following points:

- A multilateral framework will be established, the principles of which in regard to market access, non-discrimination and national treatment will foster extension of trade in services and its progressive liberalization.
- That multilateral framework must allow progress toward increasingly general and full application of those principles, once the Uruguay Round has been completed.
- Domestic policies will be oriented toward the common objectives by rules of behaviour; similarly, at the contractual level, rules for negotiation would establish rights and obligations for all contracting parties in respect of agreements concluded between two or more of them.