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The basis for the progressive liberalization process

The following communication is circulated at the request of the Permanent Delegation of the Commission of the European Communities to the members of the Group of Negotiations on Services.

Introduction

In its Discussion Paper "A possible conceptual structure for a Services Agreement" (MTN.GNS/W/29), the Community stressed the need for a balance to be maintained between the progressive liberalization of market access and the respect for policy objectives. It proposed to achieve such a balance by the establishment within the Agreement of a permanent Regulations Committee. This would have "the task of distinguishing regulations which should be regarded as appropriate, and on which no further action should be taken pursuant to the agreement, from those which should be regarded as inappropriate and hence subject to eventual elimination or amendment". During discussion in the GNS, the concept of appropriateness became assimilated to that of non-negotiability.

In the light of the discussions in the GNS, and in particular of the outcome of the Mid-Term Review, the Community now considers that the objectives which it sought to achieve through the institution of a Regulations Committee could be achieved through other means. It accordingly puts forward the following proposal as a basis for the progressive liberalization process envisaged in paragraph 7(b) of the Montreal text (MTN.TNC/11). Further supplementary elements may be put forward in the future.

A. Rules and principles of the framework

1. The rules and principles of the framework shall be applicable to all sectors covered by the framework, unless otherwise specified therein on the basis of sectoral annotations (see section B below).
2. Some of the rules and principles, particularly transparency, disputes settlement, safeguards and institutional provisions, will represent obligations to be implemented by all signatories from the moment of entry into force of the framework. Others, particularly those relating to the achievement of effective market access such as national treatment, will

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constitute obligations to be implemented by a signatory immediately in relation to the initial commitment under paragraph C(1) below and progressively as he takes on greater liberalization commitments/bindings under paragraph C(3) below.

3. A very limited number of general exceptions may need to be provided for in the framework (e.g. for reasons of national security, public order).

B. Sectoral annotations

1. Certain multilaterally agreed sectoral annotations to elements of the framework may be necessary. These may take the form of:

- clarifications or modifications of a provision of the framework in relation to the sector concerned or to the form of trade utilized.
- additional provisions applicable only to one or more sectors, or,
- in special cases, the total or partial non-application of a provision to the sector.

2. Such sectoral annotations shall be subject to multilateral review [--] years after the entry into force of the framework.

C. Negotiation of liberalization commitments/bindings

1. An appropriate first liberalization commitment/binding would be constituted by a commitment by all signatories in relation to all sectors covered by the agreement, not to introduce new measures which are incompatible with the rules and principles of the multilateral framework or, as appropriate, any relevant sectoral annotations.

2. Any measure which is not covered by an exception as referred to in paragraph A(3) above may be the subject of negotiations on a further liberalization commitment/binding (see section D below).

3. Such further liberalization commitments/bindings, the first package of which should be agreed in the framework of the Uruguay Round, should be negotiated primarily on the basis of a multilateral approach, leading to commitments which are applicable by all signatories. In addition, bilateral or plurilateral negotiations could lead to individual commitments which are then extended to other signatories on the basis of the provision regarding m.f.n./non-discrimination¹ (paragraph 7(d) of the Montreal text).

¹The Community intends to put forward a further proposal on the issue of m.f.n./non-discrimination during the coming months.

4. liberalization commitments/bindings would be made in the form of an undertaking regarding the total or partial elimination, whether immediate or on the basis of a time-schedule, of measures which are incompatible with the rules and principles of the framework or, as appropriate, any relevant sectoral annotations.

5. Where commitments relate to the partial elimination of measures, these might, to the extent provided for in the framework, be qualified by conditions aimed at promoting development.

6. Where commitments under paragraph 1 apply, and where further commitments under paragraph 4 above do not result in the full and immediate application of the rules and principles of the framework in relation to all measures, the provision regarding m.f.n./non-discrimination will normally apply.

D. Level of negotiated commitment

1. All signatories shall make negotiated liberalization commitments. The long-term aim of the process will be to achieve effective market access. Such an objective implies that differing contributions will be required from different signatories, depending on the particular characteristics of their markets, the degree of liberalization already achieved and their individual development situation in different sectors.

2. All signatories will contribute to the process of progressive liberalization by adequate participation in periodic packages of negotiated commitments/bindings. The first of these should be negotiated in the framework of the Uruguay Round, and subsequent packages every [--] years.