

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNS/W/74

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COMMUNICATION FROM PERU

Exceptions and Safeguards

The following communication is circulated at the request of the delegation of Peru to the members of the Group of Negotiations on Services.

Exceptions and safeguards

The following should be considered:

I. "Ab initio" general and permanent exceptions:

The framework agreement should include a specific clause allowing "ab initio" permanent exceptions for reasons of public order, legitimate policy objectives, national security, and protection of cultural values and public morals, among other things. Through the application of this concept, certain sectors, sub-sectors or specific transactions could be excluded. All participants could invoke this clause.

II. Temporary safeguards exclusively for balance-of-payments protection:

As mentioned in the communication from Peru in document MTN.GNS/W/49, developing countries experience major imbalances in their payments by reason of the import of services. To date, this has taken the form of a surplus in favour of developed countries and a virtually structural deficit for developing countries. The framework agreement should therefore contain specific provisions to protect the balance of payments of developing countries. The temporary safeguards are aimed at protecting the external situation of a country facing a serious decline in, or low level of, monetary reserves.

Consequently, this clause should be included in the framework agreement and be applicable to all services sectors.

Recourse to these temporary safeguards should be notified by the country applying them to interested contracting parties immediately following their application. The creation of a body responsible for conducting consultations and supervision concerning the application of these measures should be envisaged in order to avoid abuses and ensure the measures are dismantled once the balance-of-payments problems that gave rise to them have ceased to exist.

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The application of temporary safeguards for balance-of-payments reasons could involve the temporary withdrawal or limitation of concessions granted on the basis of the principles of market access, national treatment, progressive liberalization, etc.

III. Temporary derogations "(rebus sic stantibus)" - unforeseen cases of "force majeure" arising in specific sectors or sub-sectors:

These derogations may be invoked by all participants.

Examples:

- Injury to domestic industry caused by a sudden increase in imports;
- consumer protection;
- Protection of the environment;
- Protection of physical infrastructure;
- Protection of networks;
- Protection of infant industries;
- Monopolistic practices of operators affecting competition.

The consultation and supervision mechanism suggested in the case of temporary safeguards for balance-of-payments reasons would also be applicable to this category.