

**MULTILATERAL TRADE  
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COMMUNICATION FROM THE EUROPEAN COMMUNITIES

Non-Discrimination in the Multilateral Framework for Trade in Services

The attached 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.

## NON-DISCRIMINATION IN THE MULTILATERAL FRAMEWORK FOR TRADE IN SERVICES

### INTRODUCTION

Paragraph 7(d) of the Montreal text states simply that "the multilateral framework shall contain a provision on mfn/non-discrimination." Such a provision is critical to ensuring that the multilateral framework will secure an adequate balance of rights and obligations leading to genuine liberalisation and the achievement of effective market access. Historically, it has also been important in ensuring the broadest possible participation in the liberalisation process.

In line with other elements of the Montreal text, two basic parameters should be met by the provisions :

- the right to substantial benefits should be dependent on the assumption by each signatory of an appropriate minimum level of mutual obligations (§9 of the Montreal text);
- the right to substantial benefits should not require similar contributions from every signatory ab initio (§7(E) of the Montreal text).

These parameters are consistent with the basis on which the multilateral trading system has liberalised trade in goods : overall reciprocity. On this basis, all participants are expected to make contributions leading to a mutually advantageous balance of benefits.

The following proposal is closely linked to that set out by the Community in its paper "The Basis for the Progressive Liberalisation Process" (MTN.GNS/W/66). So as to ensure that this process is dynamic, priority should be given wherever possible, as underlined in Section C of that paper, to multilateral liberalisation commitments leading to comparable levels of effective market access.

### PROPOSAL BY THE EUROPEAN COMMUNITIES

1. Liberalisation commitments should be bound in the framework on a basis of unconditional MFN among signatories. This should be formulated along the lines of Article I of the GATT.

2. Cases arise where the provision of a service requires compliance with regulations, standards or qualifications in the importing country and where the particular mode of delivery makes it impossible for that country to control directly compliance with such requirements. If in such cases it is impossible to modify or remove the relevant requirements, signatories may subordinate market access to a requirement of harmonisation or recognition of the regulations, standards or qualifications of the supplying country.

Wherever possible in this respect, recourse should be made to internationally agreed requirements. In any case, compliance with regulations, standards or qualifications, and any requirement of harmonisation or recognition, should be formulated and/or implemented in a manner which is transparent and which would not constitute a means of arbitrary or unjustifiable discrimination between signatories where the same conditions prevail, or a disguised restriction on international trade.

Where a signatory believes that it has been unjustifiably excluded from benefits under the framework as a result of such a requirement, it may raise the issue in the framework of the consultation and dispute settlement provisions of the framework.

3. A specific provision will be necessary to allow for more rapid liberalisation under agreements between a limited number of signatories on a regional basis. Such liberalisation should respect the following conditions :

- agreements should liberalise trade in services between the parties in a broad range of sectors,
- agreements should be linked to customs unions or free trade agreements for goods, and
- agreements should not prejudice the level of liberalisation commitments undertaken by the signatories concerned in the context of the general framework.

Appropriate transparency and monitoring provisions should be foreseen.

4. A provision relating to non-application of commitments between particular signatories should be included in the framework. Such a provision should permit a signatory not to apply some of its liberalisation commitments to another signatory when it considers that the level of commitment of the other signatory is not in keeping with the particular characteristics of that signatory's market and the degree of liberalisation already achieved by that signatory, as well as its individual development situation in different sectors.

Such a provision should be subject to appropriate consultation and multilateral surveillance. A possible mechanism could be based on the following elements:

- action to be subject, at the request of the affected signatory, to bilateral consultation with a view to reaching a mutually satisfactory solution (consultations to be initiated within a reasonable time prior to the intended implementation of non-application),
  - action taken to be notified not later than the moment of entry into force of the commitments concerned,
  - opportunity for the affected signatory to raise the matter before the managing body of the multilateral framework, which would examine whether the action being taken was in proportion to the problem complained of, and might make appropriate recommendations.
5. Liberalisation commitments are bound only in relation to other signatories and provision will therefore need to be made for the determination of origin of services supplied. This issue will also be relevant in relation to regional liberalisation agreements and common criteria in this area would be desirable.

There is at present no internationally agreed basis for the determination of origin of services supplied and different options will need to be explored.