

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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

CONSIDERATIONS RELATING TO THE FOLLOWING PRINCIPLES:

- PROGRESSIVE LIBERALIZATION
- MARKET ACCESS
- NATIONAL TREATMENT
- MOST-FAVOURED-NATION/NON DISCRIMINATION
- REGULATORY SITUATION
- INCREASING PARTICIPATION OF DEVELOPING COUNTRIES
- EXCEPTIONS AND SAFEGUARDS

These elements are closely linked and interrelated. the Austrian contribution therefore presents them within the context of their ties and affinities. A future agreement may, however, include individual definitions for each element.

PROGRESSIVE LIBERALIZATION

Progressive liberalization should be an instrument to open markets gradually and over a longer range to foreign suppliers and to accord them national treatment. The objective of progressive liberalization should be achieved by regular negotiating rounds. The legal basis of this process should be a multilateral agreement with rules and principles which are to be negotiated during the Uruguay Round. Such rules and principles should be applicable horizontally to all international tradeable services under this agreement included by the end of the Uruguay Round or to be included in future negotiations rounds. Sectors covered by the liberalization process should be set down in an Annex to the agreement. This procedure appears to be appropriate as no generally accepted classification of services is available. It would also serve transparency.

Considering that services sectors are highly heterogeneous, provisions deviating from the general rules and principles may be necessary for some sectors. They could be set down in sectoral annotations. Signatories should be entitled to include in such annotations sector-specific national regulations deviating from the general provisions. These sectoral annotations may be an integral part of the framework agreement but may be subject to renegotiation in future negotiating rounds. Signatories should also be entitled to exclude certain sectors in whole or in part for national policy objectives or to liberalize them at a slower rate than generally agreed upon. Such provisions could be added in the form of sectoral annotations again, but may be subject to future negotiations.

Considering that many services sectors touch upon vital national policy objectives and that a number of national

suppliers of services may have little experience with cross-border trade in services, it is advisable to start the liberalization process with great caution. A balance of rights and obligations of signatories should be observed in all stages.

Content of progressive liberalization:

1. Progressive opening of markets to foreign service suppliers (general clause).
2. Progressive inclusion of new sectors into the liberalization process.
3. Progressive extension of liberalization to cover new services within particular sectors.

Notes on items 2 and 3:

The result of the current Uruguay Round will determine the services to be included and the extent of their inclusion in the liberalization process. It is conceivable that only a few sectors or only certain services of a particular sector will be liberalized at the beginning. Future negotiating rounds will have to include new sectors and new services of sectors already partially liberalized.

4. Progressive extension of the transactions to be included into "trade in services" with regard to market access. This could involve i.a. the extent of factor movements, movement of consumers as well as other cross-border transactions. Signatories may consider it necessary to interpret or restrict certain transactions in some sectors or services by sectoral annotations during the first stages of liberalization. The necessity of such reservations may be determined only after a definition has been achieved and after examining the individual sectors.

5. Progressive reduction of regulation discriminating against foreign suppliers. Such regulations concern foreign suppliers and therefore may protect national suppliers of services.
6. Progressive mutual recognition of national regulations (cf. national treatment).
7. Progressive reduction of foreign trade restrictions in services.

Negotiating rounds:

Round 1 (Uruguay Round):

Signing of the multilateral framework agreement and its adoption as a national law. Some of the rules and principles of the framework agreement, in particular transparency, could become effective on its signature. The framework agreement should cover all sectors included in the liberalization process. A standstill (freeze) provision may be agreed for these sectors.

Round 2 and following rounds:

These rounds should negotiate further stages of liberalization. Negotiations will concern mainly the inclusion of new services sectors, new services within services sectors and sector-specific issues (cf. content of progressive liberalization).

Content of sectoral annotations:

Sectoral annotations may contain general rules or national provisions applicable to all signatories:

- Notes on sectors or services included in the liberalization process, possibly also the extent of liberalization, reservations, etc.;
- sector-specific interpretation of the horizontal elements and principles of the multilateral framework agreement;
- sector-specific rules with regard to the transactions determined under "trade in services",
- possibly also information to improve transparency, e.g. relevant national regulations, bilateral/plurilateral agreements, etc.

MARKET ACCESS

Market access is closely linked to the principles of national treatment, most-favoured-nation, non-discrimination and the transactions included in "trade in services".

Market access should be accorded those sectors and services only which have been included in the liberalization process.

Markets should be opened progressively to foreign suppliers of services in accordance with the liberalization agreements achieved in the negotiating rounds. Market access will be extended progressively by the liberalization process (cf. progressive liberalization).

The most-favoured-nation and non-discrimination principles should govern market access.

Market access will also depend on the extent to which national regulations are observed by foreign suppliers. Foreign suppliers fulfilling national regulations will be accorded equivalent national treatment, i.e. the opportunity to operate in this market at competitive conditions equivalent to those accorded national suppliers.

Signatories should be entitled to exclude or limit market access to foreign suppliers in particular sectors or services for reasons of ordre public or other national policy objectives. Nevertheless a balance of rights and obligations should be observed. If any signatory excludes too many sectors or excludes one sector of importance to other signatories, such a balance may not be ensured. In such cases the other signatories should be entitled to restrict market access for certain sectors for service suppliers of the signatory

concerned. Signatories should also be entitled to open certain services sectors at a slower rate than has been generally agreed when national policy objectives require such measures. And they should be given the option of temporarily rescinding liberalization of some services for national policy objectives. Rules for such limitations of access should be defined in exception and safeguard clauses.

Because of national policy objectives, in some sectors market access may be accorded only through establishment. The right of establishment may be restricted in other sectors. A more profound examination by sectors will be possible only after the elements and principles of the framework agreement have been determined.

Market access including cross-border labour movement needs careful consideration. In principle it should be possible only for providing a specific service within a certain time limit but the respective labour market regulations must be observed. In some sectors continuous provision of services including cross-border factor movements could be made dependent on establishment. It would be necessary to make a more profound examination of sectors.

Efforts should be made to accord foreign suppliers effective market access. Effective market access might be impaired by dominating companies, state monopolies/state foreign trade companies or administrative measures. Liberalization should be conditioned by the rules of fair competition and generally valid principles.

Effective market access in this connection means transparency and the opportunity of actually working on a market, in particular free movement of the service provider within the country; access to the customers, access to information,

statistics, etc; utilization of the infrastructure necessary for offering services; no administrative measures treating foreign suppliers less favourably than national suppliers. If the right of establishment is granted, effective market access also means the opportunity to actually establish a local presence and work on the market.

In some cases granting effective market access may depend on reciprocity.

Exceptions and limitations to market access are to be considered under "Safeguard and Exceptions" with particular regard to the following reasons: national security, sovereignty, protection of morals and public order, protection of cultural identity, health, environmental and consumer interests, guaranteeing the quality of services, requirement of very high supplier reliability, ensuring product liability and legal recourse against the supplier, etc.

NATIONAL TREATMENT

Within the scope of cross-border trade in services, national treatment could mean granting foreign suppliers conditions with regard to laws, regulations, administrative practices, national taxes and dues which are equivalent to those of national suppliers. National treatment does not mean according them the same treatment unconditionally.

National treatment is a precondition for being able to offer services at equitable competitive conditions. National treatment provides foreign suppliers with effective market access.

In order to be accorded national treatment, the foreign supplier should meet the national regulations of the host country to the same extent as the national supplier. A foreign supplier cannot expect any better treatment than that accorded the national supplier, as this would mean discrimination against the national supplier.

National treatment of a foreign supplier is a long-term objective. National regulations could be mutually recognized bilaterally or plurilaterally by future negotiations. Such agreements on reciprocity would accord foreign suppliers which meet the national regulations of their home country national treatment in the host country. It appears suitable to proceed by sectors.

Harmonization negotiations within a general agreement on trade in services on a sectoral basis would be conceivable. It should be examined to what extent harmonization negotiations may be possible in cooperation with existing international services organizations active in the relevant sectors.

In some cases cross-border movement of capital and labour is necessary in order to provide services. The extent of factor movements will depend on the transactions to be included in the "trade in services" and the sectoral annotations. Factor movements which are essential for providing a service may also be accorded equivalent national treatment, i.e. application of national regulations with respect to establishment and labour (salaries/wages and social law). National regulations with regard to stay of foreigners should be respected. Some exceptions from equivalent national treatment of foreign suppliers should be possible for national policy objectives.

MOST-FAVOURED-NATION/NON-DISCRIMINATION

Similar to GATT, most-favoured-nation treatment should be granted to cross-border trade in services among signatories. Positively, this means that an advantage given to one party to the agreement should be granted to all others as well; negatively, this means that signatories are obliged to treat a party "not less favourably" than any other party (non-discrimination).

Most-favoured-nation treatment should be applicable horizontally as a general principle for all services sectors. Nevertheless M.F.N. should be applied only when a specific sector has been included in the liberalization process. Vertically it should be granted to those signatories which liberalize the respective sector to approximately the same extent. If any signatory excludes an important services sector from liberalization it should not be accorded M.F.N. in this sector. All signatories should commit themselves at a comparable level.

The M.F.N. principle should at first refer only to market access. Granting national treatment depends a priori on bilateral/plurilateral agreements. Agreements on mutual recognition of national regulations cannot be extended automatically to all signatories. Other signatories should, however, have the option to enter into bilateral/plurilateral negotiations as well.

Exceptions from M.F.N.:

Customs unions, free trade areas and regional economic integration schemes which provide for more extensive liberalization of the trade in services, possibly special agreements between neighbouring countries to facilitate cross-border trade.

REGULATORY SITUATION

The Punta del Este Statement of Ministers determined that "a multilateral agreement to liberalize trade in services should respect the policies objectives of national laws and regulations applying to services"

In Montreal it was recognized that "governments regulate services sectors, e.g. by granting exclusive rights in certain sectors, by attaching conditions to the operations of enterprises within their markets for consumer protection purposes and in pursuance of macro-economic policies. Asymmetries exist with respect to the degree of development of services regulations in different countries. Consequently, the right of countries, in particular of developing countries to introduce new regulations is recognized. This should be consistent with commitments under the framework."

All states regulate the services sectors by national regulations. Such national regulations may apply to the supplier of a service, the production of a service and to the service itself. Many national regulations are expressions of vital national objectives. Such objectives may be different in the various states and may change over time (e.g. environmental protection). Therefore it should be possible for signatories under certain conditions to introduce new regulations after the framework agreement has been signed (safeguard and exception clauses).

Major objectives of such regulations may be: ensuring the quality of services, protecting life and health, environmental protection, consumer protection, protection of creditors, maintenance of safety and security, product liability and legal recourse, fair competition, etc.

In order to ensure these objectives the right to provide a service is linked to certain legal preconditions, such as professional qualification standards, diplomas, minimum capital requirements, etc. Some services require a particularly high reliability on the part of suppliers. In such instances the right to provide such services could be linked to establishment.

National regulations apply to both national and foreign suppliers of services; they thus offer no a priori protection of national producers against foreign imports. The foreign supplier should meet for the national regulations in order to be accorded national treatment and effective market access.

National regulations which are a precondition for the provider to supply a service may impair cross-border trade in services as only national regulations of the country involved are usually recognized and not those of the foreign supplier's home country. Progressive liberalization should lead to mutual recognition of foreign regulations (cf. progressive liberalization and national treatment).

National regulations applicable to foreign suppliers should be examined as to whether they are still justified. Unjustified regulations should be reduced in the course of progressive liberalization.

INCREASING PARTICIPATION OF DEVELOPING COUNTRIES

The Ministerial Declaration of Punta del Este states that:

"Negotiations in this area shall aim to establish a multilateral framework of principles and rules for trade in services as a means of promoting economic growth of all trading partners and the development of developing countries."

In Montreal Ministers decided that:

"The rules, modalities and procedures for progressive liberalization should provide appropriate flexibility for individual developing countries for opening fewer sectors or liberalizing fewer types of transactions or in progressively extending market access in line with their development."

Ministers in Montreal also agreed upon an increasing participation of developing countries inter alia through

- the strengthening of their domestic services capacity and its efficiency and competitiveness and
- the improved access to distribution channels and information networks.
- "Autonomous liberalization of market access in favour of services exports of developing countries should be allowed.
- Particular account should be taken of the serious difficulty of the least-developed countries."

Provisions for the increasing participation of developing countries should take into account that individual signatories have different levels of development and competitiveness within the respective services sectors.

Progressive liberalization should therefore grant developing countries appropriate flexibility to liberalize services sectors or types of transactions within certain sectors according to their development needs.

Whether the slower liberalization of the services (or types of transactions) concerned is still necessary under a development and competitive aspect could be reviewed periodically or upon request of another signatory to the agreement.

Transfer of know-how, technology and capital as well as education and training of local workers might be relevant to increase the efficiency and competitiveness of developing countries in the services sectors. Joint ventures and possibly establishment could support such transfer, with positive effects on domestic employment policies.

A profound examination of the individual sectors might be useful.

Signatories should examine the realisation of such measures in close co-operation with other competent institutions.

EXCEPTIONS AND SAFEGUARDS

The lack of an effective discipline on protective measures has been one of the main problems of the GATT in the past decades. A new agreement on the trade on services should therefore strive from the beginning to set out clear criteria and rules without foregoing the chance to draw on the experience of GATT in this respect.

Three kinds of protective measures and their implications should be considered:

- 1 measures against unfair trading practices, such as dumping and subsidies (Articles VI);
- 2 exceptions of a general or specific nature aiming at situations comparable to those embodied in Articles XII, XVIII, XX, XXI (fair trade situation);
- 3 safeguard measures aiming at situations comparable to Art. XIX as presently discussed in the NG9 i.e. strictly temporary, accompanied by structural adjustment measures; (fair trade situation).

However, having in mind the very different nature of services in comparison to trade in goods, existing GATT provisions cannot be made directly applicable to trade in services.

As there is only a limited number of services which can be regulated at the border, the majority will require internal control through administrative or judicial mechanisms.

The scarcity of data on the internal and international trade in services requires a new concept of "increase of imports" (especially if services are rendered through local establishments) and a new concept of the notion of "injury" compared to GATT.

The maintenance of a minimum national production of services can be recognized as a legitimate national policy goal.

Similar to the service-relevant situations covered by and referred to in numbers 2 and 3 above (exceptions and safeguard measures) the following ones should inter alia be recognized as valid criteria (national objectives) because of the specific nature of services:

- protection of public morals
- protection of human, animal or plant life or health
- protection of essential security interests
- balance of payment considerations
- maintenance of vital infrastructure (f. ex. transport, health care, communication)
- structural adjustment measures
- maintenance of a national education system
- protection of the national identity and culture
- protection of a healthy environment
- prevention of excessive unemployment or structural underemployment
- assurance of social security
- protection and preservation of scarce resources and endangered species
- consumers' protection by setting minimum requirements for providers of certain services.

Protective measures may be directed against cross-border trade, cross-border movement of factors, consumers and payments.

The applicability of the following principles to provisions which will allow obligations to be waived should be considered by the group:

- universal or sector specific application of measures
- flexibility for developing countries
- subsidiarity of protective measures
- multilateral application as the rule, selectivity as the exception in well defined circumstances
- causality between import increase of a service and injury suffered
- proportionality of the measures taken
- degressivity of measures
- limitation of duration
- stricter rules for an eventual prolongation
- transparency through reporting, notifications, consultations
- special surveillance and review mechanism
- recourse to a dispute settlement procedure.

As many of these principles will be applicable to all protective measures irrespective of the service concerned, general rules for protective measures could be envisaged which would, nevertheless, allow for service specific adaptations if necessary.

A special regime for tradeable services offered by public entities or state owned monopolies or firms with dominant market positions could be envisaged. Such a regime could contribute to avoiding the abuse of market power. However, national competition, anti-trust and cartel laws should be the main instruments used to ensure fair competition.