

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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COMMUNICATION FROM INDONESIA

Some Essential Elements Which Should Enter as a
Part of Any Framework Agreement in Services
to Accommodate the Development Needs
of Developing Countries

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

I. Introduction

1. The stage has been reached in the Uruguay Round to define more explicitly the interest of developing countries in the field of trade in services. In so doing, it is necessary to formulate succinctly both the underlying conceptual starting point appropriate for developing countries and the specific operational content which reflects that approach.

2. The approach Indonesia regards as appropriate would be a flexible, process-oriented, building-block approach which would take fully into account the special needs and circumstances of developing countries. The view Indonesia takes in this paper is not a final position and Indonesia reserves the right to undertake modifications in the light of further developments in the negotiations with a view to achieving a concrete and constructive approach to the question of international trade in services.

II. General principles: development objectives

3. In approaching trade issues, the single most important concept to which developing countries are committed is the concept of development. The results of the Uruguay Round must contain specific elements which deal with the development aspects of international trade. Negotiations on all the issues in the Uruguay Round must have specific reference to the development aspects.

4. One manifestation which reflects the development concern is the provision on "special and differential treatment" or "special and more favourable treatment" for developing countries. This must permeate throughout the discussions in the Uruguay Round.

5. S and D is a specific manifestation of the general recognition of the international community that the development of developing countries remains a central commitment.

6. In the broader context of the development objective of developing countries, S and D is a means to an end. The more fundamental end is the objective to ensure that new rules in international trade would be consistent and not inimical to the development objectives of developing countries. Indeed, it must support the development objectives of developing countries.

7. It is therefore crucial that the development concern of the developing countries be reflected in more specific ways in the proposals for any framework agreement in services in the coming months.

III. Services and developing countries

8. The development concern, which is applicable generally across the board, must of course be applicable to trade in services.

9. In order not to continue at the level of generalities, it is imperative that more specific and concrete proposals be put forward giving an operational content to the development component in the proposed framework agreement. But they must also be consistent with the economic realities and operational context of trade in services.

10. For developing countries to be actively engaged in the negotiations in trade in services, problems relating to the participations of developing countries in service activities must first be concretely dealt with. It is the basic building block before other aspects or principles would be regarded as attractive, giving an overall "architecture" to the framework agreement.

IV. Greater understanding of trade in services: the need to emphasize process rather than rigid rule-making

11. For all countries, the service sector is less known than the goods sector. Accordingly, efforts must be devoted to know more about the sector so as to arrive at the relevant and appropriate rules that would govern trade in services effectively, consistent with the development objectives of developing countries and the objective of further liberalization of trade.

12. A thorough grasp of the economics and business of trade in services is a requirement for arriving at the appropriate set of rules that would help to govern fairly to meet the needs of all parties. In this connection, developing countries wishing to deal with definitions of trade in services are expressing a genuine concern. It reflects the desire to have a better conceptual hold and understanding of the sector. It should not be regarded as a trivial concern.

13. It is therefore important to stress that because the services sector is a new area of attention, and because not much is known about the sector, sectoral testing was regarded as necessary. Indonesia shares this view and regards the exercise of sectoral testing to be useful in clarifying principles, facts, ideas and policies connected with trade in services.

14. Whatever may be the outcome of the Uruguay Round in the field of services, in view of the pervasive nature of the sector, studies and analysis on the development of trade in services and their impact on the development of developing countries should continue to be monitored by the GATT secretariat and other international institutions.

15. Secondly, although some general rules in the conduct of trade in goods may be relevant to trade in services, other rules may not be easily applicable. Accordingly, it is important to maintain an open view about the applicability of rules for the trade in goods to the service sector.

16. Great care must be devoted to ensure that we do not mechanically transpose rules applicable in the goods sector which might not be relevant in the service sector. An overly legalistic approach is undesirable. It is more important that the rules accurately reflect the realities of trade in services, support the objective of development of developing countries, and are consistent with the general objective of a freer world trading system.

17. What is more important at the initial stage is to establish the foundation which encourages the process of participation of developing countries, encourages freer trade in services over the long run, and increases the benefits to all participants, especially the developing countries. The process is necessarily dynamic. The process to encourage the participation of developing countries, the development of the service sector of developing countries, the strengthening of service providers from developing countries and the gradual liberalization of the service sector must move in balance.

V. Framework agreement and modalities for further sectoral negotiations

18. The exercise of sectoral testings has shown the complexity of trade in services. Papers by the GATT secretariat have demonstrated that great efforts need to be devoted to ensure that the complexity of services do not lead the negotiating exercises either to hasty simplification on the one hand or to indecision on the other.

19. To develop the appropriate rules for international trade in services which would be relevant over the long term, it is necessary that the approach taken would reflect such long-term considerations. The long-term considerations of developing countries must be reflected in any framework agreement. It is in the interest of the international community that such concerns be reflected in a framework agreement. Their participation is likely to be more speedily attained.

Framework agreement

20. In order to ensure that international trade in services contain basic provisions which would be regarded as fair and relevant to all parties, it is necessary first to arrive at a framework agreement which would define the broader context of an international agreement on trade in services. This is necessary before the more sector-specific agreements could be negotiated. The April TNC document has provided some of the concepts which could be incorporated in a framework agreement.

Sectoral agreements

21. Having formulated an agreed framework agreement, the sectoral agreements or sectoral annotations could then be negotiated applying the general principles contained in the framework agreement. The Singapore proposal on request-and-offer approach could form the basis for such sector-specific agreements. The specific advantage of the Singapore proposal is that countries could initially undertake commitments and gradually extend them at their own individual speed. On the other hand, to accommodate those who do not wish to accord advantages to "free-riders", the proposed "entry fee" is provided. The mechanism provides a flexible approach to build on a convention or practice in trade in services.

VI. Specific operational principles

22. In view of the above considerations, the task now is to formulate the framework agreement which would take fully into account the development dimension of developing countries. If developing countries are to participate positively and concretely in an international framework agreement, it is important that the fundamental interests of developing countries be reflected in the text of the agreement.

What should be the starting point?

23. Looking at the April TNC document, it is important that the "raw materials" identified in the forms of principles to be considered be further reconstituted into an "architecture" which would provide a context of relevance to the developing countries. The "architecture" of the framework agreement could be built around the specific relevant basic principles. In view of the evolving discussions in the past several months, it is clear that the foundation and the relevant starting-point should be made more explicit.

24. The April text provided an illustrative list of possible basic principles which could be a part of a framework agreement on services. The sequence in which the principles were listed in that document does not necessarily reflect, and indeed was not intended to reflect, any ranking in the order of their importance. Moreover, the list was considered as open-ended and subject to further additions by participants during the negotiations. More importantly, as negotiations proceed the illustrative list must necessarily be reconstructed into a more structured conceptual framework.

25. For developing countries, a reordering of the list must be made so as to reflect a relevant conceptual order of priority.

26. Thus, for developing countries, the building blocks would also have to reflect their own specific needs. Basically, the conceptual framework must answer the following questions of major concern:

- why should developing countries participate in the negotiations, formulation and the possible functioning of an international framework agreement in services?
- how should the developing countries participate in any agreement?
- how should the liberalization process be applied to developing countries?
- what "safeguards" should be considered for developing countries?

The approach to the question should be responsive to development needs of developing countries, flexible enough to accommodate future development, encourage the development of trade in services and fair to all participants.

VII. Participation of developing countries

27. Consistent with the realities of developing countries, it is important to start with the basic foundation of ideas which directly address the needs of the developing countries. The basic idea which could form the foundation to meet the central concern of developing countries can be summarized as the requirement that developing countries specify clearly their conditions and modes for their participation in the trade in services.

28. In terms of the TNC document MTN.TNC/11 of 21 April 1989, this refers to paragraph 7(f) which among other specifies that:

"The framework should provide for the increased participation of developing countries in world trade and the expansion of their service exports, including, inter alia, through the strengthening of their domestic service capacity and its efficiency and effectiveness."

The central question to be answered is, what should be the necessary condition for participation of developing countries in the trade in services?

29. The general answer to the question is provided in the passage of the TNC document quoted above, namely that participation of developing countries requires "... strengthening of their domestic service capacity and its efficiency and competitiveness". This provision implies the need to develop means to strengthen the capacity of domestic corporate entities of developing countries as an integral part of an overall framework agreement in services.

30. The answer lies principally in the conditions for entry into the market of developing countries. Accordingly, principles such as national treatment, m.f.n., and reciprocity, cannot be applied in an absolute and abstract manner. Although in the long-term perspective general rules may be applicable, in the development transition, they must be applied with qualifications. Some of the qualifications are described below. They are not intended as clauses to escape responsibilities. They are intended to accommodate the specific needs of developing countries to allow a more dynamic and realistic process of transition, structural adjustment and development.

Developing countries as a principal market

31. The sectoral testing exercises conducted so far in the GNS have demonstrated that the developing countries are the principal markets for many of the trade in services. Virtually all the developing countries, with only some exceptions, are large net importers of services, both financial and non-financial. Liberalization of trade in services, therefore, is to a large part also a process of opening the market of developing countries.

32. While developing countries recognize that opening the market for trade in services, under proper conditions and with adequate developmental provisions, could be beneficial to all concerned, the process of opening must be balanced. It must meet the development, trade and financial needs of developing countries. For this reason, the negotiating approach proposed by Singapore would go a long way to help a balanced process.

Export interests of developing countries

33. To address adequately and properly the question of participation of developing countries no factor movements should be excluded. Developing countries are competitive in labour-intensive services. There should be no permanent exclusion to factor mobility that would exclude labour from trade in services. In the sectoral agreement, negotiations could be conducted to specify the conditions, but the principle should be accepted.

34. Other sectors of export interest to developing countries should be opened in order to demonstrate that mutually beneficial trade in services could be initiated from the beginning. A process of liberalization which would only meet the market needs of a group of service-exporting countries, would not reflect a fair application of the concept of participation of developing countries.

Domestic market of developing countries

35. As developing countries continue to progress in their economic development, the domestic market for service products would also increase. Developing countries could benefit from foreign participation to the extent that such participation could render the domestic economy more efficient.

36. However, foreign participation should help the development of service-providing enterprises in developing countries as well. For example, requirements of establishing Joint-Venture as a prerequisite for the establishment of some service sectors should not be regarded as an impediment to trade but rather, as a contribution to the process of progressive liberalization of trade in services in developing countries.

Safeguards for developing countries

37. In participating in the international trade in services, provision of safeguards for developing countries should encompass two levels of economic realities:

- (a) safeguard to ensure the appropriate macro-economic management of developing countries, e.g. balance of payments and other related matters;
- (b) safeguard at the level of enterprise development with a view to strengthening the capacity of developing countries in services.

Domestic regulations are normally addressed to deal with one or both levels of policy areas and must accordingly be respected.

38. Many suggestions have been made on the macro-economic aspects of safeguards. They could be an interesting basis on which to develop further the idea.

39. At the level of enterprises or economic operators, a dynamic infant-industry approach could be developed. The next section of this submission deals with some of the basic considerations for a dynamic infant-industry approach.

VIII. Participation of developing countries: provisions for infant industry

40. If developing countries are to participate actively in trade in services, the trade interest of developing countries must be adequately safeguarded. Their interest would be safeguarded if, among others, they could be active participants in trade in services as providers of services and not merely consumers of internationally traded services. To be active participants in trade in services means to be able to develop the national business entities. Conditions must be established where such developments could take place.

41. In many instances, the producers and the products are not easily separable. Thus the opening of a sector to foreign service providers must be accompanied by concrete provisions to strengthen the capabilities of domestic service providers as well. Therefore, participation of developing countries should imply the strengthening of developing country enterprises. This leads to the concept of a more dynamic "infant-industry" protection for developing countries. The mode of gradual liberalization and of

strengthening of service capabilities of developing countries must also clearly mean, in operational terms, the strengthening of services operators, the business entities, in developing countries.

42. These concepts lead to the need for at least two necessary provisions in any framework agreement:

- (a) conditions for entry of foreign providers of services to a developing country must incorporate specific provisions which differ from sector-to-sector depending on the sectoral strength of national companies of developing countries;
- (b) once the foreign services operators are allowed entry to the market, conditions could be established for "relative-national-treatment", more favourable to nationals of the developing countries concerned, depending on the realities of each sector. But the rules must be transparent and predictable.

The framework agreement would provide periodic negotiations in trade in services which would aim to improve and gradually liberalize trade in services while giving time for developing countries to develop the capabilities to develop their service industries. Foreign providers of services should play the catalysts that would help the dynamics of developing service industries in developing countries leading to mutually advantageous and profitable arrangements to all parties.

IX. Progressive liberalization: sector versus transaction liberalization

43. Having answered the question on the conditions necessary for developing countries to be able to participate actively in the trade in services, then the second step is to make more specific the concept and the process of progressive liberalization of trade in services. How could the process of progressive liberalization be initiated and how should the steps be taken? What should be liberalized? What specific feature is important in trade in services which is not applicable in trade in goods which may require a different and more flexible approach to liberalization?

44. In dealing with the proper approach to liberalization of trade in services, it is important that the realities of trade in services be taken into account in a more precise manner.

45. Trade in services consists of a series of complex transactions. It is important to identify the transactions being undertaken. To do so, liberalization should not necessarily be perceived on a sectoral basis. Instead, it should be perceived in the form of transactions liberalization. While participants may not be precluded from wishing to negotiate liberalization on a sectoral basis, the basis should be on the narrower scope of liberalization of transactions. In so doing, the process of liberalization could be more dynamic, and progress more smooth and continuous.

46. The process of negotiations could accordingly be kept at a steady momentum over the years in which a balanced approach could be taken allowing liberalization across a wider spectrum of services, through the transactions approach, synchronized with increased participation of service providers of developing countries and at the same time developing the service exports of interest to developing countries.

X. No formal linkage between negotiations in services and negotiations in goods

47. Because of the newness of the sector and the possible different nature of the operational realities of the sector, the way in which progress in the field of trade in services is to be achieved must be gradual. The differing realities in the field of services would require that there be no direct linkage between concessions already made or are currently being negotiated in goods, with the negotiations in services. In no case should there be a withdrawal of concessions in goods because some parties may not find the concessions in services satisfactory.

48. In the field of services, the entire international community is attempting to build gradually from the beginning, a proper rule of the game for this sector. This process must not undermine whatever progress already achieved or those in the making in the field of goods. In this manner, the international community could constructively develop new rules without disrupting progress in other fields, and, over time, develop the appropriate rules to deal with the entire field of services.

XI. Credit for liberalization already undertaken

49. In the meantime, many developing countries have already undertaken steps of unilateral liberalization in the field of services, especially in the field of banking and finance. Credits should be given for such efforts. Some transactions which were previously not open to foreign providers of services have been liberalized at the time of the Uruguay Round. They should be subject to crediting for the purpose of an eventual request-and-offer negotiations.

50. In addition, there are special conditions in developing countries which have facilitated trade in services without having to make explicit, sector-specific, or transaction-specific, provisions. Developing countries with free foreign-exchange régimes, for example, have made possible import of services under a completely free-trade environment because the transactions could take place unencumbered by foreign exchange restrictions.

51. Recognition should be given for those developing countries who wish to consider the existence of a free foreign-exchange system in their country as an important contribution in facilitating the freer flow of services. As a minimum, it should be regarded as a gesture of goodwill which contributes to the development of a freer régime in trade in services.