

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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COMMUNICATION FROM PERU

Elements of a Framework Agreement on Trade in Services

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

In October 1988 the delegation of Peru submitted for consideration by the Negotiating Group a proposal contained in document MTN.GNS/W/49 on some elements which ought to be included in the framework agreement on services provided for in Part II of the Ministerial Declaration of Punta del Este.

Taking into account the results of the Montreal Mid-Term Review Meeting and the discussions of the Negotiating Group in recent months, the delegation of Peru herewith submits to the Negotiating Group a proposal that develops and supplements the basic concept, objectives and rules contained in its communication in document MTN.GNS/W/49.

In the view of the delegation of Peru, the fullest possible participation of developing countries is necessary to ensure complete legitimacy of a future framework agreement. A balance must therefore be found between the efforts to expand trade in services and the development of developing countries, and the asymmetry existing in trade in services must also be recognized.

## I. OBJECTIVES

- Establishment of principles and rules for the expansion of trade in order to promote the economic growth of all trading partners and the economic and social development of developing countries.
- Respect for national laws and policy objectives. Possible liberalization does not imply the dismantling or deregulation of existing national laws.
- Complementarity with the mandate and activities of specialized international organizations in this sphere. The adoption of a framework agreement on trade in services should not imply derogation from existing international agreements.

## II. SCOPE OF THE FRAMEWORK AGREEMENT

- The scope should be as wide as possible. In principle, the majority of sectors, sub-sectors and transactions of tradeable services could be included. This will be determined more precisely in the successive rounds of negotiations in which ab initio permanent or temporary exceptions may be identified.

## III. STRUCTURE OF THE FRAMEWORK AGREEMENT

- The framework agreement would consist of a certain number of principles and rules of general application which will serve as a basis for successive rounds of negotiations for granting and receiving concessions relating to sectors, sub-sectors and specific transactions.
- The element of flexibility in its structure is essential, in that it must take account of the heterogeneity of the various sectors, sub-sectors and specific transactions as well as the level of development of each of the participants.
- At the outset of the negotiations, each participant would present a list of sectors, sub-sectors and transactions (a positive list) on which they are prepared to negotiate through the progressive liberalization mechanism. The initial level of commitment would be determined by the level of development of each participant. Consequently, the more developed participants will have to make larger initial contributions than less-developed participants.
- If a non-application clause is included in the framework agreement, it should be invoked only as a last option after exhausting all the procedures that would be established in this respect. Developing countries should not be affected by such a clause when making their initial contributions.

#### IV. GENERAL PRINCIPLES AND RULES TO BE INCLUDED IN THE FRAMEWORK AGREEMENT

##### Transparency

The framework agreement will contain provisions on:

- (a) publication of laws and regulations of sectors included in the framework agreement. A list of the international agreements on services to which participants in the framework agreement are parties should be included;
  - (b) establishment of a notification system concerning the sectors which each country has included in its list of concessions;
  - (c) the possibility of establishing enquiry points should be studied in greater depth, according to the actual situation in each sector and the level of development of each participant;
  - (d) every effort should be made to keep the notification system within acceptable dimensions so that it does not become unmanageable;
  - (e) every effort should be made to avoid duplication with notifications already made to other specialized international organizations in this field.
- Economic operators benefitting from market access shall provide regular information on their structure, policies, activities and operations. However, information containing legitimate trade secrets or confidential trade information should be afforded reasonable safeguards to protect its confidentiality.
  - The framework agreement shall not include such concepts as prior consultation, prior notification or counter-notification in view of the legal and even constitutional difficulties that would be faced by many participants in the framework agreement.

##### Progressive liberalization

This is a mechanism whose purpose is to provide a greater degree of market access by the granting of concessions through successive rounds of negotiations. Precise rules and procedures should be established in this respect.

- The following considerations should be taken into account in the progressive liberalization mechanism:
  - (a) The process of progressive liberalization does not imply the dismantling or deregulation of national laws and regulations. It should focus solely on reducing the negative effects of such legislation for effective market access;

- (b) developing countries would liberalize less sectors and types of transactions;
- (c) the offers of developing countries will be in keeping with their national development objectives;
- (d) developing countries will as a general rule have longer time-frames for adjusting their national laws in the sectors or transactions which they have undertaken to negotiate.

Economic development: principal of relative reciprocity

Relative reciprocity implies that participants should not expect developing countries to grant concessions which are inconsistent with their development, financial and trade needs. The contributions of countries should be in proportion to their respective levels of development.

Non-discrimination

There should be no discrimination among participants. However, since unequal parties cannot be treated as equals, it should be considered that non-discrimination does not have to be symmetrical: the development level of participants must be recognized. Thus, apart from some general derogations from the principle of the most-favoured-nation clause, for developing countries, consideration should be given to some specific derogations such as regional integration agreements, free-trade zones, frontier integration and global systems of preferences including systems exclusively among developing countries.

V. ASPECTS TO BE CONSIDERED DURING THE SPECIFIC NEGOTIATIONS IN SUCCESSIVE ROUNDS OF NEGOTIATIONS

National treatment

This is a long-term objective, not an automatic right, and shall be granted in future negotiations and in accordance with the provisions of the framework agreement and market-access conditions.

- It must be subject to national requirements for the maintenance of public order and national security. It must be consistent with national laws and without prejudice to the national development objectives of developing countries.
- National treatment should be equitable, and therefore developing countries may temporarily grant more favourable treatment to their nationals in comparison with foreign suppliers without discriminating between them.

### Market access

This is an objective which will be obtained progressively through negotiations, and in which the modes of delivery will be applied according to the rules established in the framework agreement, the specific characteristics of sectors, the national laws of each participant and the negotiated conditions of access.

- Developing countries may request the application of the following market-access conditions:
  - (a) transfer of technology;
  - (b) training of national personnel;
  - (c) access to distribution and information channels;
  - (d) request that a percentage of the earnings of economic operators be reinvested in the country for the development of the national services infrastructure and for scientific and technological research;
  - (e) respect for the rules of competition.

### VI. EXCEPTIONS AND SAFEGUARDS

The following should be considered:

#### A. "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.

#### B. 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.

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.

C. 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.

VII. INSTITUTIONAL ASPECTS

- The institutional aspects of the future framework agreement will have to be defined at the conclusion of the negotiations. It should, however, provide for the establishment of a dispute-settlement mechanism.