

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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COMMUNICATION FROM BRAZIL

Elements for a Draft Framework Agreement
on Trade in Services

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

INTRODUCTION

This communication contains further contribution to the work of the GNS. Brazil reserves its rights to modify or complement the suggestions herein made, in accordance with the progress of the discussions.

The Punta del Este Declaration and the Montreal decision contain a set of elements for inclusion in a possible framework agreement on trade in services. Therefore, taking into account the fact that the guidance given by Ministers represents a balance between different opinions and in order for the discussions to be carried out in good faith and in a constructive manner it is necessary to respect the texts guiding the Group's work and to try to discuss every point included in its mandate.

In this context, this document attempts to contribute to the Group's task of assembling the necessary elements for a draft which would permit negotiations to take

place for the completion of all parts of the multilateral framework. Careful consideration has been given to the various issues raised during the examination of some concepts, principles and rules as applied to a limited number of selected sectors. Although a thorough examination of the applicability and implications of the application of such concepts, principles and rules to individual sectors and the types of transactions to be covered by the multilateral framework has not been fully achieved, it was thought to be essential to place the exercise of assembling elements for a draft framework agreement under the perspective of practical considerations based on the reality of the world services market.

The objective of the multilateral framework agreement

The aim of the multilateral framework agreement of principles and rules for trade in services is to promote economic growth of all trading partners and the development of developing countries, including the improvement of signatories technological capabilities, through the expansion of trade in services, under conditions of progressive liberalization, in consistency with the policy objectives of national laws, as well as regulations applying to services and taking into account existing international disciplines and arrangements dealing with the

subject.

DEFINITION OF TRADE IN SERVICES

The multilateral framework agreement should apply only to situations where trade in services occur. For the purpose of the framework agreement, trade in services should be considered to occur when there is:

- a) cross-border movement of services;
- b) cross-border movement of consumers;
- c) cross-border movement of factors of production where such movement is essential to suppliers and subject to the following criteria: (i) limited duration; (ii) specificity of purpose; and (iii) discreteness of transactions.

Cases of permanent establishment of factors of production, such as international immigration and foreign direct investment are outside of the definition of trade in services and would, therefore, not be covered by the agreement.

Negotiations should attempt to identify, as precisely as possible, the types of commercial presence that would conform to the situations indicated above, as well as to give a more precise formulation for the general principle of "essentiality" in the supply of services, mentioned in (c) above.

COVERAGE

All trade in services, as defined above, is open for negotiations.

The framework agreement should be drafted in a way to avoid a priori exclusions.

PART I GENERAL OBLIGATIONS

1) PROGRESSIVE LIBERALIZATION

The agreement should include a firm commitment of signatories to engage in a long-term process of liberalization of trade in services as a means to promote economic growth and development, as well as the improvement of signatories technological capabilities.

The commitment to progressive liberalization would include the discussion, in future negotiations, of the possible application of principles to specific sectors and types of transactions, as a means of reducing adverse trade effects of all laws, regulations and administrative guidelines, taking into account the possibility for countries to benefit from the liberalization

achieved, given their development situation. The principles to be enuntiated in the framework constitute a separate section of this document

In the process of progressive liberalization, four basic principles would always apply, irrespective of the sector under consideration in future negotiations, namely:

- (i) respect for national policy objectives;
- (ii) consistency with development objectives; and
- (iii) balance of benefits among participants.
- (iv) exceptions

(i) RESPECT FOR NATIONAL POLICY OBJECTIVES

This principle implies that a country member of the agreement shall not be obliged to frustrate, modify or abandon national policy objectives in order to make concessions during the process of progressive liberalization.

One way of respecting national policy objectives would be the establishment of priorities for the import and export of services. Countries would have the right to negotiate only the sectors and transactions that constitute a priority for the promotion of growth and development in general, or for the strengthening of specific segments of the domestic economy.

(ii) CONSISTENCY WITH DEVELOPMENT OBJECTIVES

This principle means that the commitment to engage in negotiations for the progressive liberalization of trade in services includes the right to maintain, implement or adapt internal mechanisms and policies aiming at securing the development process. Embodied in this principle are the notions of "development security" and "technological security" , which represent a minimum guarantee for developing countries that the liberalization process will not provoke a retrocession in terms of development and technological advancements .

(iii) BALANCE OF BENEFITS AMONG PARTICIPANTS

Throughout the process of progressive liberalization, signatories should establish a balance between concessions and offers . Criteria should be adopted in order to give an objective expression to the possibility of having benefits deriving from the liberalization process. Such criteria would take into account the development situation of all countries.

Two basic elements to be considered under this principle are : a) access to technology; and b) financial support. Generally speaking, countries could

measure their interest or possibilities in expanding imports and exports of services according to the technological benefits to be gained as well as to the availability of adequate financing which would enable them to compete in the international market.

(iv) EXCEPTIONS

Exceptions would be invoked with respect to the overall framework , including the possible commitments to enter into negotiations. The basis for exceptions would include, inter alia , considerations on national security, public order, technological development, infant industry protection, cultural and development objectives. It should be established that the legitimate invocation of such exceptions should not be used as a justification for the discriminatory withholding of benefits of the agreement or resort to "non-application" procedures.

2) TRANSPARENCY

Transparency should be applied to service suppliers as well as governments to ensure that the objective of the agreement is being met.

Service suppliers should provide information on their operations to national and local

authorities of the countries in which these operations take place.

The framework agreement could also include the obligation for governments to publish all laws or acts related to international trade in services.

Additional means of ensuring transparency of the process, such as the establishment of enquiry points and notification mechanisms, should receive due consideration during the negotiations of specific services sectors. These mechanisms should also be considered in terms of their feasibility and burden for signatories.

3) INCREASING PARTICIPATION OF DEVELOPING COUNTRIES

Signatories should make a firm commitment to create the necessary conditions for the increasing participation of developing countries in world trade in services and for the expansion of their service exports, including, inter alia through the strengthening of their domestic services capacity and their efficiency and competitiveness.

It should be agreed that developing countries, in the light of the general principle of balance of benefits, would not be expected to make contributions in return for concessions for which they were unable to benefit due to their development situation.

The agreement should include a commitment concerning conditions for the strengthening of domestic capacity, as well as for continuous technological improvement of developing countries' services' suppliers. In this context, developing countries, when negotiating the liberalization of a given sector, would have the right to request, as a pre-condition for the concession of market access, that supplying firms undertake commitments to take actions aimed at strengthening the domestic service sectors of the importing developing countries and increasing its export capacity. Such conditions could involve provisions for actions to ensure the improvement of technological capabilities. It could also involve commitments by suppliers with respect to access to distribution channels and information networks for developing country firms, to enable them to overcome barriers to market entry as well as to obtain a greater share of the value added from international trade in services.

Preferential financial mechanisms should be provided to developing countries both for exporting and importing services. Import of services by developing countries should be accompanied by access to the latest technologies. The export capacity of developing countries should be supported by, inter alia, financial mechanisms to facilitate sales of services exports abroad, financial assistance for the improvement of basic infrastructures, for

the acquisition and upgrading of skills, as well as for their participation in information networks and distribution channels. Preferential treatment could be extended with respect to access to financing and more favourable conditions for participation of suppliers from developing countries in international tenders.

The framework shall not impinge on the autonomy of developing countries to pursue macroeconomic policies, including those required to safeguard their external financial position and to ensure a level of reserves adequate for the implementation of their programme of economic development, establishment of state enterprises and granting exclusive rights in sectors necessary to promote development. Such autonomy would include, likewise, the right for developing countries to ensure compatibility of activities and practices of the market operators with the national policy objectives.

The agreement should also provide for ways and means to control trade-distorting activities restricting trade in services of developing countries such as voluntary restrictions, restrictive informal arrangements and other restrictive business practices.

Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated commitments .

4) MOST-FAVOURED NATION CLAUSE

The framework agreement should contain a clause establishing a most-favoured-nation treatment for all signatories.

Under such clause it would be established that any concession in terms of market access, as well as provisions affecting the trade in services resulting from autonomous liberalization or deriving from bilateral or plurilateral negotiations shall be immediately and unconditionally extended to service providers of all signatories.

The MFN clause would not exclude the following possibilities:

- a) developing countries' right to benefit from preferential concessions on trade in services granted by developed countries; and
- b) developing countries right to exchange concessions on trade in services to be valid only among themselves.

The framework should contain provisions concerning the application of the most-favoured-nation treatment in the context of regional economic integration arrangements and free trade areas . Such provisions would include, inter alia, the following elements:

- (i) definition of the types of arrangements eligible for

m.f.n. derogation;

(ii) assurance that the derogation from the m.f.n. principle would not constitute a restriction on international trade in services;

(iii) declaration of competence in the area of trade in services ;

(iv) examination of the consistency of the concessions exchanged and the provisions of the framework agreement on trade in services; and

(v) compensation for signatories non-members of the above mentioned arrangements, when appropriate.

PART II PRINCIPLES GUIDING THE LONG-TERM LIBERALIZATION PROCESS

1) MARKET ACCESS

The long-term process of liberalization would include the progressive negotiation of access to markets, consistent with national policy objectives and in accordance with the provisions of the multilateral framework, especially the definition of trade in services.

The multilateral framework could provide rules for subsequent negotiations in which market access conditions could be discussed. These conditions would include, inter alia , surcharges on foreign service suppliers, in the form of a differential fee or charge and

restrictions on the number of foreign service suppliers allowed to enter a market.

Preferential and effective market access opportunities should be granted to developing countries. Access to information and distribution networks should also be guaranteed for developing countries.

Countries should retain the right to ensure that firms benefitting from negotiated access commitments maintained standards of corporate behaviour consistent with their development and technological objectives.

Modes of delivery of services would have to conform to national policy objectives. The possibility of choosing modes of delivery should, in no way, include the possibility of imposing the supplier's own standards to the local market. The delivery of services would have to conform to existing national legislation requirements, including those affecting non-service aspects of the operations.

There would be a need to establish a difference between modes of delivery and the services themselves. Special sectoral characteristics will have to be taken into account during the long-term process of liberalization.

2) NATIONAL TREATMENT

When market access is made available, the

national treatment principle should mean that services exports and / or exporters of any signatory are accorded in the market of any other signatory, in respect of all laws, regulations and administrative practices, treatment "no less favourable" than that accorded to domestic services or services providers in the same market, subject to the conditions and circumstances under which market access was granted to such services exports and/or exporters.

In the case of developing countries, the concession of national treatment would only apply to the extent that national policy objectives are served, both in terms of its gradual implementation and the scope of its application.

During the long-term process of liberalization, the principle of national treatment could be further developed in order to take account of the special characteristics of different sectors. In some cases, a precise identification of services and services providers enjoying national treatment could be necessary.

Participants could further discuss ways to avoid the creation of "more favourable treatment" for foreign suppliers. For this purpose, there would be an interest in establishing that foreign suppliers should share the same social and development responsibilities of national suppliers. Furthermore, in order to prevent foreign suppliers from appealing to foreign governments' support as

a means to strengthen its position vis-à-vis- national suppliers, the concession of national treatment would also imply that domestic legislation is to be applied for the settlement of disputes.

3) SAFEGUARDS

Safeguards for balance-of-payments reasons should be established. Other reasons for safeguards could include situations of concentration of ownership and market domination, as well as action to deal with restrictive business practices, and other situations when supplying firms or persons did not comply with their obligations under the agreements.

4) REGULATORY SITUATION

Given the asymmetries which exist with respect to the degree of development of services regulations in different countries, the framework agreement should recognize the right of countries, in particular of developing countries, to introduce new regulations related to the services sector, concerning, e.g., the establishment of state enterprises, the granting of exclusive rights in certain sectors, the upgrading of skills and others judged

necessary for the promotion of development objectives.

5) FACILITATION OF COMPETITION

The framework should include principles and rules to promote competition in international trade in services. In this context, there would be a need to discuss measures to control restrictive activities and practices of market operators, as well as anti-competitive conditions. It should recognize the right of developing countries to regulate services sectors including, inter alia, establishment of state enterprises and granting exclusive rights in sectors necessary to promote their development.

PART III - FUTURE NEGOTIATIONS

1) STATISTICAL BASIS

Any attempt to discuss the long-term process of liberalization will depend on the existence of a commonly agreed statistical basis. The first step to be taken would be reaching an agreement on inter alia, the following elements:

- a) types of modes of delivery of services to be included in statistical surveys with indication of forms of payments;
- b) specification of the transactions to be covered during

the collection of statistics;

c) classification of services sectors for statistical purposes;

d) criteria to separate national suppliers from foreign suppliers .

2) DISCIPLINES FOR INDIVIDUAL SECTORS

The Punta del Este Declaration establishes that negotiations should aim at "elaborating possible disciplines for individual sectors". This exercise, if necessary, would possibly precede the more general negotiations on market access possibilities.

Discussions of individual sectors would aim at identifying the need for specific disciplines to be applied to the whole sector, sub-sectors or types of transactions. To this end, it may be necessary to discuss first the types of adverse trade effects identified by different participants.

3) APPROACHES FOR THE DISCUSSION OF INDIVIDUAL SECTORS

One fundamental stage in the long-term process of liberalization of trade in services is the examination of the consistency of the framework agreement with the existing international disciplines and

arrangements. The future exercise of establishing disciplines for individual sectors should take fully into account the work conducted in the various international fora related to services.

Participants could start the examination of specific sectors by choosing those which are not yet regulated multilaterally.

In order for participants to have a clear picture of the benefits at stake in future negotiations, it is imperative that statistical data be available.

4) ADVERSE TRADE EFFECTS

If the long-term process of providing greater market access is to be conducted in terms of reducing adverse trade effects of regulations, it would be necessary to follow at least two paths:

(i) multilateral discussion of the types of adverse trade effects to be covered in future negotiations. Objective criteria for the invocation of adverse trade effects could be: direct effects produced by different regulations, quantifiability, impact on trade, etc. One major criterion should be consistency with development objectives.

(ii) countries claiming to have identified the type of trade effects which were multilaterally recognised to deserve action would request negotiations with those

countries holding allegedly restrictive measures. Therefore, the ultimate stage of the negotiations would be conducted in terms of requests and offers for the reduction of adverse trade effects.