

**MULTILATERAL TRADE
NEGOTIATIONS
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Elements of a Multilateral Framework
for Trade in Services

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

ELEMENTS OF A MULTILATERAL FRAMEWORK
FOR TRADE IN SERVICES

In accordance with paragraph 11 of the mid-term review decision of the Trade Negotiations Committee, the Group of Negotiations on Services is currently engaged in the task of assembling the necessary elements for a multilateral framework for trade in services. This submission contains India's preliminary views on the elements which are under discussion in the Group. India reserves its right to modify or supplement the views contained in this submission during the course of the negotiations.

Definition

2.1 Trade in services shall be considered to occur when there is :

- (I) Cross-border supply of services;
- (II) Cross-border movement of consumers;
- (III) Cross-border movement of providers of services involving temporary commercial presence for production and/or supply of services; and
- (IV) Cross-border movement of labour involving temporary relocation for production and/or supply of services.

2.2 Cases involving permanent establishment, foreign direct investment or international immigration shall not be covered by the definition of trade in services.

Transparency

3.1 The obligation of transparency shall be :

- (I) to publish promptly all laws, regulations and administrative guidelines relating to trade in services;
- (II) to establish national enquiry points to provide information upon request in respect of the above.

3.2 The obligation of transparency should apply equally to the providers of services. In their case, the obligation shall be that they should provide information requested by the national authorities relevant to their operations.

3.3 It should be recognised that the obligation of transparency should not impose excessive administrative or financial burden on developing countries. In particular, they should be given adequate time to establish national enquiry points.

Progressive Liberalisation

4.1 All signatories shall subscribe to the general objective of progressive liberalisation of trade in services as a means of promoting economic growth of all trading partners and the development of developing countries. This would imply a gradual and long term process of extending market access on a negotiated basis with due regard for a balance of interests of all the signatories.

4.2 The process of progressive liberalisation shall be governed by the following principles :

- (I) Conformity with the national policy objectives of the country granting market access;
- (II) Conformity with the developmental and technological objectives of developing countries, including inter alia, the role assigned to the services sector in the national economy and the state of development of the particular sector;
- (III) Expansion of the services exports of developing countries;
- (IV) Flexibility for individual developing countries for opening fewer sectors or liberalising fewer types of transactions in line with their development situation;
- (V) Security and other exceptions.

National Treatment

5.1 National treatment should be an objective to be achieved progressively on a long term basis and it should not be regarded as an obligation entering into force along with the framework agreement. The principle of national treatment should not follow automatically when market access is granted.

5.2 As far as developing countries are concerned, the principle of national treatment shall be qualified by the following :

- (I) the conditions under which market access is granted;
- (II) preferential treatment accorded to the domestic service providers.

MFN/Non-discrimination

6.1 The principle of unconditional MFN treatment shall apply to all trade in services covered by the framework. The benefits provided by a signatory to the services exports and/or exporters of any other country shall be accorded immediately and unconditionally to the services exports and/or exporters of all signatories.

6.2 Exception from the MFN provision shall be allowed for grant of preferences by developed countries to developing countries and for exchange of preferential concessions among developing countries.

Market Access

7.1 In accordance with the process of progressive liberalisation, commitments on market access shall be negotiated between signatories covering specific services sectors and types of transactions.

7.2 In the case of developing countries, the grant of market access shall be subject to :

- (I) conditions of entry and operation in the market;
- (II) preferential treatment to domestic service providers.

The above may take the form of differential tax treatment, levies or surcharges on foreign service providers, limitations on the number of foreign service providers, reservation of market share, preference in government procurement, financial and non-financial incentives, transfer of technology by the foreign service providers, training and employment of domestic personnel, export requirement, etc.

7.3 The mode of delivery of services shall conform to conditions of entry and operation.

7.4 The framework should ensure that market access is not abused by foreign service providers by resorting to restrictive and anti-competitive business practices.

Increasing participation of developing countries

8.1 For a large number of developing countries, their ability to participate meaningfully in world trade in services depends crucially upon the cross-border movement of their labour for supply of services. Therefore, the multilateral framework should provide on a priority basis for the relaxation of restrictions on the international flow of labour covering the entire spectrum of skills from unskilled or semi-skilled workers to high skilled professionals. National immigration regimes should be liberalised so as to enable not only developing country firms supplying services abroad to recruit personnel from their own domestic sources, but also for all service firms to recruit personnel from the source which is economically most advantageous.

8.2 The strengthening of the technological base of developing countries is extremely important for increasing their participation in international trade in services. Developing countries shall therefore have the flexibility to require foreign service providers to transfer technology and know-how through contractual arrangements as a condition of market access.

8.3 Developing countries shall also have the flexibility to require foreign service providers to build up the export earning capacity of the domestic services sector.

8.4 Developing countries shall be permitted to provide financial and non-financial incentives to strengthen their domestic services capacity.

8.5 To facilitate effective market access for services exports of developing countries, improved access to distribution channels and information networks shall be provided.

8.6 There shall be provision for grant of preferential market access to developing countries' exports and/or exporters of services.

Safeguards

9.1 The signatories shall be permitted to take safeguard measures for balance-of-payments reasons.

9.2 Provision shall be made for signatories to be able to withdraw or modify their schedule of concessions after providing appropriate compensation to affected signatories.

Exceptions

10.1 Exceptions from the provisions of the framework in terms of specific transactions and/or sectors shall be permitted on grounds of national security and protection of public order, public morals, health, socio-cultural values and the environment.

Regulatory situation

11.1 Given the asymmetries existing in the degree of development of services regulations in different countries, the framework should recognise the right of signatories, in particular of developing country signatories, to introduce new regulations in pursuance of their macro-economic policies. However, such measures should not nullify or impair the commitments on market access negotiated under the multilateral framework.

Coverage

12.1 No internationally traded or tradable services shall be a priori excluded. The market access commitments of each participant shall be inscribed in its schedule of concessions.

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