

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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COMMUNICATION FROM MALAYSIA

The attached communication is circulated at the request of the Delegation of Malaysia to the members of the Group of Negotiations on Services. It contains a statement with regard to the proposed general agreement on trade in services.

MALAYSIAN STATEMENT

This statement outlines Malaysia's proposals and views with regard to the proposed 'general agreement on Trade in Services' (GATS). It should not however be considered as a reflection of the final Malaysian position, and Malaysia reserves the right to modify its stand on the issues raised, in the light of the on going deliberations in the Group of Negotiations on Services (GNS) and developments that have a bearing on the negotiations.

CHARACTERISTICS OF GATS

Malaysia would like to suggest that the following principles be considered as the basis for the GATS:-

- (i) The GATS should embody sufficient flexibility to ensure its effectiveness in a changing international trade in services environment.
- (ii) There must be a phasing in period for obligations agreed to by signatories.
- (iii) The GATS should take cognizance of the spirit of the Ministerial Declaration on the question of linkage.

STRUCTURE OF GATS

The proposed GATS framework should be accompanied by schedules of concessions and exceptions.

A simultaneous three (3) tiered approach is proposed with regard to the applicability of the GATS rules and principles. The first tier shall consist of services sectors to which provisions of the GATS are applicable in toto. This cluster of sectors/sub-sectors should be regarded as an open-ended schedule of concessions, which shall be bound to the GATS. The concessions may be accompanied by denotation of conditions.

The second tier envisages the vertical integration and application of the GATS principles in stages depending upon national priorities applicable to specified sectors/sub-sectors. This implies that application of the principles and rules can be effected in partial form when the market situation or local conditions are appropriate for liberalisation.

The third tier shall consist of the balance of sectors/sub-sectors to which the GATS is not applicable on the grounds of national and/or development related objectives, be it at the sector level or segmented, disaggregated levels of the sector.

RULES, CONCEPTS AND PRINCIPLES

(a) Transparency

With regard to transparency, Malaysia considers that signatories of the GATS should assume responsibility for ensuring the compatibility of regulations drawn up by sub-national authorities with obligations under the GATS. National competence in this regard will aid transparency.

As differing legislative processes affect in varying manner the timing and substance of legislation, the need for advance notification could be replaced by an obligation to inform, at the very least, affected domestic parties prior to enacting legislation. However this obligation is to be eschewed when dealing

with emergency measures relating to health, safety or national security, or on fiduciary consideration.

To facilitate factor flows, technical standards and qualifications criteria should be harmonised or standardised, bearing in mind the financial costs of implementing such an exercise. This exercise could be entrusted to the competent representative international organisations and institutions of the various disciplines.

(b) Progressive Liberalisation

Progressive liberalisation should have limits, i.e. total liberalisation is not to be accorded if it is injurious to national interests or seen to be detrimental to the growth of particular sectors. This exercise will need to take into account the overall level of economic development of member countries in arriving at a decision on the degree of liberalisation to be undertaken.

The notion that liberalisation will lead to competition does not guarantee the maintenance of a competitive environment. It will be futile if the elimination of trade barriers should result in monopolies. In our view, it is therefore appropriate to have regulations and rules of behaviour or competition to ensure that the liberalisation process does not result in a reduction of competition.

The qualitative and quantitative aspects of liberalisation should be widened, deepened and monitored through subsequent rounds of negotiations as this graduated approach will minimise the degree of economic dislocation. It will also provide an opportunity to gain the necessary knowledge and experience to expand on the relevant issues in further implementation of the agreement.

(c) National Treatment and Market Access

The issue of national treatment can be better addressed if it means the provision of equal opportunities or equivalent treatment to foreign suppliers to partake in the domestic trade in services. Such treatment of foreign service providers should be applied regardless of the degree of openness of the services market, as a whole or the specific sector in question. The suggested approach would facilitate consistency with the provisions of the Framework.

(d) Increasing Participation of Developing Countries

To realise the notion of increasing participation of developing countries the overall objective should be to ensure developing countries achieve a larger (increased) share and integrate into the global trade in services rather than to focus on the development of specific sectors, activities or quantitative progress.

Preferential treatment should not be viewed as a derogation from the GATS, instead it should be taken as being an integral part and consistent with the provisions of the agreement.

Malaysia is of the view that developing countries should be allowed more latitude in devising instruments including incentives, and seeking financial assistance, to promote exports of services, and developed countries should adopt measures to encourage imports of services from developing countries.

(e) Safeguards and Exceptions

In undertaking measures relating to safeguards and exceptions, advance notification should be made a pre-requisite, except in circumstances pertaining to national security or emergencies.

Possible grounds for invoking these provisions could include existing multilateral/bilateral service trade related agreements, technical standards requirements, national security, emergencies, cultural and social considerations, balance of payments implications, and as part of structural adjustment measures.

Imposition of such measures however should be made in a transparent manner and on a m.f.n. basis.

Malaysia also proposes that national policies or programmes specific to individual countries, implemented as a result of circumstances peculiar to the country, be considered as an exception.

(f) Regulatory Situation

It is Malaysia's considered view that sovereign authority to initiate and implement rules must be respected and should not be eroded by multilateral agreements.

The link between national objectives and measures designed to attain them however should not be too tenuous or remote, as this could lead to disguised protection or the introduction of arbitrary and unjustified restrictions.

In our view the asymmetry in the regulatory situation between developing and developed countries could be overcome by permitting developing countries to introduce necessary regulations, and deregulation especially in developed countries. However in introducing the new regulations, signatories should ensure that the original balance of obligations undertaken with regard to the agreement is maintained.

Malaysia shares the view that, with regard to the introduction of new legislation or re-regulation, the focus should be on the incidental positive or negative effects of regulations rather than questioning the legitimacy of the legislation.

(g) M.f.n./Non-discrimination

As regards the application of the agreement, Malaysia would like to propose that where possible, all obligations entered into under the GATS should be extended on an equitable and unconditional basis to all signatories.

M.f.n. application shall not be automatic. Eligibility is accorded only on the grounds that signatories accede some minimum form of contribution. This minimum contribution has to be negotiated by the signatories.