MULTILATERAL TRADE NEGOTIATIONS THE URUGUAY ROUND

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Group of Negotiations on Services

WORKING GROUP ON FINANCIAL SERVICES INCLUDING INSURANCE

Note on the Meeting of 13-15 September 1990

1. The Chairman welcomed delegations to the third meeting of the working group on financial services including insurance and asked whether any delegations wished to comment on the summary record of the group's previous meeting, contained in MTN.GNS/FIN/2.

2. The representative of the International Monetary Fund said that the statement attributed to her organization in the last sentence of paragraph 8 of MTN.GNS/FIN/2 did not adequately reflect what she had said at the group's last meeting. She noted that she had merely replied to a question from the delegation of India on the functioning of the GATT's Balance-of-Payments Committee by indicating that such a question should be more appropriately addressed by the secretariat and the contracting parties involved. Her organization had not intimated that a note should be prepared by the secretariat on the matter.

3. The Chairman opened the floor to a discussion of new submissions before the working group.

4. The representative of Malaysia said that his delegation had submitted a paper, MTN.GNS/FIN/W/3, on behalf of the group of SEACEN countries, comprising Indonesia, Korea, Nepal, Malaysia, Myanmar, Philippines, Singapore, Sri Lanka and Thailand on possible annotations to financial services in the multilateral framework on trade in services. SEACEN or South-East Asian Central Banks is an association of central banks set up to facilitate mutual assistance in developing central banking policies and training. It started as an informal group in 1966 and among its objectives was to help formulate the SEACEN Group's views at the IMF. In 1972, SEACEN's administrative and training centre was formalized in Kuala Lumpur and in 1982, SEACEN attained legal status. Activities of the SEACEN Group were mainly on issues of concern in managing the financial system in the member countries. Since it was a grouping of central banks, its training activities attached primary importance to banking supervision matters to ensure that the financial sector developed while maintaining high prudential standards. SEACEN countries had been following the negotiations on services, especially in the financial arena. Several of its countries had even participated in the discussions on this issue among financial experts, as well as in the group itself. The SEACEN countries were small, with very open economies that were extremely vulnerable to external influences. Correspondingly, their financial sectors were generally very

small. Realizing this, the philosophy in SEACEN was to adopt a moderate stance in the negotiations on financial services. The requests of SEACEN countries, submitted in MTN.GNS/FIN/W/3, were not aimed at protecting domestic financial markets, but the stability of the financial system. Liberalization should also take account of the particular characteristics of the relatively immature financial systems in developing countries and the central role of the system in fulfilling the socio-economic development objectives of countries. Hence, the position put forward indicated a willingness to liberalize, which had been the member countries' policy anyway, but in a graduated manner. In particular, SEACEN countries sought: liberalization that would not jeopardize the financial and economic stability of developing countries; liberalization that would also generate benefits to local service providers; and liberalization that would enable countries to protect investor and depositor interests. He then highlighted some of the more important issues which were of concern to SEACEN countries. In regard to liberalization, it should be on a positive list approach, be gradual and yet progressive; it had to take account of development needs; it was necessary to allow maximum flexibility for prudential reasons; it had to contain conditions to facilitate liberalization, e.g. competitiveness, etc.; and for countries that were already liberal, there should not be a "freeze" at current levels as this would disadvantage local institutions. In regard to prudential regulations, liberalization should in no way impinge the rights of supervisory authorities to implement procedures and rules to ensure prudent and proper financial practices. Above all, priority had to be given to the protection of investor and depositor interests. Because these prudential rules were peculiar to the needs of individual countries, and due to confidentiality and the need for some surprise element to make it effective, there could not be dispute settlement or prior consultation on such measures. On safeguard measures, he noted that other than on balance-of-payments considerations, measures should also include prudential and monetary policy considerations. On market access, he noted that SEACEN, in line with its moderate stance, was willing to liberalize. In fact, most SEACEN countries were already very open. However, such opening up had to be subject to prudential carve-out considerations. On the issue of commercial presence, he said that while SEACEN countries wished to adopt a liberal stance, practices in member countries differed from those in the United States or other developed nations. This meant that market access had to respect: domestic policies to ensure prudent practices by foreign banks as well as and the judgement of supervisory authorities as to the number of banks which economies could support. Given this, host countries should have a say in the manner of allowing commercial presence, e.g. through joint-ventures, acquisition of existing banks, etc. On national treatment, he emphasized the need for it to be separate from market access, and not be automatic. As well, the application of national treatment had to take account of factors which were unique to SEACEN, e.g. financial markets were already liberalized with a high foreign content as well as the need for a core of domestic banks to meet socio-economic needs. Developing countries should be allowed to apply national treatment, subject to selective criteria. He expressed the hope that the views of all countries, in particular the developing countries, be given due consideration in the development of sectoral annotations for financial services.

5. The representative of Thailand said that although the SEACEN paper itself was very clear, his delegation wished to draw attention to some points to show that the SEACEN paper reflected the types of concerns which were common to most central banking authorities, especially in developing countries. He recalled, firstly, the need to have a strong consideration for prudential concerns, monetary policies as well as national development objectives which were of particular importance and had been very properly addressed by the SEACEN paper. He noted, secondly, that the levels of development of financial sectors in developing countries were mostly in early stages, a reality which had to be taken into account in the process of liberalization. This point was highlighted in the paper as well as the need for developing countries to have adequate flexibility in their domestic regulations and safeguard measures. The submission also argued very well that a country should have the right to impose conditions on the operation of foreign institutions in order to ensure that their operations created sufficient benefits to the host countries. However, one point that had not been raised in the submission was that it might be necessary to state clearly in the sectoral annotation that no annotations covering other service sectors should prevail over the annotation on financial services. This was necessary in his view in order to preserve the clarity of the group's work.

6. The representative of Indonesia said that his delegation fully endorsed the views set forth by the Malaysian delegation. Although his country had recently undertaken deregulation measures in the financial sector, it remained of the view that great care should be taken to preserve a sound financial sector in each country. In view of the very nature of financial services, any obligations in the sector should be at most similar or preferably less onerous than those applying to other service sectors. The prudential carve-out should be designed as carefully as possible to enable regulatory authorities to protect depositors and the general public, particularly in developing countries. The SEACEN proposal was both realistic and moderate and had been crafted from the perspective of bank regulators.

7. At the request of the Chairman, a representative of the secretariat informed the working group of the current situation in the GNS in regard to the draft multilateral framework. He noted that work in the GNS was being conducted on the basis of the draft text contained in MTN.GNS/35. The latter was an incomplete text and a revised and completed first draft would be available to group members at the next meeting of the GNS. He informed members of the working group that the GNS had at its August 1990 meeting agreed to guidelines for completing the work on sectoral annotations and thus allow a consideration of the full multilateral agreement at the last GNS meeting in mid-November. The GNS had invited the Chairmen of the various working groups to complete their work by the second half of October. By that date, each sectoral working group should give its assessment of the need for a specific annex/annotations and, if so, attempt wherever possible to delineate the nature and content of annotations to provisions of the draft multilateral framework. The GNS had also agreed at its last meeting to set up an ad hoc working group as from the second half of October. He said that such a group, which would consist of trade and

sectoral experts, would have the mandate to finalize the work on sectors based upon the reports of the various sectoral groups.

8. The representative of Mexico thanked the Malaysian delegation for the far-reaching proposal it had submitted on behalf of SEACEN countries. His delegation fully supported the idea that annotations in the financial services sector should form an integral part of the multilateral framework for trade in services and that any degree of financial liberalisation should take due account of prudential considerations, monetary policies and national development objectives set out by developing countries. He agreed that the right to a commercial presence should not be granted automatically and emphasized that national treatment should be seen as a long-term objective rather than an immediate outcome of the negotiations. His delegation supported a positive list approach to liberalisation in the sector but wondered why reservations, as opposed to liberalisation commitments, should be a function of a country's level of development.

9. The representative of India said that his delegation supported the thrust of the SEACEN submission, particularly as it was in tune with the general deliberations in the GNS. An important contribution of the submission in his view was that it brought back the proper focus with which negotiations in the working group should be conducted. He recalled that the working group had not been given the mandate to negotiate a wholly independent agreement on financial services. The SEACEN submission highlighted the fact that many issues arising in the financial services area were capable of being addressed by the framework agreement itself and he hoped that the working group would identify the peculiarities of the sector that required the framework to be elaborated, interpreted or clarified in an annex. The issue of movement of personnel was not peculiar to the financial services sector but was linked to the issues of definition and coverage currently under negotiation in the GNS. To exclude various categories of persons based upon their skill levels or to associate the movement of personnel with commercial presence or establishment was not appropriate as the mandate of working groups did not encompass the possibility of excluding anything from the coverage of the general framework.

10. The representative of Malaysia said that one of the peculiarities of the financial services sector requiring special treatment was that of the professional skills that were often required in areas such as data processing.

11. The representative of Switzerland said that his delegation shared many of the concerns expressed in the SEACEN submission although it did not agree with all the solutions it proposed. He expressed satisfaction at seeing SEACEN countries affirm their commitment to liberalisation in the financial field. With regard to the notion that a sectoral annotation on financial services should not impose more onerous obligations than those applying in other sectors, members of the working group should look at the liberalisation requirements of the sector and set obligations at such a level as to meet such requirements. His delegation fully agreed that the progressivity of liberalisation was of essence in the sector. He felt that

the submission was envisaging too large a loophole in regard to transparency obligations, recalling how important it was for firms to know with the greatest degree of legal security possible what market conditions were in foreign countries. He agreed that the right to regulate was of central importance but noted that it could imply the right to derogate from the provisions of the agreement. It might thus be necessary to qualify such rights so as to ensure that it was not abused in a trade-distorting manner. He agreed that there could be no automaticity in regard to market access and national treatment but felt that group members should nonetheless set an ambitious target to be progressively achieved according to the individual capabilities of countries. His delegation was fully aware of the concerns of countries in regard to the perceived need for a core financial sector and its relationship to development objectives.

12. The representative of the European Communities welcomed the fact that new ideas had been put before the working group by the SEACEN countries, particularly in regard to development-related concerns. His delegation agreed with one of the key points made in the SEACEN submission, notably that financial services should be covered by the general services agreement and that the right of national authorities to regulate for prudential reasons should be preserved. His delegation welcomed the language contained in the submission on the temporary entry of essential personnel, on matters relating to regional integration, on the treatment of cross-border services as well as on the need for appropriate safeguards for balance-of-payments purposes. One of the major concerns in the financial area related to the need to ensure a balance between the right to regulate for prudential and other reasons and the need to avoid the abusive recourse to such a right. Some of the qualifications contained in the SEACEN submission in regard to the right to regulate were so broad as to entail the possibility of de-liberalisation. Also the loophole envisaged by SEACEN countries on transparency was too large, as it provided too much regulatory discretion. The same could be said of the proposal that all measures taken for prudential reasons should not be subject to dispute settlement procedures. Such qualifications, including those applying to commercial presence, as well as the conditions which could be applied to national treatment went beyond the provisions envisaged in MTN.GNS/35. Combined with the fact that SEACEN countries favoured a positive list approach to liberalisation, such qualifications appeared to allow almost an unlimited degree of regulatory abuse. A number of development concerns expressed in the submission were justified and needed to be taken into account. However, such concerns should rather be integrated into the negotiating process than addressed by creating regulatory loopholes. There should as such be an onus on the flexible application of rules rather than on exceptions or qualifications to them. On the notion that financial liberalisation would be meaningful only when the financial institutions of host and foreign countries were equally well established, he noted that domestic institutions typically possessed an inherent competitive advantage over foreign entities in view of their long-standing networks of branches and distribution as well as widely-based commercial relationships. While his delegation agreed that there could not be, in the absence of negotiations, an automatic right to either market access or national treatment, it nonetheless foresaw the need

for clear rules with which to launch and promote a long-term process of progressive liberalisation in the financial services sector.

13. The representative of Indonesia responded that the language used in the paper regarding reservations reflected language used in MTN.GNS/35. Although reservations were dealt with in the framework, it was felt that there was a need to re-emphasize the right to make reservations.

14. Regarding obligations to be applied to financial services, the representative of Thailand said that certain countries would tend to have more advantages than others. In the process of negotiations, the rights and interests of all countries had to be addressed. Deregulation and liberalization would lead to efficiency in the financial sector. However, efficiency could be brought about by deregulation and increasing competition among local institutions, in actions taken apart from the opening up of markets to foreign financial institutions. It was necessary to appreciate the concern that deregulation might lead to some abuses. In developing countries, many sectors of the financial markets were either very new or, in some cases, not yet in existence. Some examples included stock exchanges, markets for the trading of commercial papers, or electronic transfer systems. In such environments, authorities needed maximum flexibility in introducing regulations to bring order to the markets. Also, the notion that developing countries need strong local financial institutions should not be underestimated.

15. The representative of Canada agreed with the prudential focus of the paper and the focus on the need to protect markets. It reflected many concerns that Canadian regulators and central bank authorities would share. Aspects of the paper on scope and coverage, transparency, regulation, and progressive liberalization were useful. In the areas of national treatment and market access, however, it would be desirable to go further than the paper suggested and apply these as obligations. Country schedules could deal with concerns for market stability and the differing degrees of development of markets. Exempting prudential decisions from dispute settlement would be a significant loophole in the agreement; some form or recourse should be available to a complaining party.

16. The representative of India said that the right of parties to regulate to meet national policy objectives, which was recognized in the framework, must also be recognized in the financial services sector. This included the right of parties to introduce new regulations. The only limitation was that new regulations must be consistent with specific commitments taken by a Party under the framework. As framework discussions now stood, market access commitments were subject to conditions on entry and operation and qualifications on national treatment. National treatment was a subset of market access rather than an independent set. The concerns of developing countries should be dealt with through the recognition of certain rights. As such, their concerns should not have to be negotiated under commitments for each sector and sub-sector. The movement of personnel was linked with the issue of coverage and definition. Once the issue was settled in the GNS, it would not be possible to exclude certain types of personnel from

entry through sectoral annexes. The kind of personnel to be granted entry could depend on market access negotiations.

17. The representative of Chile expressed concern about the paper's exceptions to the m.f.n. clause for the purpose of limiting a concentration of foreign service providers and to allow for regional cooperation agreements. The principle of m.f.n. should be applied automatically and unconditionally. Exceptions, however justified they might appear, were contrary to the nature of the m.f.n. principle.

18. The representative of Korea said that the paper's exclusion of prudential decisions from dispute settlement should be viewed in the context of the framework. The framework did not include many provisions on increasing participation of developing countries. Therefore, this aspect of the paper would compensate for the lack of strong framework provisions on increasing participation.

19. The representative of Singapore added that the exemptions to m.f.n. contained in the paper were suggested because concerns such as regional cooperation were not addressed in MTN.GNS/35. Economic integration was nevertheless allowed under MTN.GNS/35 and perhaps the European Communities might like to address this issue.

20. The representative of the European Communities said that the economic integration clause of MTN.GNS/35 foresaw the possibility of agreements that achieve a higher degree of liberalization under a number of conditions. These conditions should be observed. Therefore, the proposal's exception to m.f.n. for the purpose of regional cooperation was probably not necessary to allow the European Communities to continue with its liberalization program.

21. The representative of India noted that the framework provision on economic integration required that such an agreement cover trade in all services. This requirement would put limitations on regional integration.

22. The representative of Japan said that prudential considerations were not unique to developing countries but were of concern for developed countries as well. It would appear from discussion that the concept of prudential measures might differ from country to country, depending on the level of development.

23. The Chairman opened the floor to the agenda item on the functioning of the Balance-of-Payments Committee under GATT provisions. The secretariat introduced and summarized document MTN.GNS/FIN/W/4, prepared at the request of the working group at its last meeting. He noted that the two articles of GATT that referred to balance of payments were framed in the context of allowing an exemption, under prescribed circumstances and procedures, from a general prohibition of quantitative restrictions on trade in goods contained in the General Agreement.

24. The representative of the United States suggested that it would be useful to understand how effective the GATT procedures in this area may

have been. His delegation continued to be concerned about whether a balance-of-payments provision was needed in the services framework. The secretariat noted that the GATT balance-of-payments provisions were not the only exception that the GATT contained with respect to the general prohibition on quantitative restrictions. He recalled that the balance-of-payments provisions were the subject of negotiations in the Uruguay Round and, as such, many of the related issues were controversial. Nevertheless, several observations could be made. First, since the 1970's there had been little resort to the provisions by developed countries. Second, experience with Article XVIII:b varied from country to country. Some countries had recently renounced their use of the article, while for some countries use of the article had continued over a considerable number of years at varying levels of intensity. Finally, if a country solved its balance-of-payments problems and no longer needed to use the restrictions, it could still re-invoke the restrictions if it ran into problems at a later date.

25. The representative of the European Communities observed that these articles of the GATT were complex and sophisticated but that many aspects had fallen into disuse. Although drawing upon the experience of the GATT Balance-of-Payments Committee might be useful, these GATT Articles could not be used as a model for the framework. It should be possible for the framework to contain provisions that were simpler and more clear.

26. The Chairman indicated that the next meeting of the working group would be scheduled for 19-20 October rather than 18-19 October and brought the meeting to a close.