

- (f) Provision should also be made for the fact that the diversification and growth of trade in services for developing countries is closely linked with the process of transfer of technology.

Thus, it will be necessary to ensure suitable access to technology, and that trade in services is accompanied by undertakings for the transfer of technology. Furthermore, rules must be drawn up to ensure that legislation relating to intellectual property does not impose monopoly rights over the transfer of technology. Other elements that should be discussed are:

- (a) The question of restrictive business practices, and in particular the practical application of the set of principles and rules already agreed within UNCTAD;
- (b) The question of whether or not it is necessary to establish rules of conduct for transnational enterprises in connection with the impact of their activities in developing country markets.

### III. DEFINITION

In order to determine the exact scope of the rules to be agreed, it seems necessary to agree on a definition of trade in services or a service transaction. There are two choices here:

- (a) To work on a technical definition, which would involve analysing, among other things, such issues as whether or not the right of establishment subsumes the transaction criterion, and discussing the treatment of agreements that already exist in the services area.
- (b) To agree that the rules and principles of the agreement should apply to the negotiations aimed at establishing sectoral disciplines. In this way it would be possible to establish an open-ended annex in which the sectors covered by the exercise could be detailed. This would also imply introducing some kind of mechanism for decision-making in this area by an executive body administering the convention.

### IV. PRINCIPLES

It is understood that a framework agreement on trade in services should include the principles which, while placing signatories on an equal footing, provide for the complexity and specific characteristics of that trade.

Despite their acknowledged general application, it should be recognized that their extension to specific sectoral disciplines calls for some degree of adaptability.

## UNIFORM TREATMENT

On the basis of the above considerations, we think the discussion can be focussed on the principle of equality of opportunity of market access. In our view, within a possible multilateral framework it would be possible to imagine an 'ab initio' equality of all signatories supplying a service, regardless of the degree of openness of the market or the specific service sector in question.

Under this approach, the element of 'protection', understood to mean the placing of foreign and domestic suppliers on an equal footing, would not be questioned as such. The existence of uniform treatment should not in itself imply a reduction of barriers to trade in services, since the latter should be the object of sectoral disciplines.

In short, the objective of uniform treatment is that it should be applied without discrimination among foreign suppliers. Furthermore, uniform treatment should ensure a balance in the treatment of factors of production. This general principle should be defined specifically when determining the need to establish sectoral disciplines; all of which is without prejudice to the observations contained in Section II above.

## V. UNFAIR PRACTICES

This chapter should not be confined to the examination of issues relating to export practices, suitably reflecting the different situation of developing countries, but should also cover some further elements which it is worth at least mentioning. These should include clauses relating to the prohibition of limiting or prohibiting exports of services in any way, and clauses guaranteeing access to sources of services and technology.

Governments should be in a position to take action in the case of unfair practices on their domestic market: for example, if an attempt is made to gain total or partial control of the services market through a price war.

## VI. INTEGRATION AGREEMENTS AMONG DEVELOPING COUNTRIES

Specific provisions should guarantee that the possible advantages accruing in this area for developing countries which wish to embark on integration processes, or have already begun or completed them, are not impaired or called into question.

## VII. PROCEDURE FOR PROGRESSIVE IMPLEMENTATION

The process of transparency and consultation may mean that certain national rules and regulations are not fully in agreement with the general provisions of the framework agreement. It might therefore be appropriate to provide for practical procedures to be used by parties in order

gradually to adjust their national provisions. Clearly, this procedure does not concern the laws and regulations that are considered to pursue national policy objectives as described in Section I.

This concept of bringing national provisions into line could be linked with the time-limits for entry into force, progressive acceptance and so forth. In this case, the possibility of technical assistance and co-operation for developing countries should also not be ruled out.

#### VIII. OTHER ELEMENTS OF THE FRAMEWORK AGREEMENT

Other elements to be provided for in a multilateral framework should include the following:

(a) Transparency: Transparency is an instrument and not in itself a principle of the agreement; it is rather a means of monitoring compliance with obligations under the multilateral framework. Thus, obligations in this respect would only concern the provision of information relating to the individual obligations entered into under the framework. Procedures connected with the possible exercise of sectoral disciplines should be dealt with specifically.

(b) Consultations and dispute settlement:

(c) Exceptions (security, health, public morals, etc.)

(d) Balance of rights and obligations.

(e) Emergency measures (e.g. safeguards, balance of payments).

#### IX. INSTITUTIONAL ASPECTS

The application of a multilateral framework and the implementation of sectoral disciplines will require the establishment of an executive body to administer the agreement.

Group of Negotiations on Services

Original: English  
French  
Spanish

COMMUNICATION FROM THE EUROPEAN COMMUNITIES

Discussion Paper:

A Possible Conceptual Structure for a Services Agreement

The attached communication is circulated at the request of the Permanent Delegation of the Commission of the European Communities to the members of the Group of Negotiations on Services.

DISCUSSION PAPERA POSSIBLE CONCEPTUAL STRUCTURE FOR A SERVICES AGREEMENT

The complexity and diversity of the international services economy and of the regulations affecting it are now widely acknowledged and a multilateral services agreement will need to reflect this reality.

A complex agreement will, however, only be negotiable if there exists a common understanding with respect to its conceptual structure, around which detailed rules can then be developed. This note suggests what a conceptual structure might be.

It is intended to provide a working basis for the further development of ideas in the GNS. As this development proceeds, it may become apparent that concepts used in this note should not be retained, should have a different relationship to each other, should be defined in different terms, or should be completed by others. The note should therefore be understood as a starting point only, to which no delegation should commit itself at this stage.

Nevertheless, the note suggests how the key concepts contained in the Punta del Este declaration and many of those suggested by delegations in the GNS might be fitted together in coherent fashion.

Further work on this note would need to take into account one further concept, that of "SECTORAL APPROPRIATENESS". Although the concepts used are general, they may not necessarily be valid for all services sectors, and before signature of the agreement the question will be posed for each concept, whether it is indeed appropriate for each sector. In addition, some of the general concepts used may turn out to imply provisions specific to particular sectors or activities within sectors, if they are ultimately to be rendered operational as part of an agreement.

Core concepts

The central issue in the negotiation of a multilateral services agreement is how to achieve a major expansion of trade in services, thereby boosting growth in the world economy, while respecting the policy objectives which have led to international and national regulation of services and promoting the development of developing countries.

The agreement should be based on the assumption that the smooth operation of international markets will be the driving force creating such trade expansion, provided that the agreement provides the appropriate conditions in the form of a multilateral framework.

In addition, since the agreement is to be about "trade in services" and since it is now generally accepted that trade in services usually has characteristics which distinguish it from trade in goods, an agreed concept of "trade in services" will be a central element of the agreement and will to a large extent determine its sectoral coverage.

With these ideas in mind, the central core of the agreement can be seen as being based on achieving a satisfactory balance between different conditions for trade, in the manner illustrated in the diagram on page 2. The phrase 'core concept' is not intended to imply that the concepts included are more important than others to be discussed later, nor are all five "conditions" necessarily of equal importance, and indeed delegations may attach differing values to them.

CORE CONCEPTS

MOTIVATION

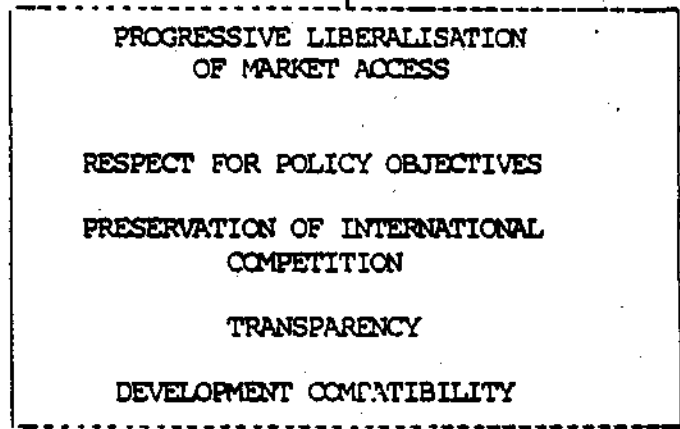
GROWTH

DEVELOPMENT

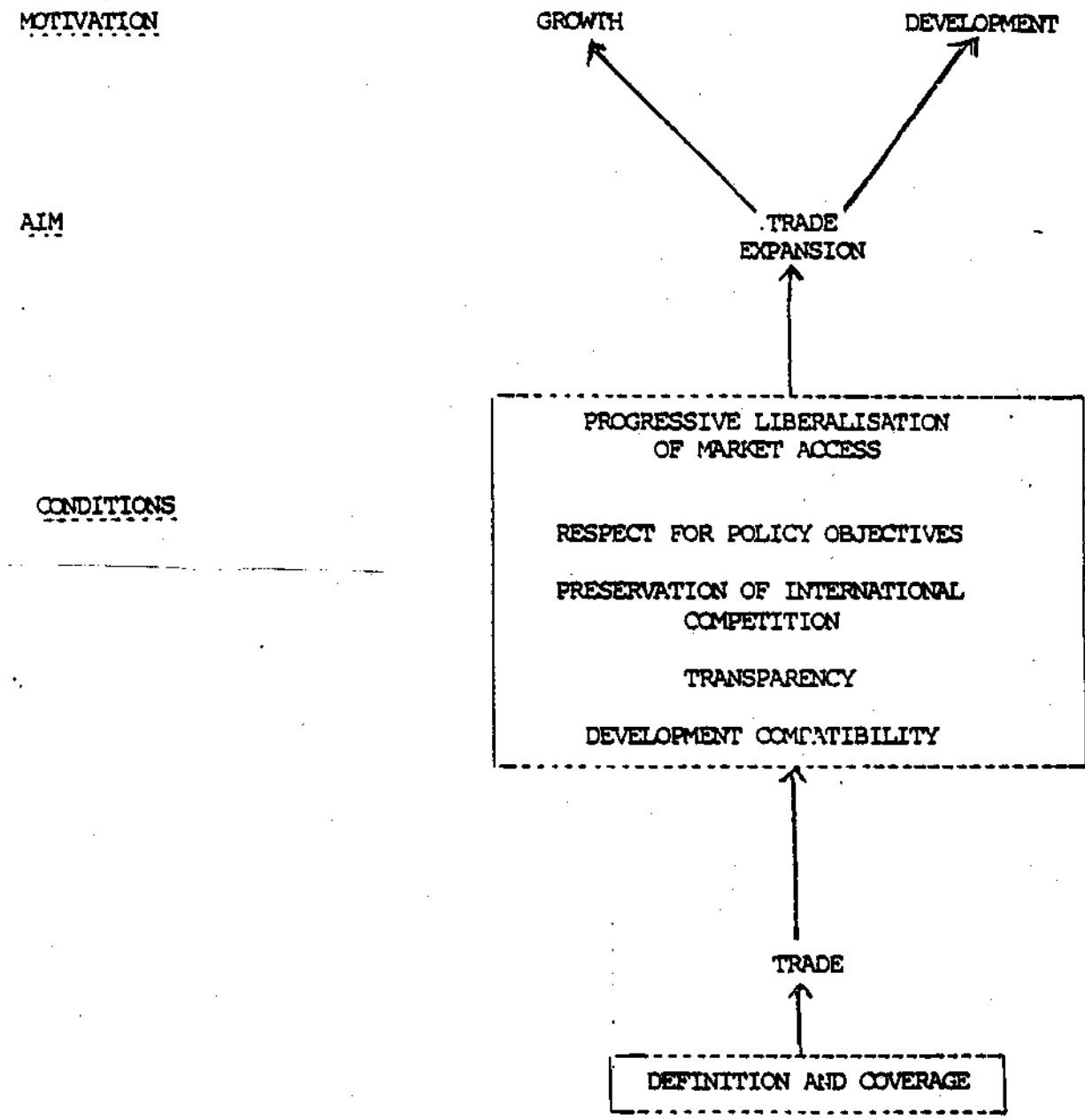
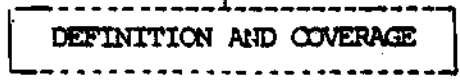
AIM

TRADE  
EXPANSION

CONDITIONS



TRADE



The core concepts suggested in this diagram are explored in more depth below, together with definitional concepts. A discussion then follows of additional, important concepts, which would not, however, affect the core structure.

#### PROGRESSIVE LIBERALISATION OF MARKET ACCESS AND RESPECT FOR POLICY OBJECTIVES

The basic assumption underlying the twinning of these two core concepts is that many existing obstacles to market access take the form of national (or international) regulations, of which a large proportion have been introduced in the pursuit of political or economic objectives unrelated to trade policy. It will be necessary to balance the PROGRESSIVE LIBERALISATION OF MARKET ACCESS with the RESPECT FOR POLICY OBJECTIVES and thus with a concept of APPROPRIATE REGULATION, which recognises that some regulation in many service sectors must be accepted as necessary or desirable, and that the policy objectives which lead governments to regulate services' activities must be respected. In order to effect this reconciliation these concepts will require further specification and this is likely to lead to sectorally specific provisions.

One starting point could be the NOTIFICATION OF PERCEIVED OBSTACLES to market access (1). Because we are dealing with the perceptions of exporting countries, such a procedure is the equivalent of what is usually termed "counter-notification".

Another starting point could be the voluntary NOTIFICATION OF REGULATIONS PERCEIVED AS APPROPRIATE by the countries maintaining or introducing them. Although these notification processes could begin during the negotiation of the agreement, they could be expected to continue on a permanent basis.

In either case, a process of examination of regulations would then be required, which could be transformed into a permanent REGULATIONS COMMITTEE when the agreement enters into force. It would have the task of distinguishing regulations which should be regarded as appropriate, and on which no further action should be taken pursuant to the agreement, from those which should be regarded as inappropriate and hence subject to eventual elimination or amendment. In no case would the fact of notification prejudice the result of this examination. Appropriate rules would have to be developed to define the role of the regulations committee and to ensure practicable procedures.

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(1) Obstacles to market access will not be the only obstacles to the realisation of the objectives of the agreement. Other types of obstacles are assumed to be addressed by other concepts.

This process would require agreement before signature of the agreement on a series of criteria for examination. These could include :

- an agreed list of POLICY OBJECTIVES for each services sector (to be respected). The list would not include economic protection;
- an agreed illustrative list of types of regulation replying to these objectives and to be accepted as appropriate on a sector by sector basis (i.e. ACCEPTED TYPES OF REGULATION); it seems clear that the development of such a list, although it could be begun before and incorporated into the agreement, would be a continuing process after signature of the agreement;
- an agreed illustrative list of INAPPROPRIATE TYPES OF REGULATION : the development of this list would also be a continuing process;
- any regulations which discriminate on grounds of nationality between different foreign suppliers of services could be regarded a priori as inappropriate (concept of NON-DISCRIMINATION);
- any regulations which discriminate against actual or potential foreign suppliers of services compared with existing domestic suppliers could be regarded a priori as inappropriate (concept of NATIONAL TREATMENT);
- any regulation which does not have the MINIMUM IMPACT ON TRADE compatible with achieving the objectives to which it replies could be regarded a priori as inappropriate.

Since it is possible that these criteria would not lead unambiguously to a decision on the appropriateness or otherwise of a regulation, the work of the regulations committee would inevitably include a negotiating element, and until agreement had been reached on a regulation, it would be subject to no further action under the agreement.

On the basis of this examination process, existing regulations which were agreed to be inappropriate would then be the object of negotiated liberalisation, (i.e. elimination or amendment), using procedures based on the following concepts :

- PERIODIC PACKAGES designed to move towards COMPARABLE MARKET ACCESS in all countries for each sector, the multilateral nature of the liberalisation being ensured through some form of MFN-PRINCIPLE. Movement towards comparable market access could be facilitated by periodic agreement on SIMILAR LEVELS OF MARKET OPPORTUNITY in a particular sector, to which countries would commit themselves (a form of binding).

This concept of graduality could apply both to the types of transactions currently made in a sector in order to achieve effective market access and to the choice of sectors to be included in a liberalisation process.

If it is assumed that the process of identification of inappropriate regulations is begun before signature of the agreement, a first package of liberalisation measures based on its results could presumably be agreed at the same time as the agreement itself.

In addition, in order to ensure steady progress towards liberalisation, there could be an obligation of STANDSTILL with respect to new

PRESERVATION OF INTERNATIONAL COMPETITION

PROGRESSIVE LIBERALISATION OF MARKET ACCESS will be the principal instrument leading to increasing international competition. It may not, however, always be sufficient to safeguard its maintenance. Also the behaviour of participants in services markets can under certain circumstances, constitute an obstacle to the expansion of trade.

A set of PRINCIPLES OF BEHAVIOUR may thus be suitable both for national monopolies and for firms or groups of firms with dominant positions.

The right of a country to resort to dispute settlement procedures (see last section) in the case of an impairment of its benefits as a result of a breach of these principles by a company should be recognised. Such a procedure might also provide for the suspension of certain obligations of the injured party (COMPETITION ESCAPE CLAUSE).

In addition, the agreement could contain provisions to promote FAIR COMPETITION including perhaps RESTRICTIONS ON COMPETITIVE DISTORTIONS.

TRANSPARENCY

Transparency can be viewed as an important instrument for the promotion of trade and its absence as a major obstacle to it. The concept of transparency could apply in at least four different ways :

- through the NOTIFICATION OF PERCEIVED OBSTACLES; and the NOTIFICATION OF REGULATIONS PERCEIVED AS APPROPRIATE;
- as an obligation with respect to all national regulations affecting the supply of services by foreign suppliers. This would require rules on the publication of such regulations including the prior PUBLICATION of new regulations, and a principle of MINIMUM DISCRETIONARY POWERS for regulatory authorities;
- the provision and publication of enquiry points through which governments could exchange information for the benefit of firms likely to be affected by existing or new regulations;
- in the continuous assessment of the results of the agreement. This could require the development of a statistical MONITORING programme by the agreement's secretariat;

DEVELOPMENT COMPATIBILITY

This important condition attached to the expansion of trade has not yet evolved very significantly in the GNS. It is therefore possible to make no more than a very preliminary attempt to identify what it might imply.

It has been suggested that each developing country should define for itself the content of the concept of development. This suggests a concept of NATIONAL DEFINITION OF DEVELOPMENT, reflecting differences in the economic structures and policies of different countries.

In any case, the concepts of an agreement will need to be implemented in such a way that its principles and rules are compatible with development.

A guiding principle in implementing this concept should be to find concepts to promote development which are compatible with rather than opposed to the expansion of trade, which is the central aim of the agreement.

#### COVERAGE AND DEFINITION

In order for the agreement to achieve its ultimate aims, it should, in principle, cover ALL INTERNATIONALLY TRADEABLE SERVICES. The definition of trade chosen should be such as to embrace all the types of transactions necessary in a sector in order to achieve EFFECTIVE MARKET ACCESS. This might necessitate agreement on an illustrative list of types of transactions covered in each sector of tradeable services.

#### ADDITIONAL CONCEPTS

A comprehensive agreement will require rules based on a number of concepts additional to those which are elements of the basic structure described above. Some of these are well-known from the GATT. They might include :

- DISPUTE SETTLEMENT procedures to deal with perceived infringements of existing obligations;
- procedures to maintain the BALANCE OF RIGHTS, OBLIGATIONS AND BENEFITS;
- ESCAPE CLAUSES to cover inter alia market disruption, balance of payments difficulties, and national security considerations, but possibly with limits on the action which may be based on them;
- some EXCEPTIONS of a permanent nature, in particular the ability of economic entities such as the Community to liberalise regulations faster among its Member States than with respect to third countries;
- the LIABILITY of signatories for the effects of regulations promulgated by sub-national authorities; no exceptions with respect to such regulations would be provided for in the agreement;
- specific rules relating to GOVERNMENT PROCUREMENT may be necessary if the agreement is to achieve its aims;
- in order to take into account changes in technology, in the operation of the international services economy, and in regulatory practices, provision could be made for the EVOLUTIONARY ADAPTATION of the provisions of the agreement at periodic review conferences.

