

COMMUNICATION FROM PARAGUAY

Autonomous Liberalization of Services

The following communication has been received from the delegation of Paraguay with the request that it be circulated to the Members of the Council for Trade in Services.

I. INTRODUCTION

1. It is important to maintain the momentum of services liberalization through progressive rounds of negotiations. For this reason the GATS includes the concept of a built-in agenda. At the same time, it is important that countries continue the liberalization process in-between these negotiating rounds. Apart from the reciprocal benefits enjoyed from liberalization carried out in a multilateral context, both developed and developing countries stand to gain from liberalizing their service sectors in an autonomous manner in order to enhance competition and efficiency of resource allocation. Autonomous liberalization, although undertaken outside of the multilateral arena, should therefore also be viewed as advancing the goals of the GATS. In the view of this delegation, it is therefore important to encourage and give credit to autonomous liberalization.

2. This paper is submitted for the purpose of contributing to the discussion in the GATS Council on this subject and in the hope of helping to forge a common multilateral approach to this question. The paper argues for the establishment of a multilateral framework allowing for the evaluation of autonomous liberalization measures and provides suggestions as to how the concept of giving credit for autonomous liberalization may be made operational.

3. Many WTO Members have pursued both voluntary and externally-imposed¹ unilateral liberalization in the services area. Countries have also pursued liberalization in the context of regional and bilateral agreements. While these actions reflect progressive liberalization in services in line with the objectives of the GATS, not all of these measures have been made legally binding and their permanent application on a MFN basis is therefore not guaranteed. These measures likewise are not entitled to benefit from the WTO Dispute Settlement Process. On the assumption that these autonomous trade liberalization initiatives convey real benefits to other trading partners and contribute to the liberalization of the multilateral trading system, this delegation is of the opinion that these positive effects should be acknowledged in the GATS negotiations through the development of a multilateral conceptual framework within which autonomous liberalization measures may be evaluated and ranked so as to provide a firmer basis for the credit that could be requested by WTO

¹ Measures which have been part of the conditionality contained in various forms of financial assistance provided by the World Bank or the IMF.

Members during the course of the current GATS negotiations. This framework would serve to encourage both the binding of such measures as well as further autonomous liberalization.

4. Developing such a framework will provide countries with an incentive to ensure that necessary policy reforms are not postponed in anticipation of reciprocal trade concessions at a future date. It will also encourage WTO Members to bind these autonomous trade-liberalizing measures that originated outside of multilateral service negotiations at the applied level of application.

II. MANDATES

5. Paragraph 3 of Article XIX of the GATS requires that the guidelines and procedures for the negotiations also "establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations":

For each round, negotiating guidelines and procedures shall be established. For the purposes of establishing such guidelines, the Council for Trade in Services shall carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV. Negotiating guidelines shall establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations, as well as for the special treatment for least-developed country Members under the provisions of paragraph 3 of Article IV.

Paragraph 13 of the Negotiating Guidelines and Procedures (S/L/93) states that:

"based on multilaterally agreed criteria, account shall be taken and credit shall be given in the negotiations for autonomous liberalization undertaken by Members since previous negotiations. Members shall endeavour to develop such criteria prior to the start of negotiation of specific commitments."

III. CLARIFYING BASIC CONCEPTS

6. In an attempt to move forward on the above two mandates, this delegation feels that a common understanding on two basic concepts should be developed namely, on the scope of the definition of "autonomous liberalization" and on the need to establish an agreed timeframe.

1. Agreeing on a broad definition of "autonomous liberalization"

7. In keeping with the spirit of encouraging progressive trade liberalization in-between rounds and outside of the multilateral process, this delegation feels that the definition of trade liberalization undertaken autonomously should be as broad as possible. Any liberalizing measure should be eligible for credit provided that it is susceptible of being clearly identified, is carried out within the relevant timeframes and is bound at the 'status quo' level of application.

8. Eligible measures falling under autonomous liberalization can be viewed as being of three types:

- Autonomous measures based on the liberalization or improvement of scheduled commitments;
- Autonomous liberalization measures not based on scheduled commitments that can be documented and are carried out within the relevant timeframes;
- Autonomous liberalization measures carried out in a regional or preferential context within the relevant timeframes, provided that a bound commitment is undertaken with

respect to these measures at the multilateral level and they are then applied on an MFN basis.

9. To qualify as eligible measures for consideration under the multilateral guidelines to be developed for autonomous liberalization, the measures must:

- be undertaken within the relevant timeframes (that is, in-between the GATS negotiating rounds, as discussed below);
- be bound at the level of the 'status quo', at least by the end of the current GATS negotiations;
- be applied on an MFN basis.

2. Establishing relevant timeframes

10. Article XIX of the GATS refers to trade liberalization measures carried out "since previous negotiations". In the opinion of this delegation, it is important that a specific timeframe be established to serve as a reference point for autonomous liberalization carried out *in-between* rounds of services negotiations as opposed to during services negotiations.

11. Therefore, credit for autonomous liberalization currently being discussed should be with reference to actions undertaken by WTO Members since the end of the Uruguay Round (15 April 1994), including the results of the extended negotiations on financial services and basic telecommunications, and prior to the start of the current round of GATS negotiations (1 February 2000) for developed WTO Members, and prior to the beginning of the requests for the market access negotiations in the present round (30 June 2002) for developing WTO Members. Autonomous liberalization actions carried out before the agreed benchmark date could broadly be considered to be a part of the previous services negotiations.

IV. BINDING AUTONOMOUS LIBERALIZATION

12. It is worth remembering that in the Uruguay Round, the concept of credit under discussion was to be applied only to bound tariffs. The Chairman's Guidelines issued in December 1991 were "aimed at supplementing the traditional GATT approach to assessing the value of specific tariff bindings by individual developing countries within the Uruguay Round"; and provided "a minimum level of credit which should be given practical effect in the negotiations where each participant can make a qualitative assessment of tariff bindings and reductions, including on what constitutes a meaningful rate of ceiling bindings".

13. In the context of services, it would seem both logical and necessary that WTO Members seeking credit for autonomous liberalization should bind those measures at the end of the current GATS negotiating round. It is in the very nature of multilateral trade negotiations to result in binding commitments, thus ensuring the predictability and lasting character of the negotiating outcome. This is also the only way to guarantee that such measures will be applied on an MFN basis. Additionally, autonomous liberalization measures should be bound at the level of 'status quo' application. This requirement is what would make it possible to consider the improvement in existing commitments as falling within the scope of autonomous liberalization.

14. In terms of timing, it is the view of this delegation that bindings may be undertaken at the end of the negotiating round and carried out once the appropriate negotiating credit has been agreed.

V. ASSESSING THE VALUE OF AUTONOMOUS LIBERALIZATION

15. It is critical to determine how the value of autonomous liberalization measures would be assessed for the purpose of demanding and obtaining negotiating credits for them. During the Uruguay Round, the discussions on how to attribute "credit" for autonomous liberalization (in goods) were linked to the possibility (or not) of designing a mechanism by which participants could assess the offers to bind tariffs for such autonomous liberalization and thus give credit to developing countries². Benchmarks or yardsticks played an important role in that regard. Offers were to be compared with the yardsticks or objectives established, and credits granted to participants according to the proximity of their offers to those yardsticks. The more a country's autonomous liberalization action approached a yardstick, the higher the credit.

16. In the context of services negotiations, the main problem that arises is *whether such a yardstick can be constructed*. Such a yardstick or ranking would allow WTO Members the means to evaluate different autonomous liberalization measures and to compare them in order to discuss the appropriate negotiating credit.

3. Difficulties in following a quantitative approach

17. A suggestion has previously been put forward to evaluate autonomous liberalization according to a quantitative approach, based on a formula. In the view of this delegation, there are serious difficulties inherent in such an approach. These difficulties include the challenge or near impossibility of capturing in a quantitative manner all of the different types of possible liberalization measures, including changes in regulatory requirements along with their varying impact on trade and their varying economic importance. Likewise, certain modes of supply might also need to be weighted more heavily than others as some modes are more economically significant while others are more sensitive. Nor should each service sub-sector necessarily receive equal weight in this process of applying a quantitative formula.

18. It is thus extremely difficult to develop a formula that would be nuanced enough to be able to take account of all the relevant variables and to assign a precise value to each type of liberalized restriction.

19. The other procedure that has been suggested for the determination of autonomous credit is that of bilateral negotiations between WTO Members that would take place in a similar fashion to the request and offer procedure for the negotiation of commitments and which would permit individual Members to assess the value of a particular liberalized measure for their own economic situation and respond accordingly.

20. However, the drawback to this approach however is that in bilateral negotiations, the often unequal economic status of the negotiating partners and the non-transparent nature of the discussions means that weaker trading partners may be at a disadvantage and their autonomous liberalization measures given little credit. This is particularly so since the lack of reciprocity in these discussions would offer little incentive to WTO Members to evaluate autonomous liberalization measures with a benevolent and generous eye. Thus establishing an 'objective' multilateral framework for credit based on agreed rankings could enhance the liberalizing efforts of developing countries with limited negotiating leverage.

² Suggestions were made on how to evaluate first-time bindings, ceiling bindings, "high duty" bindings, "low duty and zero" duty bindings; and the coverage of bindings as a proportion of national tariff lines.

4. Developing a ranking approach to evaluate autonomous liberalization

21. It is the view of this delegation that another alternative to this question should be explored, namely the development of a ranking approach within an agreed multilateral framework to evaluate autonomous liberalization measures. Criteria for the assignment of the ranking could be agreed by WTO Members, but the rankings themselves would be utilized on an individual basis in the course of bilateral/plurilateral negotiations. Such a multilateral framework would establish *inter alia*, criteria that could be used to develop rough rankings to allow an evaluation to be made of autonomous liberalization measures. The actual assessment of an individual liberalization measure could then be worked out between the credit-demanding WTO Member and its trading partner(s), based on the application of these multilaterally-agreed ranking criteria.

22. This delegation suggests the development of a *ranking procedure* to be based on the values obtained from the application of the four different indicators listed below. The ranking thus obtained would give a rough idea of the relative value of the autonomous liberalization action undertaken and would allow WTO members to request credit on a more objective basis. These indicators would include:

- The economic importance of the service sector

Autonomous liberalization carried out in economically more important sectors representing a larger share of national economic output would receive higher ranking values than would autonomous liberalization carried out in lesser important sectors. The economic importance would be measured by the share of domestic GDP accounted for by the service sector in question.

- The type of service sector in question and its contribution to economic efficiency

According to this indicator, autonomous liberalization measures would receive ranking values depending upon the relative importance of the sector to economic efficiency and growth. Liberalization measures carried out in infrastructure service sectors (financial services, telecommunications and transport) would receive the highest ranking values, followed by measures carried out in business-type service sectors (distribution, professional services, business services, tourism and environmental services), social-type service sectors (health and education services), and other services (cultural and recreational services).

- The importance of the liberalized mode of supply

Given the fact that the large majority of services trade is conducted through either cross-border trade or commercial presence, it would be logical to think that a higher ranking value should be attached to autonomous liberalization carried out through either of these two modes. However, the importance of the liberalized mode of supply may vary among WTO Members and among service sectors, and therefore it would be important to establish a consensus on the possible ranking values to be assigned to autonomous liberalization carried out through each of the four modes of supply and possibly also by sectors.

- The relative restrictiveness of the liberalized measure.

According to this indicator, carrying out autonomous liberalization measures with a highly restrictive impact on trade would receive higher ranking values than would the carrying out of autonomous liberalization measures with a lesser restrictive trade

impact. A list could be constructed of horizontal and sector-specific barriers to services trade as grouped into three broad categories according to their presumed degree of relative restrictiveness: (i) little or no effect on trade; (ii) restrictive effect on trade; (iii) prohibitive/highly restrictive effect on trade. The list would also include possible combinations of barriers in the case where two or more measures in combination would have a more restrictive effect than measures taken separately.

23. The organization of the list according to the three categories of restrictiveness could provide a basis for ascribing a ranking value to the autonomous removal of a given measure. For example, as shown in Annex I, a value of X could be attached to the removal of measures that fall into category one, while a value of X+ would be attached to the removal of measures in the second (more restrictive) category and a value of X++ to those in the third (highly restrictive/ prohibitive) category. The organization of the list and the values attached to the removal of particular measures placed in the three respective categories would be indicative of the relative effects on market openness of different types of liberalizing measures.

VI. TRANSPARENCY

24. The requirements for notification in the current provisions of GATS Article III are an important means for ensuring transparency but do not apply to the notification of any measure not covered by specific commitments. Thus autonomous liberalization measures fall outside of the scope of current transparency disciplines. It would therefore appear to be contradictory to require provision of information on autonomous liberalization measures and not on other types of non-scheduled measures.

25. While recognizing that having additional information on the regimes currently in force, both in developed and developing WTO Members, would assist both service providers and the negotiating process, this delegation feels that special transparency requirements for autonomous liberalization measures would not be appropriate. Requests for credit for autonomous liberalization should be treated like other requests, in line with the negotiating guidelines and procedures decided upon for the current GATS negotiating round. Such requests would therefore normally be destined only to the WTO Member/s from whom credit is requested. Information on the scope, content, timeframe and legal basis for the autonomous liberalization measure would necessarily be provided as a part of the request for credit, along with a rough ranking of the value of the measure as per the sum of the indicators discussed in the preceding section. If the outcome of this bilateral/plurilateral negotiation were successful, transparency would be ensured through the binding of the autonomous measure in the WTO member's GATS schedule of commitments.

26. This said, in the view of this delegation, developed WTO Members could agree, in the spirit of GATS Article IV, to notify their autonomous liberalization measures as a means to facilitate services trade. Developing country members could be encouraged to notify autonomous liberalization measures on a voluntary basis, recognizing that it will be in their interest to share information in this regard that could facilitate plurilateral negotiations.

Annex 1

Credit for Autonomous Liberalization to be based on the Sum of the following Rankings:³

1. Economic importance of the service sector	
<i>Share of DGP</i>	<i>Value attributed</i>
> 10% of GDP	100
> 5% of GDP	75
> 1% of GDP	50
< 1% of GDP	25

2. Restrictiveness of Liberalized Measure⁴	
<i>Effect of measure</i>	<i>Value attributed</i>
Prohibitive/Highly restrictive effect	100
Restrictive effect	75
Little restrictive effect	50

3. Nature of the Service Sector⁵ (contribution to growth and efficiency)	
<i>Type of service</i>	<i>Value attributed</i>
Infrastructure-type services	100
Business-type services	75
Social-type services	50
Other services	25

4. Mode of Supply⁶	
<i>Mode of supply</i>	<i>Value attributed</i>
Cross-border trade, or Commercial presence: --complete liberalization	100
--partial liberalization	75
Movement of persons	50 (?)
Consumption abroad	25 (?)

³ Note that the ranking values assigned to each category are indicative only.

⁴ A listing of examples of autonomous liberalization measures according to their restrictive effect would need to be agreed in order to make this category operational.

⁵ Infrastructure-type services include: financial, telecommunications and transport services.

Business-type services include: professional, business, distribution, environmental and tourism services.

Social-type services include: health and education services.

Other services include: cultural and recreational services.

⁶ It is important to recognize that the modes of supply may have a different relative importance for different WTO Members. It would be possible to think of a ranking of modes of supply, possibly by service sector as well, on the basis of consensus criteria decided by WTO Members, in order to obtain the ranking values for box 4.