

COMMUNICATION FROM CHILE

The Negotiations on Trade in Services

The attached communication has been received from the delegation of Chile with the request that it be circulated to members of the Council for Trade in Services.

I. INTRODUCTION

1. As was pointed out in the document submitted jointly with Australia and New Zealand (WT/GC/W/204, 14 June 1999), Chile considers that "the services negotiations should improve market access significantly for developed and developing countries. To do so, the negotiations should achieve higher levels of liberalization in all services sectors, including air and maritime transport, simplification of schedules and greater transparency in commitments; limitation of the scope and number of MFN exemptions; and the development of binding rules on domestic regulation". Given the length of time that has elapsed, Chile considers it necessary to reaffirm the validity of the main ideas set out in that document.

2. Like other delegations, Chile considers that the launch of a new round, balanced and broad in scope, could greatly contribute to the achievement of the goals described above.

3. With regard to the negotiations mandated under the GATS, Chile wishes to emphasize the importance, in these negotiations, of eliminating the lack of symmetry in the commitments undertaken by Members in respect of the different modes of supply recognized by the GATS. We also note with concern the point made by the delegation of India in its document S/CSS/W/12 of 24 November 2000, to the effect that "commitments in mode 4 are primarily horizontal and these horizontal commitments are subject to many kinds of limitations. Further, they are bound for only a small subset of service personnel related to commercial presence and at higher levels and very few commitments extend to independent movement".

II. MAIN SECTORS OF INTEREST TO CHILE¹

A. PROFESSIONAL SERVICES

4. Professional services have taken on greater importance in the area of trade in services in recent years. This has occurred not only because of their inherent importance as a subsector, but also because they are a means of developing investment and other service subsectors. In the specific case

¹ Chile reserves the right to put forward new proposals on these sectors and to add new sectors of interest.

of the developing countries, professional services provide an effective way of conducting cross-border trade in services, without necessarily being linked to commercial presence.

5. Despite its importance, this is one of the most heavily regulated sectors. Some of these regulations are based on the aim of guaranteeing quality of service, in order to protect consumers. Others, however, merely reflect protectionist practices. Examples of the latter are: nationality requirements for the provision of certain professional services; the obligation of a specified period of residence in the country where it is wished to provide the service; mandatory compliance with excessive, vexatious formalities, lacking in transparency, for professional licensing purposes, etc. In this connection, as is stated in document WT/GC/W/204 referred to above, one area of interest could be "a standardized minimum commitment to not apply trade-restrictive nationality or permanent residency requirements as a condition for meeting qualification and licensing requirements for service providers, except in exceptional cases".

6. At the same time, Chile is disheartened by the virtual failure to implement Article VII of the GATS on "recognition". For the sake of transparency, it is important to have agreements between professional groups in Member countries, which could benefit other Members in accordance with the provisions of Article VII, paragraph 2, of the GATS. However, many of those agreements are concluded between private associations, so that it becomes very difficult in practice to afford "adequate opportunity for other interested Members to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it".

7. In this connection, it would be useful to request a Secretariat report on cases where Article VII:2 of the GATS has been applied, as well as the precise procedure required to request "accession" to a recognition agreement between several Members.

8. Finally, Chile considers the work accomplished by the Working Party on Domestic Regulation to be extremely important, and we think it essential to continue working towards the achievement of strong and transparent disciplines.

B. CONSTRUCTION AND ENGINEERING

9. Chile is confident that the multilateral negotiations will result in new opportunities for Chilean construction companies and associated professional services, particularly engineering services. It is also hoped that the negotiations will help to forge links between Chilean and foreign companies in order to take advantage of business opportunities, not only in domestic markets but also in third countries.

10. For more than 20 years, engineering and construction services in Chile have been exposed to the rigours of an open market, with no barriers or subsidies. In this context, Chile has developed comparative advantages in various construction and engineering services, including in particular: engineering for mining projects; seismic engineering; structural engineering, housing construction engineering; engineering for pulp and paper projects; engineering for electricity generation and transmission; harbour project engineering.

11. Chile hopes that the negotiations will lead to the elimination, both for professionals and engineering and construction companies, of the residence or nationality requirement for service provision in the different countries; to the prompt recognition of the possibility of temporary professional employment in the engineering and construction fields; to Chilean-style elimination of the special registration requirements governing the possibility for firms to operate in individual countries; and to the prompt recognition of the qualifications of engineering and construction professionals (for example through accreditation by a college of engineering or other similar body) and firms (through the Chilean Building Industry Association).

12. In addition, Chile will seek the elimination of quotas or numerical restrictions on professional entitled to provide services in the different countries, and on the number of professionals from the country of origin which a firm can employ in its subsidiary in another country, as well as elimination of the requirement of a local partner as a general condition for the provision of engineering and/or construction services (this condition could be maintained on a case-by-case basis where it is justified by the strategic importance of specific projects).

C. TRANSPORT SERVICES

13. Chile hopes that this negotiating round will achieve substantial progress in the liberalization of air and maritime transport services, which have remained subject to weaker disciplines with little or no liberalization.

(i) *Maritime transport services*

14. Maritime transport is of key importance for a country like Chile, which is predominantly urban and has an extensive coastline. More than 90 per cent of our foreign trade is carried by sea, making it vitally important to develop maritime transport service provision and our port and port services infrastructure in general.

15. We consider that these negotiations on services must be based on the three pillars established during the Uruguay Round and subsequent negotiations, namely: international maritime transport services, auxiliary maritime services, and access to and use of port infrastructure and services. Due consideration should also be given to multimodal transport and its relationship with the entire chain of supply, in order to provide efficient solutions for consumers and/or users.

16. In this connection, the liberalization of transport services is a major objective for WTO Members during the ongoing negotiations on trade in services.

17. Chile considers that the negotiations should be informed by the intention to promote an international maritime transport system based essentially on market competition between shipping companies, with a minimum of interference and regulation. The aim should be to help expand opportunities in international maritime transport, since the provision of efficient and competitive international maritime transport services increases trade, benefits consumers and promotes economic growth.

18. Overall, we believe that WTO Members must seek a substantial reduction in trade barriers, without this affecting quality of service and the right to establish regulations for non-trade purposes, such as safety and social cohesion. In the particular case of safety, it is necessary to guarantee optimum safety in international maritime transport, by ensuring that the vessels involved in providing those services meet the highest standards. Moreover, we are concerned about acts or threats against the safety of vessels, which jeopardize the safety of persons or property, thereby adversely affecting maritime transport operations and undermining public confidence in the safety of maritime transport services.

19. These services are already governed by fairly liberal regulations, although international maritime transport is still clearly hampered by limits on foreign equity shares, the requirement to appoint a local representative (restrictions on the establishment of branch offices), limitations on government cargoes (preferential cargo allocation, discriminatory measures favouring the use of national carriers), restrictions on consecutive cabotage, discriminatory taxation and port charges, restricted/regulated access to ports and port services, vexatious procedures during port calls, and

procedures that are unnecessary or inconsistent with current market trends, implemented by customs or other related services.

(ii) *Air transport services*

20. The results of the Uruguay Round provided for continued negotiations on services five years into the transition period. In this connection, it was also considered that the GATS Annex on Air Transport should be reviewed every five years, with a view to considering the possible further application of the Agreement in this sector. This is therefore a subject of major significance to the future negotiations.

21. The review of the Air Transport Annex initiated by the Council for Trade in Services constitutes the prelude to a process designed to achieve a definition of the treatment to be accorded to this sector in the multilateral context.

22. With this aim in view, Chile is in favour of deepening the review process. To that end it is necessary to devise a blueprint directed to achieving greater liberalization of the air transport services sector. This must be followed by the clarification of concepts, definitions and classifications, in order to determine uniform laws of general application to the sector.

23. Given the requirement to establish clear parameters for commercial activities relating to the air transport sector, it is necessary to consider the inclusion – in paragraph 3 of the Annex – of all those services which, although they are directly related to air transport, have no bearing on traffic rights.

24. Similarly, it is necessary to classify and clarify all services related to air transport, so as to be able to determine which of them could be included in paragraph 2 of the Annex and which could be the subject of commitments under the GATS.

25. At the same time, it would be desirable to extend the application of the GATS to areas that have not been included. In particular, provisions should be adopted to promote the application of rules such as MFN, the establishment of an expeditious and effective dispute settlement process and the binding of measures or commitments.

26. Developments in the air transport sector in recent years make it clear that this topic should be tackled speedily in the WTO. The proliferation of bilateral agreements and the gradual establishment of plurilateral or multilateral agreements on air transport demonstrate the existence of a vacuum in respect of comprehensive rules governing this economic and commercial sector.

D. TELECOMMUNICATION SERVICES

27. The growing economic and social importance of telecommunication services justifies careful study of their regulation in the World Trade Organization, in the context of a new negotiating round.

28. A prime area for consideration is the coverage of commitments undertaken, in the light of technological innovations and media convergence. We support and encourage extensive liberalization of all basic telecommunication services, based on the principle of non-discrimination. Such liberalization must be effected by each Member as an extension of its current commitments, within the framework of its legal system and its institutional regulations. In this connection, the reference document may continue to serve as a valuable tool to guide the liberalization process.

29. In the area of basic services, as well as value added and supplementary services, gradual liberalization of market access may have a significant and positive impact which goes beyond the

sphere of trade in services. We therefore urge Members to bear in mind the potential interrelationships between this topic and other areas, including intellectual property, trade-related investment measures and issues of electronic commerce.

E. DISTRIBUTION SERVICES

30. Distribution services are covered by codes 621, 622, 631, 632, 6111, 6113, 6121 and 8929 of the United National Provisional Central Product Classification. Distribution services are therefore considered to include commission agents' services, wholesale trade services, retailing services, franchising services and others.

31. Chile agrees with the point made by the Secretariat in its document S/C/W/37 of 18 June 1998, to the effect that the distribution sector is of considerable importance in the economy, not only in terms of its direct contribution to output and employment, but also in terms of its crucial role in domestic and international trade. There is evidence that international trade in distribution services is growing from previously low levels, due to the liberalization of trade in goods and foreign investment regimes, and the development of new technologies, especially in telecommunications. However, there remains much scope for further liberalization and for improved commitments in distribution services, especially with regard to the presence of natural persons.

32. At the same time, Chile considers that there are still many obstacles to the full development of this activity. Some of those obstacles relate to "economic needs tests" for service providers, discriminatory tax treatment of foreign service providers, discriminatory treatment in respect of licensing requirements for this activity, etc.

F. ENERGY SERVICES

33. Energy service have not to date played a significant role in the trade negotiations specific to the WTO or in other free trade agreements. In fact, there was very little reference to them in the Uruguay Round, and then only in general terms. This was due to the fact that, up until a few years ago, the generation, transport and distribution of energy were in most countries controlled by State-run, vertically integrated enterprises which in most cases acted as State monopolies and served domestic markets exclusively, especially in the case of electricity companies. Moreover, it had been a traditional practice in the energy sector to draw no clear lines of distinction between goods and services. This was inconsistent with the rationale of the Round, which was based on the clear and precise identification of trade-related services.

34. This situation has undergone rapid change in recent years, and will no doubt continue to do so in the future. From the institutional and regulatory standpoint, the current trend is towards redefining the role of the State and the private sector in energy-related activities, and this has clear implications for the economic and commercial workings of the sector. Thus, in many countries the legislative and regulatory instruments governing the sector have been updated, changes have been made to legal systems of ownership, there has been a gradual trend towards internalization of the environmental costs of energy products, and encouragement has been given to the opening up, privatization and internationalization of the sector, all of which has resulted in greater competitiveness. Overall, these developments have been complemented by a reduction in production costs and the gradual lowering of prices, except in those countries where it was first necessary to eliminate existing sectoral subsidies. Finally, recent years have seen the launch of major international energy integration programmes, with a trend towards more open and increasingly flexible systems, facilitating the establishment of more robust markets than could be achieved by individual countries acting on their own.

35. In our view, therefore, certain aspects will need to be highlighted in the negotiations getting under way, such as the following:

- These negotiations should cover the full range of energy services, including services related to the generation, transformation, transport, distribution and marketing of electrical energy, as well as aspects relating to hydrocarbons and their derivatives. Some of the proposals put forward call for certain restrictions which should be considered with caution.

 - These negotiations should be carried out in the light of trends in matters relating to subsidies for energy-related activities. This point, which does not appear in any of the proposals studied, is of vital importance since the energy sector continues to be highly subsidized in many countries, and this sharply limits the potential for structuring a competitive and open market.
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