

**COMMUNICATION FROM CUBA, PAKISTAN, SENEGAL, SRI LANKA,
TANZANIA, UGANDA, ZAMBIA AND ZIMBABWE**

Increasing Participation of Developing Countries in International Trade in Services:
Effective Implementation of Article IV of GATS

The following communication has been received from the above-mentioned delegations with the request that it be circulated to the Members of the Council for Trade in Services.

1. The share of developing countries in the world exports of commercial services was less than 20% in 1999¹, despite the fact that they constitute about 90% of the membership of the WTO. Moreover, this share has not shown any increase over the past few years.² On the other hand, developing countries' share in world commercial services imports has increased by about 15% during the same period (1995-1999)³. This is just one indication of lack of effective implementation of GATS Article IV on "Increasing Participation of Developing Countries". As pointed out by UNCTAD "Experience so far suggests that the structure of the GATS has proven to be of greater utility to developing countries than declarations in their favour, such as GATS Article IV, which have not to date been effectively implemented."⁴ The need to rectify this shortcoming and to effectively implement Article IV is even greater now when the mandated negotiations under Article XIX are underway. The present submission attempts to provide some ideas for this purpose. It starts with a brief discussion of Article IV as an integral part of special and differential treatment for developing countries, analyses various elements in the Article, and then suggests certain actions to implement the Article, particularly in the context of various on-going negotiations under GATS. We are confident that these ideas will generate positive discussions in the Council for Trade in Services (CTS), leading to the effective implementation of Article IV before the start of market access negotiations.

A. INTERPRETATION OF ARTICLE IV

2. It can be argued that the positive list approach of GATS and Article IV, that directly deals with the issue of increasing participation of developing countries in international trade in services, are interlinked parts of the same paradigm, that is, special and differential treatment for developing countries in the multilateral trading system. This paradigm is based on the peculiar structural features of the economies of developing countries as well as distortions in the present international trading

¹ Based on International Trade Statistics 2000 by the WTO Secretariat.

² For example, based on the WTO Annual Report 1997, Vol. II, this share was slightly above 20% in 1995.

³ Based on WTO Annual Report 1997, Vol. II and WTO International Trade Statistics 2000.

⁴ "Positive Agenda and Future Trade Negotiations", UNCTAD, 2000, page 82.

patterns that arise from their lower levels of development. In practice, this special and differential treatment has two operational elements: (1) facilitation of exports, i.e., enhanced and non-reciprocal access for developing country exports to developed country markets; and (2) flexibility and policy discretion to developing countries in respect of their own markets, i.e., right to regulate to pursue developmental objectives, right to maintain some trade barriers and the right to provide appropriate support to their domestic services providers. Article IV therefore should be interpreted in the context of this broad special and differential treatment paradigm.

3. Article IV can also be regarded as an important instrument to operationalize the commitments in the preamble to the GATS, particularly in preambular paragraph 5, that states the desire “to facilitate the increasing participation of developing countries in trade in services and the expansion of their service exports including, *inter alia*, through the strengthening of their domestic services capacity and its efficiency and competitiveness” (emphasis added). But this is not the only preambular paragraph that Article IV aims to operationalize. At least three other preambular paragraphs are also related, particularly in the context of the on-going negotiations under GATS. Preambular paragraph 2 wishes “to establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade ... as a means of ... the development of developing countries”. And preambular paragraph 4, while recognizing the right of Members to regulate and to introduce new regulations on the supply of services within their territories in order to meet national objectives, specifically recognizes “the particular need of developing countries to exercise this right”. Finally, preambular paragraph 6 takes “particular account of the serious difficulty of the least-developed countries in view of their special economic situation and their development, trade and financial needs”.

B. IMPORTANT ELEMENTS OF ARTICLE IV

4. The important elements of Article IV, in the context of the broad special and differential treatment for developing countries, and as providing practical means to implement the objectives given in the preamble of the GATS, can be outlined as under:

- (a) Increasing Participation: This is perhaps the most important part of the Article. Significantly, and in line with the paradigm of S&D and the objectives in the preamble, it commits Members to both: (1) providing better market access to developing country services exports through liberalization in sectors and modes of supply of export interest to them (sub-para 1-c); and, (2) facilitating the strengthening of their domestic services capacity and its efficiency and competitiveness (sub-para 1-c. Para 1-a therefore is related to the flexibility and policy discretion to developing countries to strengthen their domestic service providers through appropriate measures including domestic regulations, gradual, selective and conditional access to their markets,⁵ and other support mechanisms to improve the efficiency and competitiveness of their domestic service providers. Para 1-c, of course, is clearly about linking liberalization of trade in services with better market access for services exports of developing countries. From this perspective, sub-para 1-b is relevant to both sub-paras 1-a and 1-c. Hence improving developing country access to distribution channels and information networks (sub-para 1-b) , overwhelmingly owned and operated by enterprises of developed countries, will improve their competitiveness as well as, facilitate their access to developed country markets.
- (b) Contact Points: Paragraph 2 of the Article commits the developed country Members to establish, latest by end 1996, contact points to facilitate access by developing country service

⁵ Imposing developmental conditions, while opening selected services sectors, is not only allowed to developing countries but seem desirable under the GATS.

suppliers to information that, generally speaking, will improve their competitiveness and market access to developed country markets. Certain elements in this paragraph are noteworthy. One, it does not specifically say that these contact points should be established in the territories of concerned developed country Member. Two, the types of information mentioned in sub-paras a to c are quite comprehensive and go beyond the export interests of developing country service suppliers. Three, sub-para 2-b has particular relevance to the movement of natural persons and hence emphasises the importance for developing country service suppliers of commitments in this mode of supply. Four, sub-para 2-c is linked to sub-para 1-a, further strengthening the relevance of access to technology for improving the competitiveness of developing country service suppliers. All these elements need to be present in any mechanism that is devised to implement the obligations in this para.

- (c) Special Priority to the LDCs: Para 3 of the Article clearly states that the LDCs will be accorded special priority while implementing the commitments in the preceding two paragraphs. Moreover, one concrete way of doing this will relate to lower levels of negotiated specific commitments by the LDCs which should be in line with their special economic situation and development, trade and financial needs.

5. To sum up the above analysis, Article IV is mandated to:

- (i) provide broad special and differential treatment to developing countries, with special priority for the LDCs;
- (ii) through specific commitments, mainly by developed country Members;
- (iii) that leads to tangible increase in the participation of developing country Members in world trade in services;
- (iv) through liberalisation of market access in sectors and modes of supply of export interest to developing country Members and through access to information, distribution channels and technology;
- (v) by facilitating the strengthening of their domestic services capacity and its efficiency and competitiveness; and
- (vi) by providing flexibility and policy discretion to developing country Members to support their domestic service suppliers.

C. RELATIONSHIP OF ARTICLE IV WITH ARTICLE XIX

6. Finally, the relationship of Article IV with Article XIX should not be overlooked: indeed the very first sentence of Article IV mentions Parts III (Specific Commitments) and IV (Progressive Liberalization) that includes Article XIX. Article XIX of GATS, that mandates successive rounds of negotiations and provides the legal basis for the present negotiations, is intrinsically linked to the objectives in the preamble and its operationalization mechanism as given in Article IV. Specifically, paragraph 2 of Article XIX provides some practical examples of implementing the objectives of Article IV by mandating that (1) the process for liberalization shall take place with due respect for national policy objectives and levels of development of Members, not just in over all terms but, significantly, also in terms of individual sectors; and (2) there shall be appropriate flexibility for developing countries to open fewer sectors, to liberalize fewer types of transactions, to extend market access in line with their development situation and to attach conditions to this access. Similarly, paragraph 3 of Article XIX links the achievement of objectives of Article IV to the establishment of Negotiating Guidelines for each round of negotiations that are based on the assessment of trade in

services with reference to the objectives in the preamble. Moreover, the last sentence of paragraph 3 also mandates that the Negotiating Guidelines shall establish modalities for the treatment of autonomous liberalization as well as for the special treatment for the LDCs.

7. It should be clear from the above that not only various parts of GATS, e.g., objectives in the preamble, commitments under Article IV and mandated negotiations under Article XIX, are closely interlinked, but also that the drafters of this Agreement have tried to provide certain practical means to operationalize these commitments. The lack of implementation, therefore, is not so much due to lack of means provided in the Agreement but to the disregard shown by some Members to these provisions.

D. PROPOSALS TO IMPLEMENT ARTICLE IV

8. Based on this analysis, and in view of the fact that the mandate of Article IV, for whatever reason, has not been fulfilled thus far, following action is proposed. Members should commit themselves to these actions. Such a commitment, particularly by developed country Members, will not only effectively implement Article IV but also will create a conducive environment to conduct and successfully conclude the present round of services negotiations.

I. Actions Before the Start of Market Access Negotiations

The following actions should be taken before the start of sectoral market access negotiations:

1. The Council for Trade in Services shall carry out an assessment of trade in services. This assessment should examine the participation of developing countries in world trade in services including existing liberalization commitments by developed country Members in sectors and modes of supply of export interest to developing country Members; identify major problems faced by developing country service providers; and assess whether the objectives in the preamble and Article IV have been achieved and, if not, what are the causes.

2. The Council for Trade in Services shall establish modalities for granting credit to developing countries for autonomous liberalization, and for the special treatment of LDCs.

3. The Council for Trade in Services shall examine, on the basis of notifications by developed country Members, the actions that have been taken to facilitate developing country service providers' access to technology, distribution channels and information networks. This should facilitate the identification of best practices as well as gaps in existing actions. Based on this exercise, concrete actions can be outlined that Members must take to discharge their obligations under Article IV.

4. The Council for Trade in Services shall assess the working of contact points that have been established pursuant to paragraph 2. This assessment will be based on comprehensive notifications by developed country Members that provide detailed information regarding the use of these contact points by developing country service providers. The outcome of this exercise will be to establish the minimum standards for the working of the contact points so that they are fully functional, properly funded, known and linked to developing country service providers, and proactive in responding and disseminating the relevant information. Issues such as the establishment of the contact points in the embassies/consulates/commercial offices of developed countries in developing countries and extending their role to include facilitation of access to technology and information and distribution networks, can also be part of this exercise.

5. To effectively implement Article IV.1c, sectors and modes of supply of export interest to individual developing countries will be identified by developing countries. This will facilitate the Council for Trade in Services in assessing the offers and commitments by the developed countries in these sectors and modes of supply of export interest to developing countries.

6. To preserve the present positive list structure of the GATS through the implementation of Article IV, developing countries have the opportunity to identify and submit to the Council for Trade in Services, list of sectors and types of transactions that they could liberalize so that the requests made to them by developed countries during market access negotiations focus only on these sectors and types of transactions.

II. Actions During the Sectoral Market Access Negotiations

These actions will be linked to the actions mentioned above.

1. Developed country Members shall provide meaningful access in the identified (as in I.5 above) sectors and modes of supply of export interest to individual developing countries. These commitments should be specifically mentioned in country schedules. Moreover, the Council for Trade in Services should assess these specific commitments in sectors and modes of supply of interest to developing countries before the finalization of negotiations so that any shortcomings can be made up before the conclusion of the negotiations.
2. The Council for Trade in Services shall carry out an assessment of the results of the negotiations to ensure that there is mutuality of benefits and an over all balance of rights and obligations. Of course, the negotiated commitments will have to be adjusted, if needed, in the light of this assessment which will be carried out before the final agreement is reached.
3. To preserve the positive list structure of the GATS, developed country Members, while making requests to developing country Members, shall focus only on the sectors and types of transactions that have been identified by individual developing countries (as in I.6 above) for liberalization.
4. To achieve the objectives of Article IV, and as mentioned in Article XIX, Members shall not insist on the removal of conditions that individual developing countries have attached to their commitments.
5. To ensure the exercise of the right of developing countries to take measures to strengthen their domestic service sectors and to pursue national policy objectives through domestic regulations, such measures and regulations will continue to be dealt with under Article VI only.
6. In recognition of the fact that transfer of technology is a legitimate development objective of developing countries, they shall have the right to impose conditions, specify types of transactions and undertake other measures for this purpose, while undertaking liberalization commitments.
7. Negotiating Guidelines shall be implemented in letter and spirit.

III. Other Actions

Keeping in view the fact that Article IV is a practical mechanism to implement S&D in favour of developing countries and fulfill the objectives of GATS as given in the preamble, it is also proposed that the Council for Trade in Services shall regularly monitor the implementation of all the actions and measures required to effectively implement Article IV and suggest necessary remedial action when needed. Regular notification obligations for developed country Members can be envisaged for this purpose.
