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COMMUNICATION FROM PERU

Emergency Safeguards

The following communication is being circulated at the request of Peru to members of the Working Party on GATS Rules.

The delegation of Peru attaches great importance to emergency safeguards for services as a useful instrument for countering the possibly negative effects of the liberalization of trade in services. In this connection, we consider that a multilateral discipline on this issue would encourage many Members of the WTO - particularly developing countries - to participate actively in the next round of negotiations for the year 2000. Moreover, in view of the role played by services in the overall functioning of the economy and in the development process, we believe that a general emergency safeguard mechanism, whose implementation would not depend on sectoral liberalization commitments and which would not necessarily be restricted by such commitments, would be the most appropriate.

1. On whose behalf would emergency safeguard action be taken?

There appears to be a consensus that the beneficiary of an emergency safeguard would depend on the mode of supply to which the safeguard applies, as is explained in the chairperson's note of 1 May 1997.

Another issue is the relevance of the definition of domestic industry and national industry. In Peru, according to the domestic legislation in effect, the words "domestic industry" would include industries established in Peru, whether they are owned by nationals or foreigners.

2. In what circumstances would emergency safeguard action be taken and what would be the purpose of such action?

We agree with delegations which consider that an "unforeseen development" would be a reason for the adoption of an emergency safeguard. The measure should be time-bound and it should be applied on a non-discriminatory basis. In any event, the purpose of such a measure would be to remedy any situation that arose as a result of commitments under the GATS.

It is also obvious that any general emergency safeguard would not be designed to deal with the situations included in Articles XII of the GATS (balance-of-payments difficulties), XIV (measures taken for reasons of public order or morals, security, public health *inter alia*) and XXI (modification of schedules), and with unforeseen developments such as those listed by Peru in 1989

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(document MTN.GNS/W/74), namely, protection of consumers and the physical infrastructure, prevention of dominant market positions, or other practices identified more recently.

In other words, we believe that a safeguard measure for services should be more than a simple extrapolation of safeguards such as those provided for trade in goods. We therefore consider that a safeguard measure for services should be broader and should not be restricted to covering the case of "injury or threat of injury due to an unforeseen increase in imports", because in the case of services this could only theoretically apply to mode 1, as other delegations have already remarked.

3. What approach should be adopted in respect of injury/adverse effects, and the relevant causal link between injury/adverse effects and commitments under the GATS?

In the case of emergency safeguards provided to counter injury or threat of injury, it is essential to lay down objective criteria for assessing injury, for example, impact on volume of sales, market share, profits, employment levels.

4. What measures would be taken under the emergency safeguard mechanism?

The measures would depend on the mode of supply. In any event, depending on the mode of supply, the measures should not be limited to market access measures but should also cover temporary suspension of the national treatment principle.