

Unedited Transcript of Statement

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I want to address very briefly and in summary form the issues that lie behind some of the statements made and is not infrequently referred to in specific terms and that is the legal basis of our proceeding. I say this out of respect for the country in question, India, and their spokesman and it's because of my respect for that country and it's spokesman that I comment on these issues which I otherwise would not address. Firstly, I think it's common ground that the General Agreement on Tariffs and Trade as it now exists either doesn't cover services or if it does it's a matter for considerable discussion and consultations as to whether any particular provision covers it. That's common ground and having said that

I would like to emphasize that that's quite a different thing from saying that services are beyond the competence of GATT. That shorthand phrase makes it sound as if it is illegal even for us to sit here to discuss the possibility of including services in a new round, indeed it questions the legality of what was agreed to in 1982 and the legality of everything that you, Mr. Chairman, in your working group have been doing on services so I would like to lay that one to rest: it would simplify our discussion if we didn't say beyond the jurisdiction or beyond the competence -- and I know that these words are used in good faith -- but I don't mind if electrical engineers use those words but lawyers shouldn't. That's my first point.

My second point is that institutionally some genuinely believe that the institutional body of GATT, I don't care how we define it -- not even the building because we are meeting in a different building now -- let's say the Secretariat -- must never address the issue of services. I think that's behind us. That argument was made but we are now allowing the Secretariat to service the group called curiously enough, the Jaramillo Group. So that one's behind us.

But an important point was made this morning about the law of treaties. Now let's assume for the moment that we are not talking about contractual obligations which vary as between parties because not everyone is bound by the same Codes, etc. Let's assume the law of treaties is what we are talking about and that the convention on the law of treaties, which is the constitution on treaties -- it's the global constitutional on treaties -- is what we are addressing. Well I think we do all agree with the distinguished representative of India, that treaties in general bind only those who are parties to the treaty unless, unless, the treaty lays down a universally binding norm that is to say "jus cogens" and I don't think that is what is being suggested here. The GATT doesn't bind non-parties, so we have common ground with the Indian Delegation on that point. On a second question I am sure we have common ground, namely, that amendments or new treaties bind only the party unless, once again, they lay down universally binding norms or what we call "jus cogens" and there is no disagreement there. Where we may differ is on the question whether parties to a particular treaty are allowed to negotiate amendments or modifications or extensions or even a new treaty amongst the same parties. Now there again I am sure we are on common ground in saying that those who are not

parties to the new text, the new contract, the new amendment, the new provisions, the new agreement if you wish, are not bound. They cannot be bound unless by customary law these amendments -- let's say for the sake of argument -- on services develop into universally binding norms through the customary law-making process. Now if anyone is arguing that, then they are about 50 years ahead us. So, to sum up, we do agree with the Indian delegation that they cannot be forced to accept agreements to which they have never agreed to become a party. We even agree with them when they say that the existing General Agreement on Tariffs and Trade doesn't cover services. If it does, then we too need to be convinced which is why we are suggesting it is time to address such an important issue. But the final point is, I think the most important -- it's the law of treaties convention which protects the position of countries such as Brazil and India, because they can never be forced to be bound by a new agreement or any amended agreement or any new provision unless they accept them specifically as parties.