

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

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Group of Negotiations on Services

NOTE ON THE MEETING OF 24-28 JUNE 1991

1. The Chairman welcomed delegations to the thirty-ninth meeting of the Group of Negotiations on Services (GNS) and noted that the agenda for the meeting was to be found in GATT/AIR/3197 of 13 June 1991. After requesting whether any delegation wished to take up any matter under "other business", he turned to item 2.1 on matters relating to Scheduling of commitments. He said consultations were already underway on the basis of the informal secretariat note of 4 June and indicated that they would continue. The results of these consultations would be conveyed to the GNS in due course.
2. He then introduced agenda item 2.2 on considerations relating to Article I: Scope and definition and opened the floor for comment.
3. Regarding Article I:1, the representatives of Malaysia and Thailand asked why the word "international" was not placed before the word "trade". The representative of Canada suggested that "international" was not necessary because trade was defined in Article I:2.
4. Regarding Article I:2, the representative of India said that Article I was related to the mobility of labour in certain respects. First, through modes of delivery; second, there was a need for symmetry in the treatment of capital and labour: a right of establishment would need to be matched with a right to residence for labour. Since symmetry in a literal sense might not be practical, a solution could lie in looking at the balance of economic benefits accruing to various groups of countries. The representative of Pakistan agreed with the need for symmetry in the treatment of factors of production.
5. The representatives of India and Malaysia said that the modes of supply needed to be more clearly defined. The representative of India made the following suggestions: cross border delivery (Article I:2(a)) excluded the movement of capital or labour and included delivery by means of communications and in the form of goods (such as documents and computer diskettes); relevant measures for this mode would relate to balance of payments regulations. Measures affecting the movement of consumers (Article I:2(b)) would relate mainly to foreign exchange regulations; those affecting movement of natural persons (Article I:2(c)) would relate to immigration laws on temporary entry and movement of personnel as well as to labour laws and professional qualifications; finally, measures affecting commercial presence (Article I:2(d)) would relate to investment laws and foreign exchange regulations.

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6. On the possible definition of modes of supply, the representative of the United States agreed that Article I:2(a) might not involve movement of factors of production. The representative of Canada noted that although Article I:2(b) might obviously deal with the case of tourism, it also dealt with measures that discriminated against consumers in other sectors. The representative of Hungary posed the question as to whether Article I:2(b) implied that a "right of consumption" was covered by the agreement, and if it applied to export restrictions. Regarding Article I:2(d), the representative of the United States observed that the investment covered did not include portfolio investment but that which was linked to a commercial presence. Also, the representative of Canada suggested deleting the bracketed text at the end of Article I:2(d) whereas the representative of Egypt suggested preserving this text.

7. The representative of Japan said Article I:2 defined the scope of the agreement and not the modes of supply as such. The representative of the European Communities said that a distinction should be made between the definition of modes of supply and the problem of how to schedule; the schedule addressed measures and in some instances more than one mode of supply could be affected by one set of legislation. The representative of Switzerland said that listing the four modes of delivery was not necessary in the schedules. The representative of the United States noted that the listing in the schedules of the four modes of supply might not be necessary as long as it was understood that when not mentioned, a mode was bound. The representative of Canada asked if these four modes of supply were the complete list or an illustrative list. He observed that since more than one mode of supply might be used at the same time, the text might indicate that in the supply of a service the various modes might be used either separately or in combination.

8. Regarding Article I:3, the representatives of Egypt, the European Communities and India noted that the issues of local and sub-national authorities and the exercise of government functions would need to be addressed. The representative of Austria suggested referring to "public" functions rather than "government" functions. The representatives of Canada and the United States suggested that for Article I:3(a)i, the results of other Uruguay Round groups, such as the GATT Articles Group, should be taken into account. The representative of Malaysia cautioned that the word "authorities" should not be too widely interpreted. The representative of the European Communities said that the bracketed text of Article I:3(a)iii failed to distinguish between responsibilities and enforcement when a central authority might have limited ability to enforce and noted that this issue might be addressed in an article on enforcement. The representative of Switzerland wondered what the value would be of a commitment that could not be enforced and recommended clearer language for Article I:3(a)iii.

9. The Chairman opened the discussion on item 2.3 of the agenda on Labour mobility.

10. The representative of India, supported by the representatives of Morocco, Pakistan and the Philippines, stated that factors of production

involved in the provision of services should be treated symmetrically under the framework. The representative of the Philippines added that symmetry should be viewed in terms of balance of interests and economic gains among trading partners. The representative of Poland said that symmetrical treatment of production factors was not as important as the balance-of-trade benefits. The representative of Bangladesh stressed the need to reflect the interest of all participants in order to achieve a successful result in the GNS negotiations. Labour mobility was crucial since it reflected the interest of most developing countries. The representative of Yugoslavia reminded the Group that no annex had been drafted on professional and construction and engineering services; this was based on the understanding that a satisfactory solution for all participants could be found for the labour mobility issue.

11. The representative of Mexico said that the need for a labour mobility annex should be seen from the perspective of comparative advantage. For countries with a comparative advantage in labour-intensive services, it was entirely unacceptable to subscribe to an agreement which reflected only the interest of countries which were already competitive in most services sectors and modes of delivery. Two elements were especially relevant in attempting to find a solution to the issue: the types of labour mobility to be included under the agreement and the manner by which labour and personnel should be allowed to provide services. It was clearly not sufficient to limit the coverage of service providers to managers, executives and specialists as had been done in the communications from the United States (contained in document MTN.GNS/LAB/W/1) and Canada (contained in document MTN.TNC/W/55). This view was supported by the representatives of India, Hungary, Egypt, Morocco, Pakistan and Bangladesh. Similarly, the agreement should permit not only the movement of personnel employed by the foreign service providing firm, but also the movement of foreign personnel employed by national service providing firms. The representative of India said that the framework should permit firms which had been granted access to recruit from the source which was economically most advantageous. There was wide agreement that labour movement under the framework and its annexes would be temporary.

12. The representative of India said that the scope of application of the agreement and its annexes did not extend to individual job seekers, and did not concern or affect, national laws and regulations regarding citizenship or immigration related to residence or employment on a permanent basis. This point was also made by the representatives of Canada, the United States, Hungary and Austria. The representatives of Hong Kong and Brazil said immigration measures should be outside the scope of the agreement. The representative of Japan said that changing conditions relating to the granting of work permits could imply changes in immigration laws and regulations in some countries. The representative of Thailand added that for the types of labour mobility sought by most countries in these negotiations, no major changes in immigration regulatory frameworks should be necessary. The representative of Brazil noted that an annex on labour mobility should not be conceived as an instrument of liberalization.

13. The representative of India said that there was agreement that immigration laws and regulations should not act as unjustified barriers to trade where commitments covering labour mobility had been made. The representative of Hungary said that non-economic measures such as immigration laws and regulations could be addressed through a non-frustration provision such as the one contained in brackets in paragraph 5 of the labour mobility annex of MTN.TNC/W/35/Rev.1. The representative of Brazil said that the main objective of the annex should be to prevent the nullification and impairment of concessions made involving the movement of natural persons. This view was shared by the representative of Yugoslavia.

14. The representative of India said that his delegation sought commitments from other participants on the movement of natural persons in all services sectors. An illustrative list covering all skill levels would facilitate the Group's work by bringing some balance into the negotiations. Such a list should provide an agreed categorization and terminology to be included in the schedules. The representatives of Mexico, Morocco, Pakistan, Egypt and the Philippines spoke in favour of such an illustrative list. The representative of Australia opposed drawing up an illustrative list of natural persons providing services since it was not, in his view, feasible to achieve multilateral agreement on the contents of such a list. This view was supported by Japan and Austria.

15. The representative of India said that the application of m.f.n. to existing agreements for the facilitation of labour movement and the integration of labour markets within the context of Article V of the draft framework should be addressed in the Annex. The representative of Hong Kong highlighted the importance for his delegation of preferential arrangements covering the movement of natural persons. The representatives of Brazil and Argentina agreed that nothing in the agreement should prevent preferential agreements among countries who were parties to regional economic integration arrangements. The representative of the Philippines stressed that some existing preferential agreements on labour mobility would need to remain in force. The representatives of Australia and New Zealand expressed concern about the wide exemptions from the application of the m.f.n. principle to labour mobility which the maintenance of existing preferential agreements could represent.

16. The representative of Canada highlighted the value of a common approach dealing with all services which would provide for a number of categories of personnel movement the same level of obligations for all parties. In Annex II of the Canadian initial offer on market access and national treatment (contained in document MTN.TNC/W/55) two types of services providers were identified for which the requirement to comply with job validation procedures would be waived: service sellers and intra-corporate transferees. The entry of service sellers was limited to less than ninety days. The definition of intra-corporate transferees comprised managers, executives and specialists. He added that an intermediate category might need to be reflected in the framework or an annex in order to cover providers which did not qualify as either service sellers or intra-corporate transferees. The representatives of Australia and Austria favoured the Canadian categorization of services providers. The

representative of Brazil suggested that further clarification was needed regarding the difference between job-seekers and service sellers.

17. The representative of the United States said that all categories of labour mobility should be open to negotiations. He drew the attention of the Group to the fact that the headnote in his country's initial offer on services applied to the movement of personnel where a binding commitment had been made. Among other things, the submission was intended to ensure that individual cases involving entry visas did not give rise to dispute. He stressed that restrictions relating to the movement of people were motivated not only by public-order considerations, but also by underlying economic reasons.

18. The representative of Hungary said that two different types of measures affected the movement of services providers across borders: economic and non-economic measures. Economic regulations included labour market tests whereas measures such as immigration and health-related regulations were non-economic in nature and were primarily directed at individual persons. Bindings could be taken with respect to economic measures through approaches such as the ones contained in the communication from Canada or from the United States. Similar procedures should be followed in settling disputes on the movement of natural persons as for other sectors, activities or modes of delivery under the framework.

19. The representative of Malaysia was concerned with how the movement of both highly-skilled (e.g. executives) and unskilled personnel had been dealt with in the draft annex. Her delegation favoured having no annex at all. This view was shared by the representative of Chile who said that countries should not be limited in their ability to make concessions in all areas of interest and involving the movement of all production factors.

20. Regarding other aspects of the annex, the representative of Australia said that national treatment still required further discussion. The representative of Austria identified social security in general, and the notion of detachment in particular, as issues for further discussion. Regarding exceptions, the representative of Thailand said that an exception based on national security could do much to limit the scope of labour mobility under the framework. The representative of the Philippines warned against exceptions being used as a disguised barrier to services trade involving the movement of people. Finally, the representative of India said that a transparency obligation should be included in the annex dealing with information on temporary entry procedures and regulations.

21. The Chairman closed the discussion on item 2.3 of the agenda.

22. He then turned to agenda item 2.4 on Substantive guidelines for the negotiation of initial commitments. He said that he had carried out consultations on the basis of the text attached to MTN.TNC/W/35/Rev.1. It emerged from these consultations that many participants were of the view that future work on the substantive guidelines would be greatly assisted if there was first complete agreement on related issues contained in Articles I, IV, XVIII and XIX of the draft Agreement. Views also differed regarding

the ultimate purpose the guidelines should serve, and concerning the extent to which the guidelines could be simplified once the related framework provisions were clear. Work would continue on these Articles at the next meeting of the GNS, and he intended to continue consultations on the substantive guidelines with a view to finalising this work by 31 July.

23. Concerning item 2.5, Procedural guidelines for the negotiation of initial commitments, the Chairman informed the Group that since the last meeting of the GNS he had carried out informal consultations on the draft proposal on procedural guidelines. Following further comments from several delegations he noted that the revised agreed text would be circulated to participants in document MTN.GNS/W/119.

24. Turning to item 2.6, Considerations to be taken into account when assessing offers, the Chairman said that a secretariat note, contained in document MTN.GNS/W/118, had been made available to facilitate the discussion on this subject.

25. Following the introduction of the note by a member of the secretariat, the representative of Australia welcomed the paper and suggested that it would be useful for the secretariat to provide periodic aggregate assessments of the offers submitted by outlining the offers, evaluating the average contribution of the services sectors to GDP in the offers, and the contribution of services covered in terms of share of output of all Uruguay Round participants as a means of indicating the size of the negotiation which was underway. The analytical framework provided in the secretariat paper needed to be translated into some general guidelines regarding how countries might approach the assessment of offers of other participants as well as explaining to others how their own offer should be evaluated.

26. Concerning item 2.7, Further work on initial commitments the Chairman invited delegations that had tabled offers since the last meeting to make a general introduction of their offers. In response, the representative of Brazil outlined his delegation's offer contained in MTN.GNS/W/116.

27. Regarding the subject of initial commitments, the representative of Canada referred to paragraph 8 of the procedural guidelines that "negotiations may also proceed among participants on the basis of other proposals". In this context, he noted there had been discussions on the notion of taking a common approach by all participants to liberalisation commitments for selected sectors, sub-sectors and transactions.

28. The commitments taken under this approach would be an integral part of the GATS and thus subject to its provisions, as well as the agreed arrangements for dealing with national rules of general application, "head note" provisions and other matters not yet fully worked out. They would apply as from the date of entry into force of the GATS. In the common approach, each party to the GATS should impose no limitations or conditions on market access or national treatment in the sectors and sub-sectors listed in an appendix ("listed services"), in respect of: (i) the cross-border provision of a listed service from another party; (ii) its consumers of a listed service of another party; (iii) the purchase of its listed

services by consumers of another party; and (iv) the initial establishment in its territory by a juridical person, of another party, which provides listed services. In this proposal, "initial establishment" was limited to the new implantation of a juridical person through incorporation, the creation of wholly or partially-owned subsidiaries, partnerships, branches or representative offices. He also noted that the temporary movement of service providers would be dealt with by means of a separate set of common liberalization commitments.

29. He said that his delegation would wish to include for discussion under "listed services" mining and construction services, distribution services, commercial services, computer and software services, value added or enhanced telecommunication services, and tourism services. The financial services sector would be subject to the provisions of a final services annex as proposed in MTN.TNC/W/50.

30. The representative of the European Communities said the common approach seemed to be a useful way of speeding up the negotiations but noted that it would be necessary to look at the details of the sectors in order to decide whether the approach was workable. Canada's common approach was worth pursuing although it might need to be supplemented by other common approaches dealing with certain other sectors, notably transport. The representative of India noted that the Canadian proposal excluded the movement of natural persons and was therefore unlikely to be of help to the majority of participants.

31. The Chairman then turned to the question of dates for the bilateral meetings on offers and proposed that the GNS set aside for bilateral negotiations on offers within the context of the GNS the dates of 24, 25 and 26 July. The secretariat would provide logistical support for this exercise. The dates were confirmed.

32. Regarding the issue of Labour mobility, he said that pursuant to the discussions of item 2.3 of this week's GNS meeting, he had carried out informal consultations on the temporary movement of natural persons providing services. These consultations were conducted on the basis of the labour mobility annex attached to the draft framework as contained in MTN.TNC/W/35/Rev.1. There were certain issues which still required discussion including whether an illustrative list of services providers should be established and what should be the content of such a list. A further area for work related to how to deal with existing agreements between countries dealing with the movement of labour and personnel in the light of the m.f.n. provision contained in Article II. In order to facilitate future deliberations on the matter, he asked the secretariat to prepare an informal note incorporating the results of the week's consultations into the existing draft annex. This paper would be available for delegations at the next meeting of the GNS.

33. The Chairman then invited the Australian ambassador to report on his informal consultations on the scheduling of commitments.

34. The latter said that the question of what needed to be scheduled arose whenever a country undertook a specific commitment in a particular sector or sub-sector. If a sector or sub-sector was listed in a national schedule, the absence of any reference to limitations and conditions on market access and conditions and qualifications on national treatment would mean that foreign services and service providers could enter the market, and be treated no less favourably than domestic service providers within the scope of the existing national regulatory framework. There seemed to be broad agreement that should a country place limitations on the extent of its commitment, the following types of measures would have to be scheduled: (i) measures of a quantitative discriminatory nature; (ii) quantitative non-discriminatory limitations which restricted the extent of market activity, including measures that restricted the number of service providers permitted to operate in the market and, in the view of some, also included limitations which restricted the volume or value of services supplied; (iii) qualitative measures of a discriminatory nature; and (iv) qualitative measures of a non-discriminatory character. While a clearer picture was emerging of the measures which fell into each of the above four categories, a number of "grey areas" remained. He believed the reasons were to be found more in the need for further precision with respect to the nature of the measures under consideration than in basic differences in the negotiating positions of participants.

35. For the first three categories there was a broad measure of agreement that a top-down scheduling approach should be adopted. Thus, if signatories had not entered limitations, qualifications and conditions in those sectors or sub-sectors which they had listed, there would be total freedom for foreign service providers with respect to access to, and operation in, a market. In terms of deciding what types of measures fell within the fourth category, one suggested approach had been to compile a list of examples of such measures. In this respect, participants had requested the secretariat to produce a list of some examples of qualitative non-discriminatory measures that could be considered as potential candidates for scheduling with respect to the requirements specified in Article VI:2. It was also suggested that requirements such as those specified in Article VI:2 (i.e. based on objective criteria; not more burdensome than necessary; and not in themselves constituting restrictions on the supply of services) should be further developed in order to assist participants in identifying those measures which did not satisfy these requirements and therefore should be scheduled. It was felt that attention should be paid in the future to a further refinement of these requirements. However, the lack of agreement on the precise nature of the requirements should not impede progress in work on initial commitments. Some participants indicated that it might be necessary to have both a list of examples and an elaboration of the requirements of the nature described in order to have a better indication of which measures should be scheduled. Further discussion might be necessary in order to ascertain whether the requirements should be multilaterally agreed and applied by all participants, and/or whether they should be justified only within a national context. The question was also raised as to whether they should be defined and applied on a sector-by-sector basis, or be generic in nature and apply to all sectors.

36. It was widely felt that the identification of measures to be scheduled could be facilitated by developing a clearer definition of the national treatment and market access provisions in the framework, along with a clearer understanding of the relationship of these articles with the objective of Article VI:2. In this respect, the question was raised as to whether, since this Article related only to those circumstances where commitments were made, it would be more appropriately placed in Part III of the framework. Some useful suggestions had been made in the course of consultations which should provide a focus for future work aimed at developing an agreed approach to scheduling. The discussion had pointed to "grey areas" in distinguishing between quantitative and qualitative measures, as well as between discriminatory and non-discriminatory measures. However, even if the boundaries were clear, because of the limited knowledge as to the nature of the measures, there remained some difficulties in clearly identifying which measures belonged to each of the categories. He believed it would be useful to refer to examples of measures falling into the above categories; it might be appropriate therefore to request the secretariat to compile lists of examples of such measures for this purpose. Finally, there had also been a preliminary discussion of how to schedule. While most participants agreed that this is largely a mechanical exercise, some had shown a clear preference for a two-column approach which distinguished between measures affecting entry and operation.

37. The Chairman then pointed out that a number of delegations, particularly smaller delegations, were having difficulty keeping up to date with some of the complex issues currently under discussion, such as the scheduling of commitments. He had therefore asked the secretariat to make available their services in the form of a seminar to inform delegations and raise questions on some of the technically complex issues. This would not be a negotiating meeting in any shape or form, its only objective being to clarify some of the issues under discussion.

38. Under item 2.8, Other business, the Chairman raised the matter of the work programme for the next meeting. He proposed that the next GNS commence on 10 July and continue to 19 July, holding open the possibility of continuing into the following week. The agenda items were the following: financial services; telecommunications services; parts I-IV of the framework; temporary movement of natural persons providing services; and other business.

39. Regarding financial services, work would proceed on the basis of the existing submissions and any other matters participants felt were necessary to address in relation to financial services matters; regarding telecommunications services, work would proceed on the basis of the draft annex contained in MTN.TNC/W/35/Rev.1. He said that the GNS had agreed on the principle of co-chairmanship with one trade representative, himself, and one sectoral expert; he would carry out consultations as to who should be the finance/telecommunications co-chairmen. With respect to Parts I-IV of the framework, while he would be prepared to address all matters, he would be paying particular attention to the following Articles I, II, IV, V, VI, VII, XIV, XVI, XVII, XVIII and XIX. Furthermore, while dispute settlement did not fall between Parts I-IV, in view of the fact that the secretariat

paper which was requested at the last meeting would be available for that meeting, he intended to open discussions on the basis of the paper.

40. With respect to dealing with m.f.n. he emphasised that in resolving outstanding matters, sectoral concerns of individual participants should be met without resorting to widespread derogations from this important concept. His consultations this week had confirmed that participants attached the same priority to settling this matter. In this respect, it might be necessary to explore options such as alternatives to fully-fledged sectoral annexes, and perhaps eventually arrive at solutions to problems relating to sectoral concerns through the framework itself. Some participants had suggested that it might be useful to have an idea of the magnitude of the problem before the Group, such as the commercial value of the activities covered by arrangements for which derogations could be sought by individual participants. Also, it could be useful to know the extent to which existing arrangements for which derogation could be sought by individual countries were in reality commercially operational. The secretariat would be working on possible ways to assess the practical importance of such matters. It would be helpful for the secretariat if participants would submit on a strictly confidential basis, information that would assist them in this exercise. It would be particularly helpful to know, for example, the arrangements for which participants would seek derogations and the commercial activities carried out under these existing arrangements. In any event, whatever means were eventually adopted to deal with sectoral concerns with respect to m.f.n., it was critical that the GNS maintain its objective of minimising such derogations by adopting a mechanism that would firmly constrain participants from seeking such derogations. M.f.n. considerations relating to horizontal agreements would also require further work, but at the moment the possibilities to advance work were severely limited by a lack of information. The secretariat had not been able to make significant progress in their preparation of a document as very few countries had made submissions in response to the secretariat questionnaire. He encouraged countries to submit information to the secretariat as soon as possible.

41. The representative of Austria emphasised that in the context of discussion on sectors and m.f.n. her delegation attributed particular importance to a satisfactory outcome in the land transport sector.

42. The representative of Malaysia drew the attention of the Group to the amendments that she wanted to make to the "Note of the Meeting of 27 May to 6 June 1991" contained in document MTN.GNS/42, paragraph 36: after the fourth sentence she added the following: "She also said that her delegation could not accept the provision on non-violation. Without wishing to elaborate further as to the reasons why her delegation could not accept the provision, she observed that the formulation of the provision in the draft framework was too encompassing. Her delegation, however, would be willing to study any future draft working towards a more precise and circumscribed obligation." Finally, she said the the fifth sentence should be deleted.

43. The Chairman then closed the proceedings.