

**MULTILATERAL TRADE
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THE URUGUAY ROUND**

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Group of Negotiations on Services

NOTE ON THE MEETING OF 17-27 SEPTEMBER 1991

1. The Chairman welcomed delegations to the forty-first meeting of the Group of Negotiations on Services (GNS) and drew their attention to the agenda for the meeting contained in GATT/AIR/3226 of 30 August 1991.
2. Moving to the first item on the agenda, telecommunications services, he noted that relevant documents included the telecommunications annex (MTN.TNC/W/35/Rev.1) and a proposal by the delegation of the United States (MTN.GNS/W/134). The Chairman first invited the Co-chairman of the GNS to comment on progress made to date in discussions in the scheduling of commitments which could be relevant to matters under consideration in the telecommunications sector. He then invited the representative of the United States to introduce its proposal regarding suggested amendments to the telecommunications annex.
3. The Chairman stated that the principal topics to be addressed at this meeting were the scope of obligations, intra-corporate communications, other information related matters, and the balance between the ability to have access to and use of public telecommunications transport networks and services and the possibility to impose conditions on such access and use. The Chairman converted the meeting to an informal meeting and delegations commented on these four topics.
4. Regarding the next agenda item, maritime transport services, the representative of Sweden, speaking on behalf of the Nordic countries, said that the proposal for a common approach to Maritime Transport Services (MTS) under the GATS Agreement, contained in document MTN.GNS/W/135, reflected a number of concerns expressed in the GNS negotiations. Prominent among those was the need to avoid undermining the liberalization already achieved in international shipping. For the Nordic countries it was imperative to ensure the inclusion of the MTS sector under the GATS. The proposal was conceived to form an integral part of the GATS, though it remained for the moment conditional on a successful conclusion of the negotiations. The focus of the proposal was on measures affecting the provision of MTS. The first part of the proposal called for a standstill and a rollback of all existing restrictive and/or trade-distorting measures affecting international shipping services or suppliers of such services. It reflected the view that a standstill in this area would not suffice for a sector which enjoyed a relatively high degree of market openness. Further liberalization in the sector should aim at the elimination of cargo reservation as well as other restrictive measures within three years from the entry into force of the Agreement.

5. The second part of the proposal dealt with cabotage, recognizing that it would not be realistic within the horizon of this round of negotiations to expect all participants, as a matter of a shared common approach, to make binding commitments to liberalize in this area. The possibility for doing so individually should, however, exist through the request and offer process. M.f.n. exemptions might also be relevant in the area of cabotage. The third part of the proposal called for a standstill of all restrictive and/or trade-distorting measures affecting MTS auxiliary services or suppliers thereof. It did not call for a binding rollback, leaving the elimination of existing measures at the discretion of each participant through the request and offer process. Paragraph 6 on access to, and use of, MT auxiliary services was viewed as essential to avoid undermining commitments undertaken in the MTS sector at large. He said that more precise definitions were needed and referred participants to the informal note prepared by the Secretariat containing a more disaggregated list of MTS. He noted that the proposal did not deal with inland waterways. In concluding, he stressed that the document contained the substance of the Nordic country position in the MTS sector. Whether this substance should be reflected in an annex, under the framework or in individual schedules of commitments was a matter on which his delegation had no strong views.

6. The representatives of Japan, Canada, the European Communities, Hong Kong, New Zealand Australia, Austria and Chile expressed agreement with the basic thrust of the Nordic proposal. The representatives of Canada and New Zealand suggested that a common approach in this sector could plausibly go further by calling for, and not merely pointing to, a rollback of existing restrictions affecting MT auxiliary services and suppliers of such services. The representative of Hong Kong said that his delegation would need to take a closer look at paragraphs 5 and 6 on auxiliary services.

7. The representative of the United States found the proposal particularly useful in portraying the uniqueness of the MTS sector. Considerable discussion was necessary on ways to deal with the sector. In that respect, the paper played a very important role in helping participants to clarify their positions. The representative of Austria said that his delegation favoured a differentiated approach to the transport sectors. He agreed with the representative of the United States that the MTS sector was unique in many respects and suggested that other modes of transport also had important specificities which should somehow be reflected under the Agreement.

8. The representatives of Mexico, Poland, Peru, Brazil, Argentina and Sri Lanka favoured the liberalization of MTS but were uncertain as to whether the Nordic proposal constituted the best means to achieve it. The representatives of Mexico, Peru and Argentina joined the representative of Hong Kong in requesting further clarification regarding paragraphs 5 and 6 on the liberalization and the access and use of MT auxiliary services. The representatives of Peru, Argentina and Sri Lanka found that a time horizon of three years for the rollback of restrictive and trade-distorting measures was unrealistic. The representative of Poland pointed out that the sector was regulated in a very specific manner and suggested that account should be taken of existing and future agreements. The representative of

Uruguay stressed that liberalization under the agreement should be spread across this and other sectors. He hoped that through the agreement account could somehow be taken of liberalization which countries such as Uruguay had been autonomously undertaking in the area of services.

9. The representatives of Malaysia, Mexico, India, Egypt, Yugoslavia, Brazil, China, Colombia, Nigeria, and Pakistan expressed doubts regarding the notion of a common approach - whether to this or any other sector. The representative of Brazil said that a common approach to liberalization could introduce rigidities in the negotiation process which could work against participants who had otherwise the intention to liberalize their services sectors. The representatives of India and Egypt enquired what relationship existed between the current proposal and the annex on MTS which had been sent to Ministers in Brussels.

10. The representative of Malaysia said that her country could not grant access to or provide MTS on a competitive basis. Malaysia had been facing a deficit in the freight and insurance accounts of the balance of payments. The Nordic proposal was sweeping in nature and could work to the detriment of export-oriented developing countries, such as Malaysia. The representatives of Egypt, Ghana, Cameroon, Sierra Leone, Indonesia, Côte d'Ivoire, China, Gabon, Congo, Benin and Togo stressed that the Nordic proposal did not take into account development concerns or the interests of developing countries. The representative of Cameroon said that developing countries had made significant efforts in the last decade and a half towards the development of the MTS sector. For that reason, his delegation could not support a proposal which would imply the destruction of much of these countries' achievements while limiting their ability to promote development in the shipping sector in the future.

11. In response to enquiries made on the proposal, the representative of Sweden, speaking on behalf of the Nordic countries, said that paragraph 6 on access and use of MT auxiliary services reflected the "user's" side of the transaction - as opposed to the "provider's" side. It was, for that reason, very closely linked to paragraph 3 on the common approach on international shipping. As to the relationship of the proposal to the annex contained in MTN.TNC/W/35/Rev.1, she said that the proposal aimed to introduce some substance into the discussion and not favour any particular procedure regarding how this substance should be reflected under the agreement. Her delegation did not support the substance of the draft annex which gave too wide a scope for m.f.n. exemptions in the MTS sector.

12. In addressing a concern raised by the representative of Malaysia, she said that the aim underlying the Nordic proposal of having as efficient and cost-effective transport systems as possible would seem to be especially relevant for export-oriented countries such as Malaysia. She said that participants should negotiate having in mind the promotion of economic welfare in general terms and not limit their efforts to achieving a balance in any particular item of the balance of payments. Regarding the time horizon of three years for the rollback of restrictive and trade-distorting measures, she said that though that period reflected the preference of her delegation, it could feasibly be the object of further negotiations. The

same applied to auxiliary services where further work might be necessary, in particular with a view towards a more precise definition.

13. Moving to the third item of the agenda, financial services, the Chairman noted that documents relevant to discussions included the proposals for financial services annexes (MTN.TNC/W/50, MTN.TNC/W/50/Add.1 and MTN.TNC/W/52) and an informal note prepared by the Co-chairman on financial services which identified the principal topics and points made at the last meeting of the GNS and possible options for discussion. The Chairman first invited the Co-chairman of the GNS to explain progress made to date in discussions in the scheduling of commitments with a view to elements which could be relevant to matters under consideration in the financial services sector. He then invited general comments from delegations.

14. The representative of Malaysia said that the SEACEN Central Bank Governors were committed to a services agreement that would liberalize financial services but not adversely affect the management of the financial sector. At the same time, the SEACEN Governors recognized the need to compromise on issues to meet requests of developed countries but that such compromises had to take place within the constraints of their economic development objectives. In addition, such compromises would only be workable if undertaken by all parties. On the two-track approach, SEACEN had demonstrated its intention to make progress in the negotiations by its willingness to discuss the transfer of Part III of the four-country text into a guideline to be used by countries when negotiating commitments. SEACEN believed such a guideline should be informal, and added that the willingness to discuss a guideline concept was a significant concession on their part. This was because SEACEN was still convinced that the framework provisions on the application of the Agreement made the two-track approach meaningless. Furthermore, the two-track approach would only weaken a Party's negotiating strength in bilateral discussions on commitments and provide the legal basis for pressurizing countries to liberalize. Regarding a provision on prudential measures, SEACEN remained firm that it could not be part of an exception provision for the reasons expounded at earlier meetings. However, SEACEN recognized concerns about the possibility of abuse of the provision and were willing to discuss any proposals to prevent such abuses. SEACEN countries were also committed to further discussion of other outstanding issues in the Financial Services Annex, but these - particularly dispute settlement and institutional machinery - were mainly technical issues. The Chairman recalled that the topics discussed at the last meeting included the two-track approach, prudential regulation and institutional provisions and invited delegations to comment. Delegations then informally expressed their views on these topics.

15. Turning to agenda item 2.4 the Chairman invited the representatives of Hungary, South Africa, Egypt, Costa Rica and Venezuela to present their conditional initial offers contained in the following documents: MTN.GNS/W/133 (Hungary); MTN.GNS/W/136 (South Africa); MTN.GNS/W/137 (Egypt), MTN.GNS/W/127/Add.1 (Costa Rica) and MTN.GNS/W/123/Add.1 (Venezuela). The secretariat representative then introduced an informal note prepared by the secretariat dated 27 September 1991 relating to conceptual issues concerning rules of origin and trade in services. The

representative of Cameroon introduced a communication submitted on behalf of a number of African countries concerning the UN Liner Code contained in document MTN.GNS/W/138.

16. The Co-Chairman then reported on progress that had been made in consultations on the scheduling of commitments. He noted that there was widespread acceptance of the basic approach to scheduling described in his previous commentary, i.e. a bottom-up listing of sectors and sub-sectors and a top-down identification of conditions and limitations in respect of market access, when these were of a quantitative nature, and of qualifications and limitations in respect of national treatment. Regarding work on the individual scheduling articles, he said that for Article VI on Domestic Regulations the three broad issues under discussion concerned the administration of measures, the need to secure market access concessions, and a proposed work programme relating to qualifications, standards and licensing requirements. Regarding the language of paragraph 3 of article XVI (Market Access), there was a need to ensure the greatest possible certainty and understanding in respect of the quantitative-type measures which should be scheduled and also to know where the line should be drawn between quantitative and qualitative measures.

17. On the national treatment article, the opportunity was taken to seek the advice of secretariat legal services on the adequacy of the language contained in paragraph 2 of Article XVII. The reaction highlighted concern that, from a legal view point, the intention of the text might be unclear and that therefore further work was needed. Consideration was also given to a proposal that provision be made, under a new separate article to follow Article XVII, for Parties to negotiate commitments with respect to measures not subject to scheduling under Articles XVI or XVII. In the light of the progress made in establishing the main directions in which participants wished to move in respect of domestic regulation, market access, national treatment and other relevant provisions, he believed it should be possible in October to finalise the drafting of these articles in accordance with the revised work programme for the negotiations on services. Finally, regarding initial discussions of Article XIV (Exceptions), he said that consultations had been based on an agenda which listed virtually all of the situations which participants had identified as possibilities for recourse to exceptions. He had detected a concern on the part of many to keep this list as concise as possible and to define as tightly as possible the need for, and scope of, such exceptions.

18. The Chairman then reported on the progress made in his consultations: first, regarding dispute settlement, there was agreement regarding Article XXII but some parts of Article XXIII required more work e.g. non-violation, procedures to be applied in the dispute settlement mechanism; second, on Article IV (Increasing Participation of Developing Countries) he noted progress had been made on paragraph 3 and felt that a solution could be found for the language that was in square brackets; third, Article XVIII showed that full agreement had been reached on the text of this article; fourth, concerning substantive guidelines, he was not in a position to report any positive results but he hoped that this item would be resolved when consultation recommenced in October; fifth, progress had been made on

certain parts of the text of the annex on the movement of natural persons although further work was needed; sixth, he noted that no significant progress had been made on the m.f.n. clause and he therefore urged delegations to bear in mind the need for precise information on the types of exemptions they felt would be necessary.

19. Turning to the work programme for the next meeting, the Chairman said that he and the Co-chairman intended to commence informal consultations on 16 October on scheduling and on substantive guidelines and increasing participation of developing countries (Article IV) and on m.f.n. (Article II) and m.f.n.-related issues. The GNS would formally commence on Monday 21 October with discussions on the following sectors: Maritime Transport Services; Financial Services; Audiovisual Services; and Telecommunications Services. Further, in the week of 21-25 October, he and the Co-chairman intended to continue the process of informal consultations on the Articles of the Agreements and his intention would be to report back to the GNS at the end of the week on the progress that had been achieved. As of 28 October, he proposed that participants carry out bilateral and plurilateral consultations/negotiations on the basis of offers and requests with a view to intensifying work towards the goal of completing initial commitments as soon as possible. Finally, he noted that it was his intention to convene a formal GNS on 1 November in order to conclude work. He then closed the meeting.