MULTILATERAL TRADE NEGOTIATIONS THE URUGUAY ROUND

RESTRICTED
MTN.GNS/48
29 October 1993
Special Distribution
(UR-93-0084)

Group of Negotiations on Services

INFORMAL GNS MEETING - 29 OCTOBER 1993

CHAIRMAN'S STATEMENT

This meeting has two main purposes. First, I should like to report to you on the consultations which I have held over the past week on textual matters and on certain other issues. Secondly, we should take stock of the progress made in bilateral negotiations in the last two weeks and plan our future work.

With regard to the text of the Agreement, I have been consulting on the basis of the draft text which was attached to my letter of 1 October to the Chairman of the TNC, and especially on the two attachments to that letter. I am now circulating a further revised text of the Agreement, dated 29 October and identified as Revision 1, which reflects the outcome of these consultations. The amendments which have been incorporated in the new text can be briefly described.

- First, in Article XIV we have incorporated a footnote to paragraph (d) which clarifies the meaning of the phrase "equitable or effective imposition or collection of direct taxes". The language of this footnote has been agreed on a consensus basis.

- Secondly, Article XXII, paragraph 3 has been amended by the inclusion of the language proposed in Attachment 2 to my letter of 1 October to Mr. Sutherland.

- Thirdly, an interpretative footnote has been added to Article XXXIV(g) in order to clarify the treatment to be accorded to branches and representative offices as service suppliers under the Agreement. A note by the secretariat explaining the issue which had been raised in this connection has been issued as document MTN.GNS/W/176, dated 26 October. Copies are available in the Room.

In relation to Article V, I have been consulting on the basis of the solution proposed in Attachment 1 to my letter of 1 October. While as yet we have not achieved consensus on this proposal -for which reason I have not incorporated it in the revised text - it is clear to me that the significant support for this proposal which I noted at the end of September has now strengthened even further.

Before leaving aside the question of taxation, I should make two further points. First, while as I said earlier the new footnote to Article XIV(d) was a consensus text, a major participant has indicated the intention to insert in its schedule a horizontal limitation on national treatment covering all forms of direct taxation. Other participants have expressed considerable concern about the implications of this proposal. Secondly, the secretariat has produced an explanatory note dealing with three questions which were raised during the consultations. Copies of this note, which is dated 28 October, are available in the Room. At the request of participants it will shortly be circulated as a formal working document.

At our last informal meeting, on 1 October, I indicated that further consultations were needed on questions which had been raised as to whether certain categories of governmental measures (such as measures relating to social security or to judicial assistance) fall within the scope of the GATS and would consequently be subject to obligations and commitments under it. I then invited delegations to submit any further questions of this kind to the secretariat, and some have done so. On this basis, the secretariat has prepared a note synthesising the questions raised by delegations. This note has now been issued formally as MTN.GNS/W/177 and copies are available in the Room.

The consultations I have held on these issues reveal that, certainly at this stage, it would not be possible to reach definitive conclusions as to whether an entire category of measures falls inside or outside the scope of the Agreement. Within a given category, some measures may be found to affect trade in services, according to paragraphs (a) and (b) of Article XXXIV, and thus to fall within the scope of the Agreement, while others will not. Participants felt that after the conclusion of the negotiations it would be necessary to carry out a more detailed examination of these questions in order to reach a better common understanding of the ways in which measures of the kind under discussion may affect trade in services. The consultations also reflected a general view that it would not be appropriate, in the absence of more detailed consideration than is now possible, to amend any of the relevant provisions of the Agreement. I should however note for the record that a proposal to provide, under Article XIV, for an exception from Article II for international agreements on avoidance of double payment of social security contributions attracted some support.

It was not therefore possible to agree on any general guidance which could be given to participants as to the need to schedule, or seek exemptions for, measures of any particular kind. In considering the advice that I might provide on this matter, it was the general view of participants that each country would have to assume its own responsibilities in deciding which of its measures do affect trade in services, and whether in such cases it is necessary to schedule or take MFN exemptions for them. At the same time it was felt that it would be undesirable if governments were to feel impelled to schedule or seek exemptions for a very large number of measures of limited commercial significance merely in case they should later prove to have implications for trade in services. It was pointed out that if one country seeks exemption for a particular type of measure other countries may feel obliged to do the same even if the connection with services trade is unclear or tenuous, and that this could lead to very large numbers of exemptions of little relevance to the GATS. It was also felt that governments would feel less vulnerable in scheduling or seeking exemptions only where there is a clear need if there were a common understanding that participants would exercise restraint in challenging each others' measures.

Overall, while differences of opinion persist on one or two matters, such as the reference to pricing policies in the Annex on Telecommunications - a concern which was identified in the DFA - I feel that we are close to agreement on the final text of the framework and its annexes. I therefore hope not to have to devote much more time to consultations on textual matters.

While on the subject of MFN exemptions, I should draw your attention to the agreement, which was reflected in the critical path for the negotiations, that revised MFN exemptions should be submitted by 5 November. They should be drafted in conformity with the revised format contained in the secretariat note on listing of Article II Exemptions which was circulated on 15 September. A great many of the exemption lists submitted in the past are defective either in their content (by which I mean for example that exemptions have been requested unnecessarily) or in their presentation: the most common example of this is the tendency to list legislation or agreements rather than the specific measure for which exemption is needed.

I would also like to seek the agreement of the group that in future all MFN exemptions submitted should be circulated to all participants. Hitherto, in line with the decision we took in January 1992, they have been circulated only to countries which have submitted initial offers: I think that at this stage of the negotiations it would be helpful if everybody was made aware of the exemptions which are being sought.

In our consultations this week consideration was also given to a question which has been raised concerning the effect of limitations on foreign equity participation. It was pointed out that in order to qualify as a service supplier of another member, a juridical person must either be controlled by persons of that other member or more than 50 per cent of its equity must be owned by such persons. However, in some offers participants have limited foreign equity participation to less than 50 per cent. In cases where there is no foreign control, this would mean that the supplier in question could not qualify as a service supplier of another Member. It was suggested that in such cases market opening commitments would have no legal effect. Other participants argued that suppliers in this position, while they would not be treated as foreign suppliers, would qualify as national suppliers and would therefore benefit from full national treatment: they would also benefit from the binding of the equity limitation at the level specified in the schedule. No conclusion was reached in this discussion, but there was an apparent willingness to consider means whereby members entering such limitations in their schedules could nevertheless undertake a commitment to treat suppliers subject to the limitations as if they were foreign service suppliers.

Consultations have also taken place in the last two weeks on the question of future negotiations on Basic Telecommunications services. A group of experts drawn from countries interested in making commitments in such negotiations has drawn up a model schedule of commitments which will be the basis for further consultations in November. At that time the question of modalities for negotiations on Basic Telecoms will also be addressed.

There have been no plurilateral consultations in this period on Maritime Transport. This will be taken up in November. Meanwhile the number of countries which in response to the questionnaire circulated by the European Communities have indicated their interest in making commitments in this sector has risen to 25.

I now turn to the programming of our work in the last weeks of the negotiations. Although the recent series of bilateral negotiations was intended to be the final session, I have heard from a number of delegations that it will be necessary for them to meet again with some of their partners, and that we must therefore anticipate further bilaterals in November. Given the very short time that is left, it seems to me that any such meetings should certainly start no later than 15 November, and as far as possible they should take place before then. I urge all negotiators to make clear to their negotiating partners before they leave Geneva what their availability will be in the first half of November. I would remind you that the submission of final MFN exemptions and of final schedules, according to the critical path, should take place by 26 November.

In addition to the plurilateral consultations on Basic Telecoms and Maritime Transport to which I have referred, I also intend to organise consultations, possibly on a fairly large scale and probably on 16 November, on drafting of schedules of commitments. I should stress that it would not be the purpose of this exercise to consider the economic content or value of offers, but rather, in the interest of all participants, to identify possible improvements in the presentation of offers, based on actual examples. The organisation of this discussion would be greatly assisted if participants informed the secretariat in advance of any common errors in scheduling which in their view affect the clarity or the legal security of commitments. This would enable the secretariat to prepare a working document for the discussion.