

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED
MTN.GNS/W/25
3 November 1987
Special Distribution

Group of Negotiations on Services

Original: Spanish

COMMUNICATION FROM MEXICO

Preliminary Comments on Non-Discrimination,
National Treatment and Transparency

The following communication is circulated at the request of the delegation of Mexico to the members of the Group of Negotiations on Services.

This working paper contains some comments on other papers already presented by other delegations to the GNS and provides some suggestions about the way these and other concepts could be treated in this Negotiating Group.

Of course, these comments and suggestions are preliminary, and the Mexican delegation reserves the right to come back to them, and to introduce modifications or additions, as might be required.

The aim of this document is to try to clarify such concepts and contribute to the discussions in the GNS.

During the last two meetings of the GNS, Canada, Australia and Japan presented very interesting papers on transparency (MTN.GNS/W/13), non-discrimination (MTN.GNS/W/12) and national treatment (MTN.GNS/W/18), respectively.

In the last meeting of the GNS, some views were expressed in relation to the Canadian proposal on transparency, the most important of which were the following, including some afterthoughts.

1. The implicit suggestion of "negotiating" with other parties to the eventual agreement on any new proposed regulating measure on services by the government concerned.

This proposal goes beyond the provisions of Article X of GATT, which establishes that "laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party... shall be published promptly in such a manner as to enable governments and traders to become acquainted with them".

Moreover, this article adds that such provisions "shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private".

In this respect, the Canadian proposal falls short of the GATT article.

2. The Canadian proposal seems to be inspired by the Code of Conduct on Technical Barriers to Trade. The difference between new technical regulations and new regulating measures on services, is that while the former (almost) always are issued by the (central or local) executive branch of government, the latter may be issued either by the executive branch (and then submitted to Congress) or by the legislative branch itself. This difference, in terms of the eventual framework, deserves a more in-depth study in the GNS.

3. The Canadian proposal seems to imply that all laws, regulations, administrative procedures, orders, directives, and so on, already in force or proposed, be submitted to the "international secretariat". Desirable as it might be, this implies information costs that not all countries are in a position to defray.

4. Transparency implies that everyone, foreign governments and national and foreign companies alike, should be aware of the obstacles to trade in services introduced by regulations in this field. However, as yet there is no definition of what an "obstacle" to trade in services is.

As mentioned in the last meeting, it is first required to define the parameters around the "obstacles" to trade in services. To this end, it was proposed that the following should not be considered as "obstacles" to such trade.

- (a) Regulations related to foreign investment. This is so because, according to the Punta del Este Declaration, the negotiations refer to trade in services, and not to foreign investment in this field.
- (b) The same treatment to the same product (service) irrespective of its origin (domestic or imported).
- (c) For developing countries only, the new regulations pertaining to new services or to an enhanced transportability of traditional services.

We are not at all opposed to transparency. On the contrary, our view is that developing countries can only defend their rights through a transparent process of application of whatever international agreement on services is reached.

However, it seems that the question of transparency requires a more in-depth discussion in the GNS.

The Australian paper, on the other hand, poses a number of questions about the MFN conditionality or unconditionality of the eventual agreement. In this respect, our perception is that MFN conditionality undermines the foundations of the international trade system of goods and services.

However, other delegations have hinted that they would favour a conditional MFN as a means to "encourage" countries to subscribe to the eventual agreement.

However, in our view the best encouragement is through the negotiation of an agreement that is fair and equitable to all countries.

Regarding the paper of the delegation of Japan, it is clear that domestic and imported products (services) would receive the same treatment, i.e. imported products (services) would receive national treatment. However, as these are negotiations on trade in services, the same does not apply to the producers or sellers of those services, that is, to foreign direct investment in services.

In other words, there is nothing in the Punta del Este Declaration related to the so-called right of establishment or commercial presence or whatever other name which implies foreign direct investment flows, as some other delegations are implying.

However, if these delegations insist on negotiating on the international flows of one production factor they are well endowed with, there should also be included in these negotiations the international flows of another production factor, namely labour - the production factor Mexico and other developing countries are well endowed with.

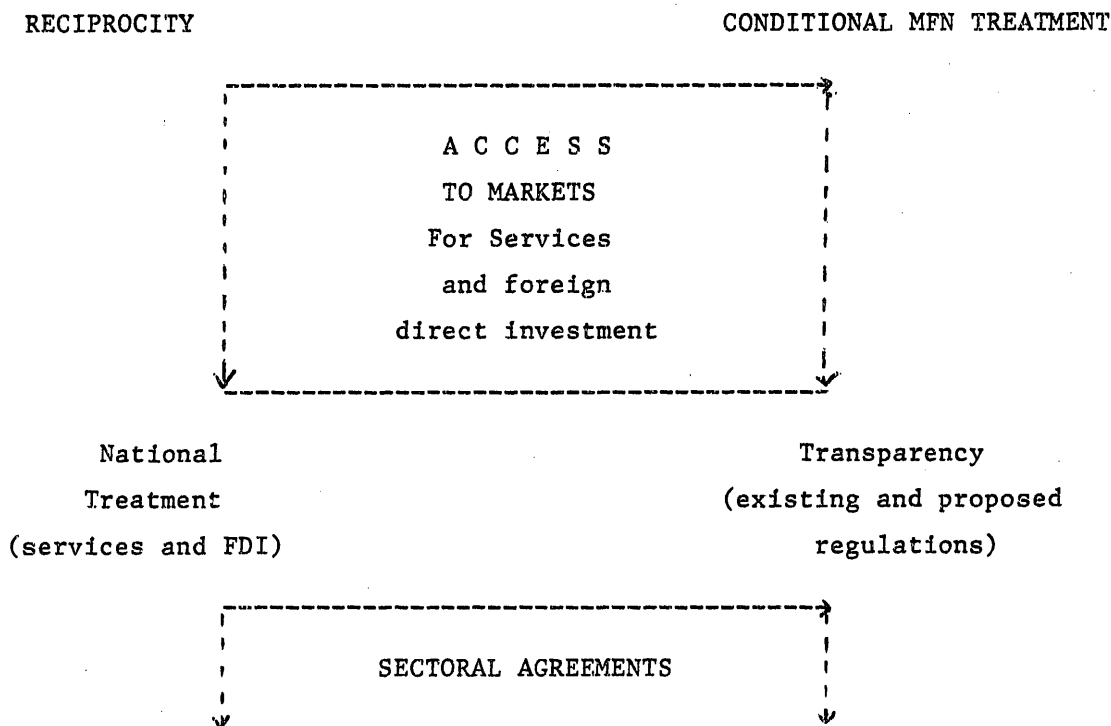
Among other things, in these negotiations we are interested in migrant workers, off-shore transformation services (international manufacture subcontracting or, as it is called in Mexico, maquiladora industry). We are also interested in maintenance and reparation services, as well as in construction services. For instance, in public works it would be desirable that the company winning an international bid could recruit workers from its country of origin to perform such public works.

Labour is a service par excellence and should be included in the negotiations.

In this respect, we should discuss whether migration laws are an obstacle to trade in services. We should also discuss whether a bail of 125 per cent in any construction work - as required in some countries - is or is not an obstacle, and so on.

The position expressed so far by some delegations could be suitably depicted in the following diagram:

DIAGRAM 1



In the above diagram, it may be seen that the starting point is reciprocity - a concept yet to be discussed in the GNS. Reciprocity determines both a conditional MFN treatment and national treatment.

According to these delegations, this national treatment is to be provided to both the imported services and foreign direct investment in the field of services.

But for the national treatment to really exist, the transparency of both the existing and the proposed regulations, both in services and in FDI in services, is necessary.

In turn, the conditional MFN treatment would determine transparency only for the members of any eventual agreement.

The objective in this approach would be increased access to markets of both services and FDI in services.

All these elements would constitute the general framework for the conduct of international trade (and FDI) in services. This framework would determine the functioning of the possible sectoral agreements, which, of course, would be supplemented with additional, specific rules.

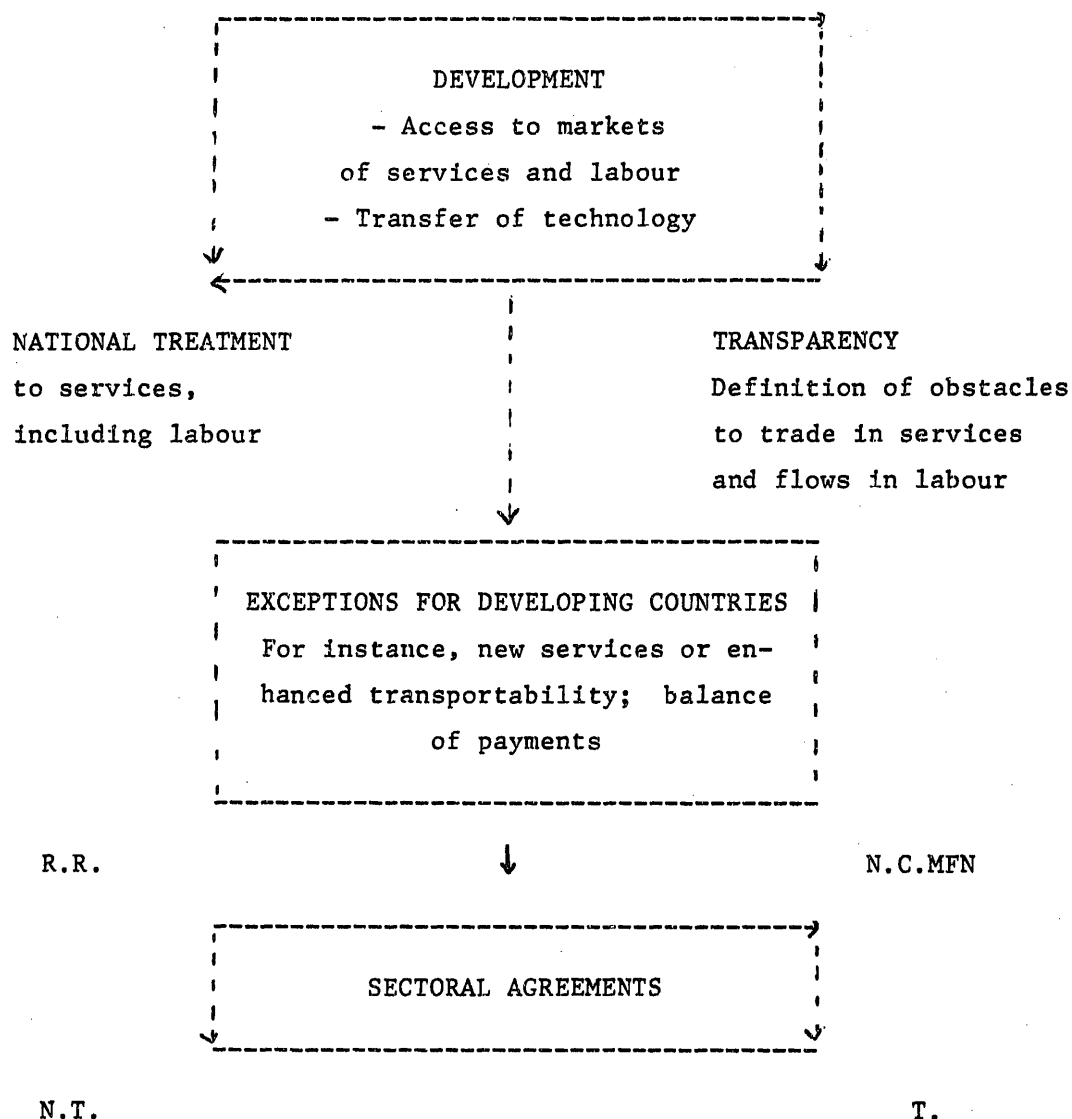
It should be mentioned that the above analysis is our perception of the position taken by a number of delegations, and should not be attributed to any delegation in particular.

However, we would be grateful for any suggestion that would improve this diagram in conceptual terms.

DIAGRAM 2

RELATIVE RECIPROCITY

NON-CONDITIONAL MFN



Following the same reasoning as above, our preliminary position could be depicted in diagram 2, economic development being the objective of any agreement on services, as stated in the Punta del Este Declaration.

As may be seen in that diagram, the starting point would be relative reciprocity, a concept still to be defined, but which could include, among others, elements such as the development, financial and trade needs of each developing contracting party to the eventual agreement.

Relative reciprocity would determine the non-conditional MFN treatment. In turn, this treatment would determine transparency. However, as mentioned before, a definition of the parameters of obstacles to trade in services is required first. On the other hand, it should be noted that transparency is a concept requiring better statistics, national and international, than those now at our disposal.

Transparency and relative reciprocity would determine national treatment of imported services and labour.

As mentioned before, the objective of the general framework for developing countries should be to foster their economic development.

To contribute to this objective, access to services and labour markets abroad and transfer of technology - the backbone of the new services economy - should be enhanced.

It may be seen in the diagram that labour flows should also be included in the general framework of any agreement on services.

The general framework should also include a number of exceptions for the developing countries - not to be identified with "special" treatment for them.

These exceptions should include such items as the possibilities of these countries to regulate new services or traditional services whose transportability has been enhanced by the new technologies. Also, new regulations could be required for balance-of-payments purposes. These exceptions, and some others, are in line with the stated objective of fostering the economic development of such countries.

These elements would determine the sectoral agreements, which should also include the concepts of relative reciprocity, unconditional MFN treatment, transparency, national treatment, and exceptions for developing countries, as defined above.

Finally, as mentioned before, it would be more desirable for these negotiations to stick to what is contained in the Punta del Este Declaration, that is, trade in services, without including foreign investment. The latter is being treated in another Negotiating Group and only refers to investment related to trade in goods.

These are only some preliminary views, which may be supplemented or changed in the course of the negotiations. As mentioned at the beginning of this paper, the purpose has been to try to contribute to the discussion and clarification of some of the elements included in the GNS agenda.