

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNS/W/39

16 May 1988

Special Distribution

Group of Negotiations on Services

Original: English/
French

COMMUNICATION FROM CANADA

NEGOTIATION OF A MULTILATERAL AGREEMENT
ON TRADE IN SERVICES: A WORKING HYPOTHESIS

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

**NEGOTIATION OF A MULTILATERAL AGREEMENT ON TRADE IN
SERVICES: A WORKING HYPOTHESIS**

BACKGROUND

1. The Punta del Este Ministerial Declaration launched negotiations aimed at the establishment of "a multilateral framework of principles and rules for trade in services, including elaboration of possible disciplines for individual sectors, with a view to expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting economic growth of all trading partners and the development of developing countries. Such framework shall respect the policy objectives of national laws and regulations applying to services and shall take into account the work of relevant international organizations."

2. Canada supports the goals of these negotiations to expand, make more transparent and progressively liberalize trade in services. We believe that the removal of trade barriers and the creation of an open, predictable and stable trading environment for services can contribute to the economic growth and development of all countries.

3. In this regard, the Punta Declaration emphasizes the need to promote the development of developing countries as one objective to be pursued through negotiating a Trade in Service Agreement. Canada recognizes the importance of this commitment. At this stage, developing countries are in the best position to make proposals to reflect this goal. (We have noted and welcome the proposal by Argentina which we intend to examine further within the flexible and practical approach suggested in this working hypothesis.)

PURPOSES

4. This paper sets out a working hypothesis for the Trade in Services negotiations. It does not purport to be a complete text of an Agreement or necessarily to incorporate all elements that should be included in the Agreement, for example with regard to principles and rules. However, we hope that an approach along the lines set out in this working hypothesis could serve as a basis for moving the negotiations forward. The working hypothesis seeks to take account of several key considerations:

First, regulatory measures that affect foreign service providers cannot be as readily distinguished from other regulatory measures by tracking their enforcement at the border as can regulatory measures affecting foreign goods;

Second, protection of domestic industries, while it may be economically inefficient, cannot realistically be eliminated overnight. A progressive approach to removal of trade distorting or restrictive barriers is thus required;

Third, there is a need to ensure flexibility and respect for differences in national policy and regulatory objectives in services sectors, consistent with the desire to create an open, predictable and stable trading environment;

Fourth, an agreement on trade in services would need to involve benefits for and contributions from all its participants.

5. In the light of discussions of conceptual issues in the GNS, the proposed working hypothesis should be sufficiently comprehensive and flexible to allow all interested parties to participate meaningfully and to the fullest extent. It is set out in 2 parts: A) an outline of the structure for an Agreement on Trade in Services; and B) some comments on the process of negotiations;

PART A: POSSIBLE STRUCTURE FOR A TRADE IN SERVICES AGREEMENT

6. Canada suggests that a Trade in Services Agreement would need to include at least four main elements:

- * a set of principles to provide a framework for further market access undertakings and trade liberalization measures, as well as implementation of the Trade in Services Agreement;
- * a set of rules concerning, in particular, transparency and non-discrimination requirements;
- * institutional arrangements and procedures to ensure effective multilateral surveillance and enforcement of the Agreement and timely resolution of disputes as well as to provide arrangements for further market access trade liberalization;
- * an exchange of specific market access undertakings and trade liberalization measures, which would determine the practical scope of the Agreement.

Framework Principles

7. Agreed principles would lay out the framework within which further market access undertakings and ongoing liberalization of trade in services would be effected. Those principles would address for example national treatment and the behaviour of monopolies.

8. The issues involved in a principle of "national treatment" lie at the heart of the services negotiations. There are different degrees of "national treatment" which the negotiations may seek to define as precisely as may be possible. However, if services negotiations are to result in liberalisation of trade and a beneficial increase in commercial flows, they will ultimately have to involve exchanges of bound "concessions" eliminating or reducing barriers (or classes thereof). This is the subject of the market access section below.

9. Conceptually, there may be a legitimate distinction to be made between the prudential or safety, for example, purposes of certain regulations, and the possible anti-competitive or restrictive effects. The regulations should in principle have an effect which is non-discriminatory among domestic and foreign service providers and, accordingly, trade inhibiting impacts would be open to the services negotiations. We are, however, sceptical as to whether elaborate machinery need be set up to examine all regulations in vacuo. Rather, if this distinction is generally accepted, it should simply be applied in the course of the negotiations, recognizing that there is often overlap between the two.

10. How to treat monopolies would appear under this heading rather than the next, insofar as it involves an economic negotiation over degrees of openness, the results of which would, again, be set out in the national schedules.

11. There may be other principles which should be considered for this category.

Rules

12. The main rules would cover transparency of national laws, regulations and practices, and non-discrimination among the participants to the Agreement. Rules once agreed would be automatically applied and not be the subject or "locus" of negotiations (though they could be the subject of complaints e.g. over alleged nullification or impairment).

13. Once the Agreement is adopted, national laws and regulations that affect the operation of the Trade in Services Agreement would be published. Participants would be required to publish official notice of any measure that would impose a new or changed requirement or restriction relating to traded services. Any participant that considers such a measure by another participant to nullify or impair benefits of the Agreement would also be entitled to notify it. The measures could be challenged under the Agreement only if there had been a binding through the exchange of concessions.

14. MFN treatment would also be a basic requirement. It is the cornerstone of the GATT and would need to become a correspondingly key element of any agreement on services. This would mean that although the exchange of concessions (whether commitments on existing measures or on future measures) would generally be negotiated bilaterally or plurilaterally, the concessions would be implemented on an MFN basis to all parties to the Trade in Services Agreement.

15. There should also be a requirement that bilateral concessions between a party to the Agreement and a non-party to the Agreement be extended automatically to all parties to the Agreement. This would ensure that the Agreement was the "best deal" available to each party and would encourage wide participation.

16. Another area for possible consideration at a suitable point would be that of exceptions, e.g. provisions allowing the parties to adopt or enforce measures to protect public morals, to protect human, animal or plant life or health or to secure compliance with laws or regulations that are not inconsistent with the Agreement. The general exceptions should not allow parties to use such measures to circumvent their commitments with disguised restrictive measures.

17. There may be other types of rules which should be agreed for inclusion.

Institutional Provisions

18. Institutional provisions would be incorporated to make the Agreement work effectively and equitably as well as to resolve disputes in a timely manner. Procedures for dispute settlement would be required to deal with situations of denial of negotiated benefits and other instances of nullification and impairment of benefits.

19. Consultations on any matter affecting the operation of the Agreement would be provided for in the Agreement. Mechanisms for multilateral surveillance of the policies of the parties to the Agreement in relation to the rules of the Agreement, notably transparency, and to concessions incorporated into the Agreement, would also be included.

20. Provisions would be required for the modification of schedules, and negotiations by the parties, with a view to the further liberalization of barriers to trade in services.

Market Access Undertakings

21. The practical scope of the Agreement would be determined by the exchange of specific market access undertakings and of trade liberalization measures. The undertakings could potentially relate to any measure used to

inhibit trade in services. For the purposes of illustration, market access undertakings could include:

- (a) concessions on measures relating to traded services, i.e., those essentially produced in the territory of one country and provided in the territory of another country;
- (b) concessions relating to commercial presence, establishment, and national treatment for enterprises providing services once they were established;
- (c) impediments to information and payment flows; and
- (d) impediments to temporary movement of business personnel.

Concessions could also incorporate commitments made in other international agreements, where these were compatible.

22. The undertakings could take the form of bindings of existing measures (or classes of measures) with a commitment not to make the existing measures more trade restrictive; or the removal in part or in whole of measures (or classes of measures) which have been the subject of a (cross) notification, plus a binding of the new situation and a commitment not to make it more trade restrictive in future.

23. While the exchange of concessions (whether commitments on existing measures or on future measures) would generally be negotiated bilaterally or plurilaterally, all parties to the Trade in Services Agreement would have to contribute appropriately to the exchange of concessions, which would then be implemented on an MFN basis to all parties to the Agreement. In practice these negotiations would establish the scope of the Agreement with concessions incorporated in each participant's national schedule annexed to the Agreement.

PART B: PROCESS OF NEGOTIATIONS

24. In order to ensure that a Trade in Services Agreement demonstrate its value and produce mutual economic benefits from the outset, work should avoid theoretical debates and proceed expeditiously and pragmatically. Canada proposes to move ahead in parallel on each of the areas identified in this paper.

25. However, the subject of market access undertakings and liberalisation has to date received relatively little attention, yet will in the Canadian view inevitably be critical to success and should therefore be given greater priority.

26. Under this working hypothesis, there would be two key requirements for participation in the services negotiations, with particular reference to the exchanges of market access undertakings:

First, the collection of a body of information on participants' barriers to trade in services is essential. This would in principle largely be provided by the participants themselves.

Second, in order to participate under this hypothesis, countries would also need to agree to a mode of negotiation that will ensure that there would be an opportunity to cross notify each others' barriers and answer fully all enquiries on various regulatory regimes.

27. Such information is essential to the development of definitive interest lists and implementation plans and to the accurate description of concessions. The work of the GNS to date on identifying and classifying barriers to services trade, including the Canadian contribution MTN.GNS/W/14, is a starting point. But far more needs to be done to allow the negotiations to get underway seriously this year.

28. Proposals have been made for a freeze to be effected as part of the negotiations. Canada is attracted to this idea. It would help in preventing any participant from instituting (or altering existing) measures so as to give itself an advantage in the negotiations. However, the issue is clearly related to that of transparency, as without a generally available picture of what is being frozen, the scope for misunderstandings and disputes is discouragingly high.

29. In order to accommodate the wide range of interests among participants, there should be no attempt at the outset to constrain the scope with respect to coverage, or with respect to types of factor flows which could be subject to negotiations. While some parties may choose to exclude certain types of factor flows or specific sectors or measures from their own offers for the exchange of concessions, each party would make such decisions on the basis of its own negotiating objectives, and could still decide to respond to another party's expression of interest in a non-offered item.

30. In addition to the work aiming at actual measures of liberalisation of trade, negotiations should also proceed in the other areas identified. In particular, the framework principles, once agreed, should prove especially helpful to the access negotiations. The other two areas discussed above should not lag either, as they will have an important bearing on the nature and extent to which parties would be prepared to commit themselves in the Agreement.