

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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COMMUNICATION FROM MEXICO

Elements for a Framework Agreement with Special Reference  
to the Participation of Developing Countries

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

Introduction

With a view to contributing to the attainment of what is said in paragraph 11 of the Montreal Declaration, with special reference to the section thereof on the "increasing participation of developing countries", in this document the delegation of Mexico presents those elements that, in its judgement, should be included in a framework agreement on trade in services.

1. Objectives of the agreement

The Mexican delegation concurs with other participating delegations in the GNS that the framework agreement of principles and rules applicable to trade in services, that should be established at the conclusion of the Uruguay Round, should have as objectives: the expansion of such trade at the world level, the promotion of growth of all trading partners, as well as the development of the developing countries. From this last objective, a secondary one is the strengthening of the national capabilities in services of developing countries, as well as of their efficiency and competitiveness. Such objectives should be the result of the application of the agreement's provisions, including the process of progressive liberalization of trade in services which should be carried out with due respect for the national policy objectives of the participating countries.

Development issues must be embodied in the various concepts, principles and rules of the agreement, and not included as an appendix, as special situations or as waivers to the provisions of such agreement.

2. Aspects to be considered in order to attain a balance of interests in the framework agreement

It was agreed in Montreal that work on definition should be carried out "without a priori exclusion of any sector of trade in services", and that its coverage "should allow a balance of interests for all participants", particularly including the "sectors of interest to the developing countries' exports", with the aim of reducing the existing imbalance in trade and promoting a greater participation by these countries in a multilateral agreement. The Mexican delegation has repeatedly stated that the competitive advantages and exporting potential of the developing countries is found in the labour-intensive services and in the services provided by labour. Therefore, it is not possible to omit the inclusion of the transborder mobility of this production factor and of labour-intensive sectors and activities, only favouring the production factor which is not abundant in these countries, namely capital.

The discussions in the GNS have shown that at present the developing countries are already quite liberal with respect to foreign direct investment in services, or at least much more so than the developed countries are regarding labour.

Therefore, the inclusion of labour in the negotiations is essential for the balance of interests of all participating countries in these and future negotiations, so as to avoid a situation where a multilateral agreement discriminates between first and second rate services or between first and second rate countries, given that both labour and capital are necessary in the delivery of services. Likewise, there must be a balance in the negotiations regarding the treatment of temporality of the international flows of capital and labour. The delegation of Mexico considers that the foregoing constitutes one of the principal obstacles, if not the most important, in order to arrive at an agreed definition of what constitutes trade in services.

It should be clear that this delegation is not proposing an objective of free international mobility of production factors. This is neither the spirit nor the letter of either Punta del Este or Montreal. Nevertheless, it is necessary to have symmetrical treatment of the various elements that will allow the attainment of the objectives of these two Ministerial Declarations.

The preceding considerations correspond to the desire and the legitimate right of developing countries to increase their participation in the world trade in services from the export opportunities that they can derive from a services agreement. As a matter of fact, the advantages and opportunities that they can find in such an agreement will determine their interest in acceding to it.

Nevertheless, we must point out that the effectiveness of such advantages will depend on the way that the multilateral agreement promotes the strengthening of the national capacity in services and the efficiency

and competitiveness of the developing countries, as provided for in the Montreal text. This implies the need that the participation of these countries in trade in services should be promoted from the import side as well. That is, the agreement would not be complete if it does not envisage the way in which the evident increase in the services imports of the developing countries that will result from an eventual liberalization process, will lead to concrete benefits for the strengthening and upgrading of the sector. This could be achieved in particular through the assimilation of technologies and know how embodied in the services provided by developed countries.

Various delegations of developing countries in the GNS have expressed their interest that specific provisions should be included in the framework agreement regarding transfer of services technologies. In order to make progress in the elaboration of such provisions, a number of comments are called for.

The services sector is characterized by being simultaneously a user and producer and distributor of technologies ranging from those embodied in equipment to those intensive in information, know how, and/or organization. Technology has clearly become an important factor in the production of services. Considering these characteristics, and irrespective of the specific modalities of transfer of technology in each service sub-sector, it may broadly be said that such a transfer is intimately linked to the access and use of two kinds of technologies:

- (a) "hard" technology, where the transfer is completed through the sale of equipment, etc.;
- (b) "soft" technology, which is of growing and vital importance in the production and/or distribution of many services through: know how or qualifications/skills; the hiring of local personnel at different levels (mostly managerial and technical); personnel training programmes; franchising agreements; training of personnel in companies producing or using such technologies; and licences, patents and trade marks.

It is important that the developing countries requiring these technologies should be able to choose freely the most appropriate and adaptable forms of transfer, taking into account that hitherto in many instances they have been compelled to acquire obsolete or inappropriate technologies. They face a great array of obstacles to access to modern technologies, and particularly to information networks. Such access is almost always conditioned or influenced a priori, either by financial factors (costs of network access, consultation or provision of information); by "legal" factors (private systems, reserved access, discriminatory access); or by technical factors (availability of material, problems related to standards and norms) and so on.

In view of the above, the framework agreement should provide for the elimination of obstacles faced by the developing countries regarding technology transfer, and facilitate such transfer through the establishment of provisions geared to:

- prohibition of measures and/or practices that limit or impede the access to information networks and to the distribution networks for services, as well as to the technological innovations related to this sector;
- elimination of those measures that impede or limit free choice in the acquisition of technologies, as well as of those that restrict access to such technologies on the basis of price manipulation;
- facilitation of training programmes for local personnel and the exchange of personnel;
- promotion of the participation of national suppliers in research and development activities conducted by foreign suppliers;
- establishment of "inquiry points" on services technology available in developed countries and on demand for services technology in developing countries. To that effect, the governments of the participating countries should co-operate among themselves and with international organizations, such as the UNCTAD/GATT Trade Centre.

### 3. Relative reciprocity

In view of the existence of evident inequalities in the degree of participation between developed and developing countries in world trade in services, a multilateral agreement in this field must ensure that the contribution of the various signatories is in proportion to their respective levels of development in this sector. The fact that four-fifths (more than nine-tenths if the mobility of production factors is included in the definition) of world trade in services are carried out by developed countries should be considered grounds for recognizing the principle of relative reciprocity, in which it is recognized that there cannot be equal treatment among unequal parties. These differences are recognized in the Montreal document, which affirms that the progressive liberalization process should provide appropriate flexibility, with respect to time-frames and transactions, for developing countries to open fewer sectors or liberalize fewer types of transactions and progressively extend market access in line with their development situation. From the point of view of the Mexican delegation, this would be an element of the concept of relative reciprocity on the demand side.

On the supply side, the agreement must include provisions to ensure that in this and future negotiating rounds services of export interest to developing countries are negotiated on a priority basis; the developed

countries facilitating access to their services markets should not expect concessions of a similar magnitude. This includes concessions on labour-intensive services and on services provided by labour, without the developed countries expecting similar concessions in the field of movement of factors of production. This is not aimed at providing special treatment for developing countries, but at reducing the gap between the participation of the two groups of countries in world trade in services and providing an incentive for developing countries to contribute further to the liberalization process in this sector, which many of them have undertaken unilaterally so as to modernize their economies.

The concept of relative reciprocity should be explicitly included in the possible framework agreement.

#### 4. Progressive liberalization

Liberalization is not a synonym of deregulation, given that the negotiations address the legal and other obstacles which directly or indirectly limit trade in services, and not the national regulations and laws whose purpose is to implement development policies or other domestic regulations. Nor should liberalization be interpreted as a process of gradual harmonization of the domestic laws and regulations of participating countries.

Progressive liberalization in the services sector implies gradual access to the market for each service and gradual extension of national treatment, but not the immediate liberalization of specific sectors or transactions. In other words, it is a horizontal, and not a vertical, process. To draw a comparison with GATT, tariff reductions on a product are generally gradual, without reaching a zero rate in a single negotiating round. Thus, the concepts of market access and national treatment are part of the process of progressive liberalization. Furthermore, in certain cases other elements such as measures related to public or private monopolies, or even m.f.n. treatment/non-discrimination, could also be part of this process.

For these reasons, it is difficult to talk about "negative lists" of sectors and transactions. Moreover, two other main reasons oppose the use of "negative lists". Firstly, as has been shown by the discussions on the testing of concepts in the GNS, there is no classification on services sectors and transactions that could be used in these negotiations. Secondly, any classification that might be adopted, after long and difficult negotiations during the Uruguay Round, would be rapidly surpassed by the many new services daily appearing in the world market as a result of the application of new technologies. It must be clear that this would happen even if a definition of trade in services was agreed upon, which is not yet the case in the GNS.

Thus, the Mexican delegation favours the use of "positive lists of concessions", which would be included in the national schedules of the

signatory countries and would appear as an annex to the framework agreement and/or to possible sectoral agreements.

#### 4.1 Access to markets

The forms of market access negotiated should conform to the definition agreed upon for trade in services, as well as to the specificities of each particular sub-sector, while respecting national policy and development objectives.

The concessions negotiated on market access in the context of a framework agreement on services should contain a balance in the opening of markets in relation to the international flows of the production factors in this sector, i.e. labour, capital, and technology. In other words, there could be "crossed" concessions among services intensive in such factors of production: a concession on flows of investment in services might have a counterpart concession on labour and/or on technology transfer, but always with due respect for the principle of relative reciprocity in favour of the developing countries in the exchange of such concessions.

Market access, which is part of the process of progressive liberalization, should respect the time-frames agreed upon among the signatory countries in relation to the international mobility of the production factors, depending on the preferred mode of delivery, also to be agreed upon during the sectoral negotiations. The effectiveness of such access in the case of those services where labour movement is necessary, given that this factor is an essential element in the provision of many of them, will depend on ensuring flexibility in the laws, or in their interpretation, regarding entry, work permits and residence of foreigners, as well as on the validation and recognition of qualifications, skills and experience of the personnel involved in the provision of such services. On this last point, adequate formulae must be sought so as to reach multilateral solutions with respect to the validation and recognition of skills, qualifications and experience of personnel, avoiding discriminatory solutions, in particular against developing countries.

In the definition of market access, it is also essential to be especially careful and establish an appropriate delimitation of the concepts of health, consumer protection, public security and/or national security, so as to avoid possible forms of protectionism based on these concepts and hence avert a recurrence of the long experience of neo-protectionism in the field of goods.

In the GNS it has been proposed that permits granted to foreign personnel to enter the country that receives the service, should be issued immediately or as soon as possible. We agree with this, but further, given the prerequisites that each country imposes in the granting of visas or work permits, we believe that transparency, on the conditions mentioned below regarding contact points, should make it possible for every supplier to be informed regarding the time-frame for obtaining them.

#### 4.2 National treatment

The Mexican delegation agrees with other delegations that national treatment must be understood as the treatment of foreign services that is no less-favourable than that given in similar circumstances to the local services of the signatory party. However, its practical application will depend, among other things, on the definition of international trade in services that will be agreed upon in the GNS.

Nevertheless, what it cannot agree with is that this treatment could be given immediately after providing market access. In this respect, various delegations have stated on a number of occasions that national treatment should be a long-term objective and that it must be part of the concept of progressive liberalization and of the principle of relative reciprocity, at least for developing countries. What is important is that national treatment should be given as access to market is obtaining and not vice versa. That is to say, national treatment would be given gradually and according to a negotiated calendar that, generally, would be different for each service sector or transaction.

Another element to be considered concerns procurement of services for the public sector. The agreement should be explicit that although national treatment is not applicable to government procurements, services directed to this sector must not be transferred, directly or indirectly, to the commercial sale of services and goods by the governments of developed countries.

#### 4.3 Transparency

The Mexican delegation considers that transparency must be expressed through the publication of all new national, State, province and local laws, regulations and administrative guidelines regarding internationally-tradeable services. In order to avoid excessive costs of information collection and computerization, transparency should be achieved through the establishment of contact points, the function of which would be to guide foreigners making enquiries towards the public and/or private organizations to which they must apply for the required information, on the understanding that those organizations should have the obligation to collect and update in whatever manner each country considers most appropriate, all regulations directly or indirectly affecting trade in services. These contact points could compile and inventorize on a permanent basis all the regulations more frequently asked for by other signatories and, if appropriate, publish or republish them.

Signatories with more advanced information systems could provide, upon request, technical assistance to any other signatories which faced difficulties in setting up such contact points.

Furthermore, the agreement must consider that a national law or regulation should not be applied until it is officially published.

However, nothing in the agreement should oblige a country to consult with the government, individuals or companies of another signatory about any law or regulation prior to its implementation.

#### 4.4 Rules on monopolies

The existence of monopolies and/or market-dominating operators is a very sensitive topic, since they exist in most participating countries.

Thus, under the progressive liberalization process the exchange of concessions among participants on the gradual reduction of restrictions so as to afford foreign users no less-favourable treatment than domestic consumers should be considered. However, its practical application will depend on the definition of trade in services eventually adopted by the GNS.

On the other hand, progressive liberalization may result in the appearance of dominant operators in the market who would take advantage of their position to engage in unfair practices to the prejudice of domestic service suppliers and/or consumers, or create market distortions by obstructing healthy competition. Thus, nothing in the agreement should interfere with the signatories' right to use their national laws to prevent such abuses, nor to prevent the countries lacking such legislation (for instance, anti-trust laws) to adopt it in the future, on the understanding that it should be non-discriminatory.

Moreover, the framework agreement should contain precise provisions to avoid restrictive business practices. Such provisions could be based on agreements already achieved in UNCTAD and the OECD.

#### 5. Subsidies

In the same way as for industrial products, developed countries should undertake to stop subsidizing their exports of services covered by the agreement as from, for instance, two years after the signature of the agreement. They should also commit themselves to the phased elimination of production subsidies to all services, whether or not included in their schedules of concessions.

In the case of developing countries, their right should be recognized to subsidize the production and exportation of services as long as they do not injure the interests of other signatories.

#### 6. Technical Assistance

The Mexican delegation supports the proposal of the Nordic countries on the establishment of information centres in the developed countries concerning market opportunities for developing countries' services exports. Furthermore, it considers that the framework agreement should include provisions for the supply of technical assistance to the latter to



strengthen their national services capability and their efficiency and international competitiveness.

It also seems desirable to include provisions to promote centres for joint research and development between companies from developed and developing countries under the auspices, not necessarily financial, of the governments concerned.

7. Least-developed countries

As stated in the Montreal Declaration, the developed signatories shall not expect any kind of reciprocity from the least-developed countries.

8. Safeguards

The Mexican delegation considers that signatories should have the possibility to adopt the necessary safeguard measures when, as a result of the application of the framework agreement, a sector, sub-sector and/or activity of the services covered is affected and this leads to a serious drop in its currency reserves. The aim of these measures should be to regulate import levels and limit the volume or value of the services involved. The following conditions should be considered sufficient for the application of these measures:

- (a) the existence of a sudden and unexpected rise in imports;
- (b) causing injury or threat of injury to domestic suppliers;
- (c) as a result of a specific obligation undertaken under the agreement.

These elements should not be considered isolatedly; a causal link should exist among them. The measures adopted should be, by definition, of a temporary nature, and should be eliminated once their application is no longer justified.

The Mexican delegation also considers that safeguard measures should be able to be applied for balance-of-payments purposes. These should also be temporary.

Developing countries should also be able to adopt such measures when there is a need to:

- (a) promote the creation of certain services sectors, sub-sectors and/or activities;
- (b) correct structural problems such as those formation in related to technological changes and capital formation is a sector, sub-sector and/or activity, when they have an important bearing on the trade balance;

- (c) to allow the emergence of new services fostered by highly-advanced technologies.

All the above-mentioned measures would be implemented by the freezing of the liberalization process, including market access, national treatment, and other measures relevant to each particular case, but without affecting most-favoured-nation treatment and non-discrimination. Their practical applicability will depend on the definition of international trade in services to be adopted by the GNS.

9. Preferential agreements between developing countries and m.f.n./non-discrimination

The framework agreement should allow two or more developing countries to initiate economic integration processes in one or more services, even where they have not done so in the field of goods. In this respect, it should be considered that economic integration attempts have often failed owing to a lack of economic integration in services. It is therefore to be expected that preferential agreements on services would eventually lead to the formation of economic integration areas both for goods and for services.

Clearly, the agreement should contain provisions recognizing all economic integration processes already under way among developing countries.

As far as the m.f.n./non-discrimination treatment is concerned, it should be granted unconditionally by developed countries to developing countries in all areas of the agreement.

10. Domestic and international regulations

The agreement should recognize the right of the developing countries to regulate in their territories the delivery of services included in the agreement, including the right to introduce new laws, regulations and administrative guidelines, as required by their national policy objectives, while respecting the provisions of the agreement. However, the agreement should provide for situations where, due to the emergence of new technologies, services included in the agreement are in fact transformed into new services. It should also provide for the fact that many new services already regulated in the developed countries have still to be regulated in developing countries.

Likewise, care should be taken to ensure that the application of the provisions of the agreement does not affect previous commitments under international disciplines. For this purpose, consultation mechanisms should be established to remedy any incompatibilities that may exist, granting the required flexibility and time.

## 11. Statistics

One of the main problems facing the various negotiating rounds on services is, and will be, the lack of national and international statistics on the sector. The agreement should include a specific provision to deal with this situation. One approach could be that the body that will supervise the implementation of the agreement should recommend and take appropriate action for the retrieval and systematization of such statistics, taking as a source the signatory governments and the relevant regional and international organizations that possess the necessary data. The objective would be to have a reliable data base at the disposal of all signatories. The agreement should also contain specific provisions for the supply of technical assistance from the more advanced countries in the treatment of such data to developing countries which so request.

## 12. Other provisions

All the foregoing should be supplemented by other provisions of a general character to be included in the agreement, such as:

- (a) general exceptions;
- (b) exceptions relating to security;
- (c) consultations, dispute settlement, surveillance;
- (d) modification of trade concessions;
- (e) establishment of a Committee on Trade in Services;
- (f) acceptance and accession;
- (g) entry into force;
- (h) modifications to the agreement;
- (i) denunciation;
- (j) secretariat, deposit, registration.

However, the purpose of this document has only been to identify those provisions that should be included in the agreement so as to ensure that developing countries are not treated as a special case and that their treatment is not based on waivers to the provisions of the agreement. The concept of development must be an integral part of a possible agreement on trade in services (ATIS) and of possible sectoral agreements.

The purpose of the Mexican delegation has been to contribute to attain the goal set out in paragraph 11 of the Montreal Declaration, and at the same time fulfil the other elements contained in that Declaration and in the Punta del Este Declaration. In any case, it is important that all the participants in the GNS should be aware that it is not possible to attend to the demands of a handful of countries without considering the interest of the other participants, for this would only make it more difficult to fulfil the task which the Ministers entrusted to the Group of Negotiations on Services.