

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

MTN.GNS/W/90/Add.1

4 January 1990

Special Distribution

---

Group of Negotiations on Services

MATERIAL TO BE CONSIDERED WITH A VIEW TO FULFILLING  
THE MANDATE GIVEN TO THE GNS IN PARAGRAPH 11 OF THE  
MONTREAL DECLARATION (MTN.TNC/11)

Addendum

It has been requested that the following material from national submissions and from statements made in the general discussion on concepts, rules and principles be added to document MTN.GNS/W/90.

I. WHAT THE NEGOTIATIONS FOR A FUTURE FRAMEWORK ON TRADE IN SERVICES  
RELATE TO

° Switzerland, MTN.GNS/W/69, page 6 and MTN.GNS/26, paragraph 61

The issue of definitions can be approached in a pragmatic manner through bindings relating to market commitments.

Binding relates to three elements of regulations on trade in services:

- Accession to the market and activities on the market (i.e. modalities to enter a service market, regulation of operations in a service market);
- preferred mode of delivery (i.e. cross-border trade, establishment of a commercial presence and transborder movements of factors of production);
- relevant factors of production (labour, capital, information, e.g. real estate, labour and capital market regulations, privacy laws).

II. CONCEPTS, PRINCIPLES AND RULES TO BE EMBODIED IN A FUTURE FRAMEWORK ON  
TRADE IN SERVICES

(a) TRANSPARENCY

° Hong Kong, MTN.GNS/27, paragraph 39 (additional statement)

Cross-notification is a procedure well-established and accepted in the GATT and has been instrumental in contributing to transparency of trade measures, and should be applied in the services agreement as well. Transparency obligations should extend to regional and local authorities and also private bodies that set technical standards and qualification requirements.

**(b) PROGRESSIVE LIBERALIZATION**

- ° Switzerland, MTN.GNS/W/69, page 7

With a view to improving market access and increasing participation of developing countries, the Uruguay Round Agreement would contain short- and long-term elements. It could contain immediately applicable achievements (freeze, requirement for the accession to the agreement), as well as a system for the progressive liberalization of commercial services to be undertaken after the end of the Round. This means that at the end of the Round contracting parties would accept to submit the universe of commercial services to the general rules and procedures of the GATS Agreement. The progressive liberalization of trade in services would be undertaken sectorially by means of a process of progressive inclusion of service sectors under a set of specific rules and disciplines (inter alia, non-discrimination/m.f.n., national treatment). Such inclusion would correspond to the concept of binding in GATT. Sectorial negotiations - multilateral, plurilateral or bilateral - would furthermore pursue the compatibility of pertinent service regulations and the elimination of specific barriers to market access.

**(c) NATIONAL TREATMENT**

- ° Hong Kong, MTN.GNS/25, paragraph 86

National treatment is an important obligation in the agreement with a view towards ensuring effective market access. It is not necessarily identical but equivalent treatment that should be implied by the concept. Effective market access should be approached in this context both in terms of access as well as operating conditions once access had been obtained.

**(d) M.F.N./NON-DISCRIMINATION**

- ° Hong Kong, MTN.GNS/24, paragraph 239

M.f.n. and non-discrimination are back-to-back concepts. While m.f.n. relates to the extension of benefits, privileges and concessions, non-discrimination refers to the application of trade restrictive measures. Both concepts should be incorporated as obligations in the framework.

- ° Hong Kong, MTN.GNS/24, paragraph 239

Concerning qualifications and standards, there should be transparency in the objective criteria leading to mutual recognition arrangements, so that others who could fulfil the same criteria would also be able to obtain the same level of recognition.

**(e) MARKET ACCESS**

° Brazil, MTN.GNS/W/86, pages 12-13

The long-term process of liberalization would include the progressive negotiation of access to markets, consistent with national policy objective and in accordance with the provisions of the multilateral framework, especially the definition of trade in services.

The multilateral framework could provide rules for subsequent negotiations in which market access conditions could be discussed. These conditions would include, *inter alia*, surcharges on foreign service suppliers, in the form of a differential fee or charge and restrictions on the number of foreign service suppliers allowed to enter a market.

Preferential and effective market access opportunities should be granted to developing countries. Access to information and distribution networks should also be guaranteed for developing countries.

Countries should retain the right to ensure that first benefiting from negotiated access commitments maintained standards of corporate behaviour consistent with their development and technological objectives.

Modes of delivery of services would have to conform to national policy objectives should, in no way, include the possibility of imposing the supplier's own standards to the local market. The delivery of services would have to conform to existing national legislation requirements, including those affecting non-service aspects of the operations.

There would be a need to establish a difference between modes of delivery and the services themselves. Special sectoral characteristics will have to be taken into account during the long-term process of liberalization.

° Japan, MTN.GNS/W/83, pages 4-5

Market access is the guiding principle in the liberalization of trade in services. The framework agreement lays down rights and obligations in order to provide participants the opportunity to compete in trade in services. However, the performance of the participants in each market will be determined by market principles in each services sector.

Therefore, the guiding principle of market access in itself does not provide any participant a prerogative to demand review of the rights and obligations already agreed to in the framework agreement just because it has not competed successfully and has not attained a market share which it expected. Such a result-oriented approach is contrary to free trade in services.

In this connection, we should also avoid application of a reciprocal market access concept, in which a participant limits access by another participant to its own market, on the grounds that the latter's market access is not sufficient.

**(f) INCREASING PARTICIPATION OF DEVELOPING COUNTRIES**

° Nordic countries, MTN.GNS/25, paragraph 203

Regarding the suggestion that the increasing participation of developing countries would need to be accompanied by an increased flow of financial resources into these countries, it should be kept in mind that each international organization has its own specialization and that the mandate of the GNS is to establish a multilateral framework of principles and rules for trade in services. Even though the end result of the GNS negotiations would ultimately need to fit into the broader context comprising other international economic and trade institutions, the task of the Group is not to discuss what is in the domain of other bodies.

° Nordic countries, MTN.GNS/27, paragraph 21

These great difficulties in elaborating provisions which would mandate the transfer of proprietary technology. However, the framework agreement could be conducive to a transfer of technology by creating an environment which would lead to a quicker diffusion of skills and know-how since this ultimately depends on what happened at the company level.

**(g) SAFEGUARDS AND EXCEPTIONS**

Safeguards

° Hong Kong, MTN.GNS/25, paragraph 223 (replacing current entry on page 30 of MTN.GNS/W/90)

The development of safeguards provisions would need to consider situations where injury was not caused by newcomers but by those already in the market, particularly when the injuries caused by such different sources could not be differentiated. The criterion of a sudden and unforeseen increase in imports is difficult to apply to services which are not as easily detectable as a shipment across border. Due to the complicated inter-relationship among services sectors, the question of safeguards measures applied to address injury to a particular sector could have widespread implications. The concept of a protection balance sheet is worth exploring.

Exceptions

° Hong Kong, MTN.GNS/25, paragraph 223

In the GATT, the main characteristics of such measures are that there is no requirement to consult with other parties and no provision for

retaliation or compensation. Tighter provisions would be necessary in the services framework to guard against the abuse of measures which could undermine commitments or concessions made in the framework. There is also a need for periodic review and for contracting parties to make recommendations as appropriate.

**(h) REGULATORY SITUATION**

° Brazil, MTN.GNS/W/86, pages 15-16

Given the asymmetries which exist with respect to the degree of development of services regulations in different countries, the framework agreement should recognize the right of countries, in particular of developing countries, to introduce new regulations related to the services sector, concerning e.g. the establishment of state enterprises, the granting of exclusive rights of certain sectors, the upgrading of skills and others judged necessary for the promotion of development objectives.

**(i) OTHER PROVISIONS**

° Hong Kong, MTN.GNS/24, paragraph 239

Regional economic integration

Regional economic integration is a derogation from the m.f.n. principle and extensive use of Article XXIV - type arrangements to form regional trading blocs would undermine the multilateral trading system. Rigorous disciplines are necessary to ensure that there will be no abuse of such provisions.

° Hong Kong, MTN.GNS/25, paragraph 223

Subsidies

Regarding subsidies, the situation is far more complex than for goods because many services, e.g. education or research and development - could be provided by government and would give rise to the question of inputs or indirect subsidies from other sectors.

° Hong Kong, MTN.GNS/25, paragraph 223

Dumping

Concerning dumping, the question of price comparison could be very complicated because the charging for services could depend on many different factors in the home country as against in the market. There might also be circumstances where scales of fees or charges are applicable but which differ according to country, thereby making price comparison meaningless.

### III. STRUCTURE AND APPLICATION OF A FUTURE FRAMEWORK ON TRADE IN SERVICES

#### (b) INITIAL COMMITMENTS

- ° Hong Kong, MTN.GNS/24, paragraphs, 239, 126, 34 and 27

The concept of a freeze requires careful examination, given the asymmetry that exists with respect to the degree of development of services regulations in different countries. It would be necessary to provide for those participants with a relatively open regime which might in the future need to introduce regulations for good reasons but which would reduce the current level of liberalization. Special credits should be given to such participants and one way to achieve this is to accept the ceiling bindings are permitted in order to ensure a proper balance of rights and obligations.

#### (c) MECHANICS OF LIBERALIZATION

- ° Brazil, MTN.GNS/W/86, pages 17-18

One fundamental stage in the long-term process of liberalization of trade in services is the examination of the consistency of the framework agreement with the existing international disciplines and arrangements. The future exercise of establishing disciplines for individual sectors should take fully into account the work conducted in the various international fora related to services.

Participants could start the examination of specific sectors by choosing those which are not yet regulated multilaterally.

In order for participants to have a clear picture of the benefits at stake in future negotiations, it is imperative that statistical data be available.