

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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COMMUNICATION FROM MEXICO

Definition: Elements for the Inclusion of Services Provided by  
Labour in the Framework Agreement and in Further Negotiations

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

1. The discussions in the GNS on the problem of definition have centred on the different possible modalities for the provision of services, and in so doing have raised the question of the treatment of the factors of production in this sector.
2. The delegation of Mexico has insisted on the need to include in the definition adopted on trade in services those modalities for the provision of services of interest to the developing countries. In this respect, the activities in which these countries are internationally competitive are the labour-intensive ones.
3. Given the importance, at this point in the negotiations, of devising specific mechanisms for the inclusion of services provided by labour in the framework agreement and in the negotiations, the Mexican delegation presents in this paper a number of preliminary ideas on the subject.
4. These preliminary ideas may be subject to changes and refinements.
5. Firstly, it is important to note that there is no theoretical or practical justification for giving preference, in a possible framework agreement, to one way of delivering a service over another (e.g. capital over labour) or to some services over others (e.g. capital-intensive services over labour-intensive ones). There should in fact be symmetry in the trade effects of each type, both in the framework agreement and in the various rounds of negotiations. This situation lies at the heart of the difficulties in reaching an agreed definition in the GNS negotiations.
6. In order to differentiate it from immigration problems, trade in services provided by labour has to include the concept of a temporary movement of labour, both skilled and also semi-skilled and low-skilled.

7. The second required element is that such movement must not consist of individual services providers, i.e. of individuals searching for employment in the field of services in the "importing" country. Temporary mobility of labour should be treated as an "organized import", which can only be achieved if such labour is part of an enterprise responsible for compliance by the individuals concerned with the policy objectives of immigration laws and regulations in the importing countries.

8. There are two ways of achieving this. These may be more easily explained by using two examples corresponding to two non-exclusive situations. Take a developing country A which exports services provided by labour, and a developed country B which imports those services. The first situation would be that of a construction company from country A temporarily established in country B to carry out a construction project. In this example, the company could bring with it from country A all personnel required for the project, who would stay in country B until its completion. The construction company from country A would be liable to the authorities of country B for any breach of immigration laws and regulations by any of its personnel (from country A). Thus, country B's authorities could sanction the company from country A in different ways, from the imposition of a fine to temporarily or definitively suspending its operations in its market.

9. The second example concerns a construction company from country B wishing to hire skilled and/or semi-skilled and/or low-skilled labour from country A. In this case, the organized hiring of labour requires the existence of a company specialized in hiring different kinds of manpower, established in country A or in country B. Its equity could come from country A or country B or from a joint venture. It would be responsible to country B's authorities for any breach of immigration laws and regulations by the personnel sub-contracted to the construction company from country B.

10. In addition, the foreign personnel should comply with all labour laws of country B, including, of course, the payment of all kinds of taxes and (temporary) contributions to social security schemes. In the example given in paragraph 8, the responsibility for this would fall to the construction company from country A. In the example in paragraph 9, the construction company from country B would have this responsibility: the company specialized in recruitment would only be responsible for immigration law violations, given that, for obvious reasons, it would not be in a position to carry out the necessary book-keeping for salaries, taxes, social-security contributions, etc.

11. The above examples for the construction sector may also be applied to other labour-intensive service sectors, where it would again be seen that international labour mobility, as explained above, would not be an immigration problem but rather would specifically constitute trade in services as defined in the Montreal Declaration and in the already agreed part of document MTN.GNS/28.

12. Thus, the above proposal would make it possible to fulfil the Punta del Este and Montreal Declarations in the sense of achieving a progressive liberalization of trade with due respect for national policy objectives of the laws and regulations applicable to services. It also conforms to the objective of achieving "in this round and future negotiations, a progressively higher level of liberalization taking due account of the level of development of individual signatories", and of including "sectors of export interest to developing countries".

13. In so far as the developed countries progressively render more flexible their laws on the temporary entry of aliens and on temporary work permits, the above proposal would also facilitate the fulfilment of the Montreal Declaration, reiterated in the unbracketed part of paragraph 1 in the section on progressive liberalization in document MTN.GNS/28, which states that "with a view to achieving a progressively higher level of liberalization, the adverse effects of all laws, regulations and administrative guidelines should be reduced and eliminated as part of the process to provide effective market access".

14. Finally, it should be made clear that unless the possible framework agreement and the various rounds of negotiations give similar treatment, as regards trade effects, to the different ways of delivering services, and unless the sectors of export interest to all countries are included, the opportunity to have an agreement of universal application will be lost. Furthermore, it is essential to avoid a repetition of the GATT experience of excluding from the scope of the General Agreement such important sectors as agriculture and textiles, to the benefit of only a handful of countries.