

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNS/W/101

4 May 1990

Special Distribution

Group of Negotiations on Services

Original: English

COMMUNICATION FROM CAMEROON, CHINA, EGYPT, INDIA,
KENYA, NIGERIA AND TANZANIA

Multilateral Framework of Principles and Rules
for Trade in Services

The attached communication is circulated at the request of the delegations of Cameroon, China, Egypt, India, Kenya, Nigeria and Tanzania to the members of the Group of Negotiations on Services.

MULTILATERAL FRAMEWORK OF PRINCIPLES AND RULES FOR TRADE IN SERVICES

PREAMBLE

The Parties to this Framework,

Recognizing the growing importance of trade in services for the growth and development of the
world economy,

Recognizing the role of services in the development process and the impact of trade in services on
this process,

Recognizing the need for a multilateral framework of principles and rules for trade in services,
within which negotiations aimed at expansion of such trade under conditions of transparency and
progressive liberalization as a means of promoting economic growth of all trading partners and the
development of developing countries can take place,

Desiring to facilitate through the promotion of mutual understanding, consultation and
co-operation the solution of problems relating to international trade in services, in particular
concerning access to technology, information, and financial resources,

Taking into account the need to reduce the adverse effects on trade in services of laws, regulations and administrative guidelines,

Conscious of the dominant position of developed country suppliers, the very limited share of developing countries in world trade in services and the urgent need to expand developing countries participation in the world market for services,

Taking into account existing international disciplines and arrangements dealing with services,

Recognizing the sovereignty of national economic space, and that accordingly the Multilateral Framework should respect the policy objectives of national laws and regulations applying to trade in services.

HAVE AGREED as follows:

CHAPTER I

Scope and Coverage

Article 1

Definition of Trade in Services

1. For the purposes of this Framework, trade in services shall include transactions involving:

- (a) cross-border supply of the service;
 - (b) cross-border movement of consumers;
 - (c) cross-border movement of factors of production under conditions of specificity of purpose, discreteness of transactions and limited duration;
2. Trade in services shall not extend to permanent establishment, or foreign direct investment or international immigration.
3. Factors of production shall be treated symmetrically in the Framework and in market access negotiations provided for in Article 14.
4. A list of modes of delivery applicable under the Framework is contained in Annex II.

Article 2

Coverage

1. All internationally tradable services as defined by Article 1 shall be covered by the present Framework.
2. A list of services which would constitute the universe of traded and tradable services is contained in Annex I of the Framework for illustrative purposes.

Article 3

Relationship with Existing Agreements

Nothing in this Framework shall affect rights and obligations under existing international agreements in the field of services.

CHAPTER II

Concepts, Principles and Rules

Article 4

Transparency

1.(a) Parties shall publish all relevant laws, regulations, administrative guidelines as well as international agreements concerning trade in services. This obligation shall also apply to local Government bodies and non-governmental regulatory bodies of the Parties; and

(b) Publication of information shall take place not later than the date of entry into force of the measure concerned. Such information shall be published in the official national language (s) of Parties.

2. Parties may establish national enquiry points to provide information upon request. These enquiry points need not be depositories of laws and regulations.

3. Parties shall exchange and make public information regarding the global activities of service suppliers, with a view, inter alia to obtaining more information with respect to the volume and direction of service trade flows and to ensure that the objective of the Framework is accomplished.

4. Transparency requirements may be imposed on service suppliers as a condition for market access by developing countries Parties to the Framework, as provided under Article 8, paragraph 2. The confidentiality of information provided shall be respected.

Article 5

Progressive liberalization

1. Parties undertake, in achieving a progressively higher level of liberalization, over the long-term to enter into negotiations aimed at reducing or eliminating the adverse effects on trade in services of their laws, regulations and administrative guidelines, as part of the process to provide effective market access. This process shall respect national policy objectives and the development situation of individual Parties, and aim at securing an overall balance of interests for all Parties.

2. Not later than years from the date of entry into force of the Framework and periodically thereafter, unless agreed otherwise, Parties shall undertake further negotiations in pursuance of the progressive liberalization commitment.

3. Progressive liberalization shall provide appropriate flexibility for developing countries Parties for opening fewer sectors, liberalizing fewer types of transactions or progressively extending market access in line with their development, trade and financial needs.

4. The process of progressive liberalization shall be governed by the following:

(a) conformity with the developmental and technological objectives of developing countries Parties, including, inter alia, the role assigned to the services sector in the national economy and the state of development of the particular sector;

(b) future liberalization by developing countries Parties shall depend on their ability to trans-

late liberalization by other Parties into an expansion of their services exports.

(c) commitments undertaken under this Framework shall not lead to further concentration of market power in international trade in services.

5. Sectors of export interest to developing countries Parties shall be negotiated on a priority basis.

Article 6

Most- Favoured- Nation Treatment/Non-discrimination

1. Any benefit, negotiated or autonomously granted, with regard to trade in services, by a Party to any country shall be extended immediately and unconditionally to all other Parties.
2. Parties shall not discriminate between foreign service suppliers of Parties in regard to entry and operating conditions.

Article 7

Schedules of Concessions

All concessions negotiated and exchanged among Parties in bilateral/multilateral negotiations shall be included in the Schedules of Concessions annexed to this Framework.

Article 8

Increasing Participation of Developing Countries

1. The increasing participation of developing countries in world trade and the expansion of their

service exports shall be provided for, inter alia, through the strengthening of their domestic services capacity and its efficiency and competitiveness. This shall be facilitated through specific agreed measures taken in relation to trade in services.

2. In providing access to their markets to foreign service suppliers, developing countries Parties may attach to it the following conditions: limitations or requirements with regard to the type of commercial presence; minimum requirements for training and employment, associated with different stages of producing the service; surcharges and different tax rates; local content requirement; access to technology; information regarding global business operations; and provision of financial resources.

3. The Parties recognize that the export potential of developing countries Parties depends largely on the liberalization of cross-border movement of personnel covering the entire spectrum of skills from unskilled or semi-skilled to high-skilled professionals. To this end, the developed countries Parties shall liberalize their national regimes so as not only to enable developing country firms supplying services abroad to recruit personnel from their own domestic sources, but also to permit service firms to recruit personnel from the source which is economically most advantageous.

4. With a view to accomplishing the objectives of this Article, and to facilitate effective market access for services exports of developing countries Parties, the developed countries Parties to this Framework shall:

(a) Establish enquiry points to provide exporters from developing countries with commercial information;

(b) Establish contact points to assist developing country exporters with questions relating to registration, recognition and completion of professional qualification, obtaining such qualifications in cases of lack thereof;

(c) Grant preferential market access to developing countries Parties' exports and/or exporters of services;

(d) Prohibit measures and practices that limit or impede access to information networks and to distribution channels for services;

(e) Eliminate measures that impede or limit free choice in the acquisition of technologies, as well as those that restrict access to such technologies;

(f) Facilitate training programmes for local personnel and the exchange of personnel of developing countries Parties;

(g) Promote the participation of national suppliers from developing countries in the research and development activities conducted by foreign suppliers.

5. The provisions of this Framework shall not prevent developing countries Parties from providing incentives to strengthen their domestic and export services capacity and take necessary measures to secure a minimum level of domestic production.

6. Special consideration shall be given to the strengthening of the domestic services capacity of least developed countries Parties as well as to their difficulties in accepting market access commitments. Concrete measures in this respect shall be agreed on by the Parties as a matter of priority.

7. Due consideration shall be given, in the negotiation process, by the developed countries Parties to the financial constraints which may exist in developing countries arising from their foreign debts and concrete measures shall be agreed on.

Article 9

Safeguards

1. Any safeguard measure shall be of a temporary nature, imposed only for the time necessary to correct the situation which made such measure necessary, and shall be subject to an agreed multilateral procedure established by the Parties, involving requirements such as, transparency, consultation, notification and surveillance.
2. Safeguard measures may be applied for balance of payments purposes. The balance of payments justifications of such measures shall be established.
3. Safeguard measures may also be applied to avoid or remedy unforeseen injury arising from increased supply of services resulting from liberalization commitments. Rules, modalities and procedures shall be established for the application of this paragraph.
4. Safeguard measures may also be applied by developing countries Parties when there is a need to:
 - (a) promote the creation of certain service sectors, sub-sectors and/or activities,
 - (b) correct structural problems such as those related to technological changes and capital formation in a sector, sub-sector and/or activity, when they have an important bearing on the trade balance.
5. Safeguard measures may also be applied in order to deal with adverse trade effects caused by situations of concentration of ownership, market domination and restrictive business practices.

Article 10

Exceptions

Subject to the requirement that such exceptions shall not be used as a means to circumvent the

objectives of the Framework nor as disguised restrictions on international trade in services, nothing in this Framework shall be construed to prevent the adoption or enforcement by any Party of measures:

- (a) Necessary to protect public morals, cultural and social values, order, safety or health;
- (b) Necessary to protect national security;
- (c) Relating to environment; and
- (d) Necessary for the development of developing countries.

Article 11

Regulatory situation

Parties to the Framework shall have the right to regulate the provision of services within their territories, inter alia through the grant of exclusive rights in certain sectors, in order to implement national policy objectives. This includes the right of Parties to introduce new regulations consistent with commitments under the Framework. The Parties recognize that developing countries Parties may have a particular need to exercise this right. Regulations shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties.

Article 12

Customs Unions, Free Trade Areas and Regional Integration Agreements and Preferences among Developing Countries

1. The provisions of this Framework shall not prevent the adoption of arrangements such as customs unions, regional integration agreements, free-trade areas, and preferential agreements among developing countries, which allow parties to the arrangements to undertake measures of liberalization among each other without extending them to other Parties. Such arrangements shall respect the general obligations of the Framework and not create any new, or raise existing, barriers to trade in services in relation to other Parties so as to nullify concessions negotiated under the Framework. Such arrangements shall be subject to multilateral discipline and surveillance.

2. If, in fulfilling the requirements of paragraph 1, a Party proposes to modify or withdraw any concessions, the procedure set forth in Article 19 shall apply.

Article 13

Regulation of Competition

1. Each Party shall take all possible measures by legislation or otherwise, to ensure, within its jurisdiction, that service suppliers do not engage in unfair trade practices, creating market distortions, acquiring undue market domination or otherwise obstructing competition, or frustrating the objectives of the Framework, provided such legislation or other measures do not constitute arbitrary or unjustifiable barriers to trade. The provisions of this paragraph shall not apply to developing countries Parties' flexibilities in respect of preferential treatment to domestic service providers and to financial and non-financial incentives to them.

2. Parties shall notify the measures covered by paragraph 1, and conduct multilateral periodic reviews thereof.

3. Parties shall establish international standards and disciplines for the control of adverse trade effects of anticompetitive private sector behaviour, and multilateral mechanism to enforce such standards and disciplines.

4. Developed countries Parties to the Framework shall not grant any subsidy or other form of assistance to exports of services or to suppliers thereof. Developing countries Parties may subsidize exports of services in a manner consistent with their development needs and consistent with the Framework.

CHAPTER III

Modalities of Progressive Liberalization

Article 14

Market access

1. In fulfilling the obligation of long-term progressive liberalization Parties shall negotiate market access concessions. Market access shall be in accordance with Article I and consistent with the other provisions of the Framework.
2. Market access which is made available through negotiations would cover the modes of delivery made available to the foreign supplier and the conditions for entry and operation to be fulfilled by foreign suppliers in order to gain access to the market of the importing country. Where more than one mode of delivery is available as a result of the negotiations, the foreign supplier shall be free to choose its preferred mode of delivery subject to the conditions of entry and operation embodied in the negotiated commitments.
3. Market access, made available through negotiations, shall be consolidated through binding of the negotiated commitments.

4. Market access shall not be made dependent on reciprocal concessions within the same sectors.

Article 15

National treatment

1. Once market access has been made available through negotiations, subject to conditions of entry and operation, national treatment may be accorded. When accorded in conformity with other provisions of the Framework, in particular Article 1, national treatment means that, services exports and/or exporters of any Party are accorded in the market of any other Party, in respect of all laws, regulations and administrative practices, treatment no less favourable than that accorded domestic services or services providers in the same market.
2. When necessary, the treatment a Party accords to service providers of another Party may be different from the treatment accorded to national providers, as long as the treatment is equivalent in effect to the treatment accorded by the Party to national providers.

Article 16

Initial commitments

1. The provisions of Chapter II shall apply as obligations from the outset to all services subject to the Framework.
2. Each Party shall undertake initial commitments upon entry into force of the Framework. In order to achieve an overall balance of interest, these commitments shall take the form of:
 - (a) Each Party shall assume such obligations under the Framework as are specified under a schedule of positive bindings, except as specified in subparagraph 2(b) of this Article.

(b) In the case of developing countries Parties subscription to the obligations of the Framework shall constitute a sufficient commitment to ensure a minimum initial level of commitments.

(c) A least developed country Party shall be granted flexibility in implementing initial commitments provided for in paragraph 1(b); such least developed country shall benefit from the extension of all concessions exchanged.

Article 17

Mechanics of liberalization

1. In accordance with the provisions of Chapter II, the process of liberalization shall be carried forward through bindings resulting from the establishment of a multilateral set of commitments to be applied by all Parties. Liberalization may also take place through bilateral or multilateral negotiations based on exchanges of specific concessions to be extended to all Parties on an unconditional most-favoured-nation basis. Bindings may relate to sectors, transactions, modes of delivery, or factors of production. Further liberalization shall be achieved through the binding of commitments resulting from periodic negotiations.

2. The long-term process of progressive liberalization is to be achieved through the reduction of adverse trade effects of all laws, regulations and administrative guidelines. The following stages of negotiation shall be observed:

(a) Multilateral discussion of the types of adverse trade effects and objective criteria for the identification of adverse trade effects shall be established;

(b) Any affected Party which considers that in any particular instance a practice exists which has the effect indicated in paragraph 1 (a) of this Article may consult directly or request the Organization to arrange for consultation with particular Parties with a view to reaching mutually satis-

factory conclusions.

3. Parties may negotiate, subject to provisions to be prescribed within the Framework, protocols open to all Parties providing for harmonization and/or mutual recognition of regulations, standards and qualifications with respect to specified services taking into account the development situation of individual Parties.

4. For the purposes of Articles 4 and 5 an agreed statistical base for trade in services shall be developed by the Parties.

Article 18

Sectoral annotations

Sectoral annotations or agreements, where considered necessary, shall be multilaterally agreed and form an integral part of the Framework, subject to the specific provisions prescribed in the Framework, and consistent with the provisions of the Framework. Such annotations or agreements may be envisaged, inter alia, for interpreting and/or clarifying the provisions of the Framework and adding provisions applicable to certain sectors, as well as for ensuring a balance of interests among participants and providing for the expansion of the services trade of developing countries.

Article 19

Modification and withdrawal of concessions

1. Any Party may, after a period of 3 years from the day the concession was extended, notify the Organization of its intention to modify or withdraw any concession included in its appropriate schedule.

2. The Party intending to withdraw or modify a concession shall enter into consultation and/or negotiations, with a view to reaching agreement on any necessary and appropriate compensation, with Parties with which such concession was initially negotiated and with any other Parties.

3. Should no agreement be reached between the Parties concerned within six months of the receipt of notification and should the notifying Party proceed with its modification or withdrawal of such concessions, the affected Parties as determined by the Organization may withdraw or modify equivalent concessions in their appropriate schedules. Any such modification or withdrawal should be notified to the Organization.

4. The procedures provided for in this Article shall also apply to modification or withdrawal resulting from the arrangements in Article 12.

Article 20

Withholding or withdrawal of concessions

A Party shall at any time be free to withhold or to withdraw in whole or in part any item in its schedule of concessions in respect of which it determines that it was initially negotiated with a State which has not become, or has ceased to be, a Party in this Framework. A Party taking such action shall notify the Council and, upon request, consult with Parties that have a substantial interest in the service sector concerned.

CHAPTER IV

The International Trade in Services Organization

Article 21

Membership, Structure and Functions

1. The International Trade in Services Organization (hereafter referred to as "Organization") is hereby established. The members of the Organization shall be those States which have fulfilled the requirements of Articles 16, 30, 32 and 33.
2. The Organization shall perform such functions as may be necessary to facilitate the operation and further the objectives of this Framework. The Organization shall be responsible for reviewing the application of this Framework and the instruments adopted within its framework, monitoring the implementation of the results of the negotiations, carrying out consultations, making recommendations and taking decisions as required, and, in general, undertaking whatever measures may be required to ensure the adequate implementation of the objectives and the provisions of this Framework.
3. The Organization shall keep under review the possibility of promoting further negotiations for the enlargement of the schedules of concessions and for the enhancement of trade in services among Parties through other measures and may at any time sponsor such negotiations. The Organization shall also ensure prompt and complete dissemination of trade information in order to promote trade among Parties;
4. The Organization shall have a Council, and such other organs as may be required. There shall also be an Executive -Director and Staff.

Article 22

The Council

1. The Council shall consist of all the Parties to the Framework.
2. Each Party shall have one representative in the council and may appoint alternates and advisers to its representative.
3. The Council may establish such subsidiary organs as may be necessary to the effective discharge of its functions;
4. The Council shall review disputes and make recommendations thereon in accordance with Article 26 of this Framework;
5. The Council may adopt such regulations and rules as may be necessary to the implementation of this Framework.
6. The Council shall endeavour to ensure that all its decisions are taken by consensus;
7. Notwithstanding any measures that may be taken in compliance with paragraph 6 of this Article, a proposal or motion before the Council shall be voted on if a representative so requests;
8. (a) Each Party shall have one vote in the Council.

(b) Decisions shall be taken by two-thirds majority on matters of substance and a simple majority on matters of procedure.
9. The Council shall determine the location of the headquarters of the Organization.
10. The Council shall adopt its rules of procedure.
11. The Council shall adopt financial rules and regulations.

Article 23

Co-operation with International Organizations

The Council shall make whatever arrangements are appropriate for consultation or co-operation with the United Nations and its organs, including the United Nations Conference on Trade and Development (UNCTAD), and the specialized agencies of the United Nations with responsibility for particular services sectors such as the International Telecommunications Union, the International Civil Aviation Organization, as well as intergovernmental, subregional, regional and inter-regional bodies concerned with services.

CHAPTER V

Consultations and settlement of disputes

Article 24

Consultations

1. Each Party shall accord sympathetic consideration to, and shall afford adequate opportunity for, consultations regarding such representations as may be made by another Party with respect to any matter affecting the operation of Chapter II of this Framework.
2. The Council may, at the request of a Party, consult with any Party in respect of any matter for which it has not been possible to find a satisfactory solution through such consultation under paragraph 1 above.

Article 25

Nullification or impairment

1. If any service supplier benefitting from negotiated access concessions under Chapter III of the Framework, considers that a Party has altered the value of a concession embodied in its schedule or that any benefit accruing to it directly or indirectly under this Framework is being nullified or impaired as the result of the failure of another Party to carry out any of its obligations under this Framework or as the result of any other circumstance relevant to the operation of this Framework, it shall seek to resolve the dispute under the domestic legal procedures of the Party concerned.

Article 26

Settlement of Disputes

1. In exceptional cases where such domestic procedures have been exhausted under Article 25, a Party may, on behalf of the service supplier concerned make written representations or proposals to the other Party, which thus approached shall give sympathetic consideration to the representations or proposals made to it.

2. Any dispute that may arise among the Parties regarding the interpretation and application of the provisions of this Framework or any instrument adopted within its framework shall be amicably settled by agreement between the Parties concerned in accordance with Article 24 of this Framework. If no satisfactory adjustment is effected between the Parties concerned within 90 days from the date on which such representation or request for consultation was made, the matter may be referred to the Council which shall consult with the Parties concerned and make appropriate recommendations within 75 days from the date the matter was referred to the Council. The Council shall adopt appropriate rules for this purpose.

3. The rules of origin in Annex V contain rules with respect to the origin of service suppliers so as to determine on behalf of which service suppliers Parties would be permitted to make representations under Articles 24, 25, and 26.

CHAPTER VI

Final provisions

Article 27

Implementation

Each participant shall take such legislative or other measures as may be necessary to implement this Framework and the instruments adopted within its framework.

Article 28

Depositary

The Secretary General of the United Nations is hereby designated as the depositary of this Framework.

Article 29

Signature

This Framework shall be open for signature at in from until the date of its entry into

force in accordance with Article 31.

Article 30

Definitive signature, ratification, acceptance or approval

Any State which has fulfilled the requirements of Article 16 may:

- (a) At the time of signing this Framework, declare that by such signature it expresses its consent to be bound by this Framework (definitive signature); or
- (b) After signing this Framework, ratify, accept or approve it by the deposit of an instrument to that effect with the depositary;

Article 31

Entry into force

1. This Framework shall enter into force on the thirtieth day after ... States have deposited their instruments of definitive signature, ratification, acceptance, approval in accordance with Article 30, paragraphs (a) and (b).
2. For any State which deposits an instrument of ratification, acceptance, approval or accession or a notification of provisional application after the conditions for entry into force of this Framework have been met, it shall enter into force for that State on the thirtieth day after such deposit or notification.
3. Upon entry into force of this Framework the Council shall set a final date for the deposit of instruments of ratification, acceptance, or approval by States referred to in Article 27. This date shall not be later than three years following the date of entry into force of this Framework.

Article 32

Notification of provisional application

A signatory which intends to ratify, accept or approve this Framework but which has not yet been able to deposit its instrument, may within sixty days after the Framework enters into force notify the depositary that it will apply this Framework provisionally. The provisional application shall not exceed a period of two years.

Article 33

Accession

Six months after this Framework enters into force in accordance with the provisions of this Framework, it shall be open to accession by other States who shall have complied with the conditions provided for in this Framework. To this end the following procedures shall apply:

- (a) The applicant shall notify its intention of accession to the Council;
- (b) The Council shall circulate the notification among the Parties;
- (c) The applicant shall submit an offer list to the Parties and any Party may table a request list to the applicant;
- (d) Once the procedure under (a), (b) and (c) above have been completed, the applicant shall enter into negotiations with the interested Parties with a view to reaching agreement on its list of concessions.
- (e) Application for accession from a developing country shall be considered taking into account the provisions of Article 8.

Article 34

Amendments

1. Any Party may propose an amendment to this Framework. The Council shall consider and recommend the amendment for adoption by the Parties. An amendment shall become effective 30 days after the date on which two-thirds of the Parties have notified the depositary of their acceptance.

2. Notwithstanding provisions of paragraph 1 of this Article, any amendment concerning:

(a) The definition of trade in services stipulated in Article 1

(b) The procedure for amending this Agreement;

shall enter into force after its acceptance by all Parties.

Article 35

Withdrawal

1. Any Party may withdraw from this Framework at any time after its entry into force. Such withdrawal shall be effective six months from the day on which written notice thereof is received by the depositary. That Party shall simultaneously inform the Council of the action it has taken.

2. The rights and obligations of a Party which has withdrawn from this Framework shall cease to apply as of that date. After that date, the Parties and the withdrawing Party shall jointly decide whether to withdraw in whole or in part the concessions received by the latter from the former and vice versa.

Article 36

Non-application

1. The Framework shall not apply as between Parties if they have not entered into direct negotiations with each other and if either of them, at the time either accepts this Framework does not consent to such application.
2. The Council may review the operation of this Article in particular cases at the request of any Party and make appropriate recommendations.

Article 37

Annexes

1. The annexes form an integral part of this Framework and a reference to this Framework or to one of its chapters includes a reference to the annexes relating thereto.
2. The annexes to this Framework shall be:

Annex I - Illustrative List of Sectors.

Annex II - List of Modes of Delivery

Annex III - Additional Measures in Favour of Least Developed Countries

Annex IV - Schedules of Concessions

Annex V - Rules of Origin

Annex VI - Sectoral Agreements and Annotations

1. DONE at Geneva on the , one thousand nine hundred and , the texts of this Framework in the English, French and Spanish languages being equally authentic.
2. IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Framework on the dates indicated.