

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNS/W/106
18 June 1990

Special Distribution

Group of Negotiations on Services

Original: English

COMMUNICATION FROM ARGENTINA, COLOMBIA, CUBA, EGYPT,
INDIA, MEXICO, PAKISTAN AND PERU

Annex on Temporary Movement of Services Personnel

The attached communication is circulated at the request of the delegations of Argentina, Colombia, Cuba, Egypt, India, Mexico, Pakistan and Peru to the members of the Group of Negotiations on Services.

The countries presenting this annex reserve the right to amend or supplement it in the light of the course and progress of the negotiations.

ANNEX

EXPLANATORY NOTE

The proposed Annex is intended to set out in the form of concrete obligations, the principles relative to movement of personnel as a mode of delivery, as agreed in paragraphs 4 and 7(e) of the results of the Mid-term Review.

It is envisaged that in the negotiation of specific access commitments Parties to the Framework could agree to apply this Annex to those sectors or sub-sectors for which they would grant market access under the Framework, as provided in their Schedules of Concessions.

TEMPORARY MOVEMENT OF SERVICE PERSONNEL

Article 1

Purpose

1. The provisions of this Annex elaborate upon the Multilateral Framework on Trade in Services (hereinafter referred to as the "Framework"), as it applies to movement of persons as a mode of delivery, to ensure that immigration regulations neither act as an unnecessary barrier to trade in services, nor nullify and impair benefits expected under the Framework.
2. The Parties recognize that progressive liberalization of trade in services may be hampered by barriers to movement of personnel. With a view to eliminating such barriers, and ensuring that immigration laws and regulations shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination among Parties or as disguised restriction on international trade, the Parties shall ensure that national laws and regulations governing entry will be progressively liberalized and criteria and procedures will be transparent, quick and simple, to facilitate entry for temporary stay.
3. The Parties recognize that the expansion of the service exports of developing countries and their increased participation in world trade in services depends on the liberalization of cross-border movement of personnel covering un-skilled, semi-skilled and skilled labour, and that effective access to markets for their service exports can mainly be realized through this mode of delivery. To this end, the developed countries Parties to the Framework in providing effective access to their markets shall liberalize their national regimes so as to enable not only developing country firms supplying services abroad to recruit personnel from their own domestic sources, but also for all service firms to recruit personnel from the source which is economically most advantageous. The

Parties shall also ensure that arrangements for the mutual recognition of professional and technical qualifications are not frustrated by the application of immigration laws.

4. Nothing in the Annex is intended to affect immigration laws and regulations dealing with permanent residence, establishment or citizenship.

Article 2

Scope and definition

1. This Annex applies to the temporary movement of service personnel essential to the effective delivery of a service. Such movement shall take place under conditions of specificity of purpose, discreteness of transactions and limited duration so as to facilitate the provision of services through time-limited contracts.

2. The Parties shall provide for the entry for temporary stay of personnel who are otherwise qualified for entry under applicable law relating to public health and safety and national security in accordance with the commitments contained in the Schedules of Concessions.

3. The Parties shall apply this Annex to all personnel able to provide the services for which market access has been granted, without arbitrary distinctions relating to skills or position in corporate hierarchies.

Article 3

Access to service personnel

1. The Parties shall permit firms providing services for which access has been granted under the Framework to recruit personnel from the source, among countries signatory to the Framework, which is economically most advantageous.

2. Movement of personnel under paragraph 1 above may be organized by a national hiring entity or by a foreign hiring entity. The hiring entity shall cooperate with the authorities of the importing country in case of any breach of immigration laws and regulations by its personnel.

Article 4

Movement of service employees

1. The Parties shall grant temporary entry to employees of foreign firms supplying services for which access has been granted under the Framework.
2. Such temporary entry shall be granted to persons who continue to render services to the same employer or a subsidiary or affiliate thereof.
3. The Parties shall not require, as a condition for entry for temporary stay, prior approval procedures, labour certification tests or other procedures of similar effect.
4. The legal entity employing the service personnel shall cooperate with the authorities of the importing country in a case of any breach of immigration laws and regulations by its personnel.

Article 5

Mutual Recognition Arrangements and movement of qualified professionals or tradesmen

1. The Parties shall endeavour where national regulations, licencing, certification, qualifications or professional standards exist for the provision of services, to conclude mutually acceptable arrangements open to all parties for the mutual recognition of national regulations or qualifications.

2. The Parties recognize that measures governing the licensing and certification of persons providing services should relate to competence or the ability to provide such covered services and shall not have the effect of impairing or restraining the access of nationals of the other Parties to such licensing or certification nor constitute a means of arbitrary or unjustifiable discrimination among Parties.

3. The Parties intending to enter into bilateral or plurilateral arrangements for the mutual recognition of professional or trade standards and qualifications or for developing mutually acceptable professional or trade standards and criteria shall notify all other Parties of their intention in this respect.

4. The Parties indicating their desire to take part in the formulation of such criteria or standards shall be given ample opportunity to participate in such a process, including making recommendations.

5. Existing arrangements for the mutual recognition of professional standards and qualifications shall be notified to all other Parties. The Parties wishing to participate in such arrangements shall be given adequate opportunity to do so.

6. Parties shall ensure that once qualifications are recognized, immigration laws shall not prevent service personnel to obtain temporary entry for delivery of services for which market access has been granted.

Article 6

Transparency

1. Each Party shall publish its laws, regulations and procedures relating to the provisions of this Annex and provide to the other Parties such explanatory materials as may be reasonably necessary to enable the other Parties and their service suppliers to become acquainted with them.

2. Data collected and maintained by a Party with respect to the granting of temporary entry of personnel under this Annex shall be made available to the other Parties in conformity with applicable law.

3. The Parties shall establish enquiry points, including in embassies and immigration offices abroad, to provide information on the procedure and regulations concerning the granting of entry for temporary stay under the provisions of this Annex.

Article 7

Non-Discrimination

1. The Parties shall apply this Annex unconditionally to all other Parties to the Framework.
2. No Party shall establish or maintain any measure which will constitute a means of arbitrary or unjustifiable discrimination among Parties on the basis of the source of service personnel, including through the application of geographic and national designations.
3. Existing discriminatory measures inconsistent with the provisions of this Annex shall be eliminated within two years of the entry into force of the Framework.

Article 8

National treatment

1. Foreign service personnel shall be entitled to benefits and subject to obligations, on rates and conditions no less favourable to that applied to service personnel of national origin in the application of such laws and regulations, in like circumstances.

2. The domestic laws and regulations of the Party granting entry for temporary stay, including the payment of appropriate taxes and contributions, shall apply to all foreign service personnel.

Article 9

Expeditious procedures for entry for temporary stay

1. The procedures for entry for temporary stay shall be accomplished expeditiously so as to avoid unduly impairing or delaying the conduct of trade in services under the Framework.
2. The Parties shall ensure that their embassies and immigration offices abroad, and immigration authorities at ports of entry are familiar with the visas issued pursuant to this Annex.

Article 10

Consultation

The Parties shall establish a procedure, which shall involve the participation of immigration officials, for consultation at least once a year with respect to:

- a. the implementation of this Annex,
- b. further facilitating entry for temporary stay of personnel.

Article 11

Dispute settlement

A Party may invoke the provisions of Chapter ... of the Framework on dispute settlement with respect to any matter governed by this Annex.

Article 12

Exceptions

Nothing in this Annex 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.