

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Draft General Agreement on Trade in Services

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

GATT SECRETARIAT

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Proposal by Japan

Draft

General Agreement on Trade in Services

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DRAFT GENERAL AGREEMENT ON TRADE IN SERVICES

Preamble

The parties to this Agreement (hereinafter referred to as the "Parties"),

Desiring to establish a multilateral framework of principles and rules for international trade in services with a view to expansion of such trade under conditions of transparency and immediate and progressive liberalization,

Recognizing the need to establish such framework as a means of promoting economic growth of all trading partners and the development of developing countries, respecting the policy objectives of national laws and regulations applying to services and taking into account the work of relevant international organizations,

Hereby agree as follows:

CHAPTER I Objectives

CHAPTER II Scope and Coverage

CHAPTER III General Obligation

Article 301 Non-discrimination

With respect to any measure covered by this Agreement, each Party shall accord immediately and unconditionally to services and service providers of any other Party treatment no less favourable than that accorded by the Party in like circumstances to services and service providers of any other country.

Article 302 Existing International Agreement

1. Article 301 shall not require any Party to extend to all other Parties benefits accruing from existing measures taken on the basis of international agreements which pertain to or affect measures covered by this Agreement and are in force on the date of entry into force of this Agreement. Regulations imposed by Parties, which are eased only among limited Parties on the basis of existing international agreements and thus are more restrictive toward other Parties, shall be subject to negotiations for liberalization prescribed in Chapter VII of this Agreement.

2. Parties may modify or amend such agreements, unless such modifications or amendments increase the degree of inconsistency with the provisions of this Agreement.

3. Each Party shall set out in its Schedule I the existing international agreements prescribed in Paragraph 1 of this Article.

Article 303 Exceptions to the Principle of Non-discrimination

1. With respect to any measure covered by this Agreement, Parties to this Agreement may conclude arrangements on the harmonization or mutual recognition of laws and regulations. Notwithstanding Article 301, such Parties may withdraw reservations set out in accordance with the provisions of Chapter VII exclusively among such Parties, subject to the following conditions:

- 1.1 the harmonization or mutual recognition of laws and regulations, both in its process and its result, shall not have more restrictive effect on service providers of any other Party than the corresponding laws and regulations which have existed prior to the entry into force of such arrangement;
- 1.2 parties to such an arrangement may not seek compensation from other Parties, not party to the arrangement, which benefit from a removal or relaxation of regulations relating to measures covered by this Agreement as a result of the harmonization or mutual recognition, or may not revoke unilaterally part of all of their commitments to liberalization on the ground that such compensation has not been granted;
- 1.3 parties deciding to withdraw reservations exclusively among the parties to such an arrangement in accordance with this Article shall promptly notify [the Committee on Trade in Services] of the decision. Parties concerned shall, at the request of [the Committee], provide information regarding such an arrangement, so that [the Committee] may issue to Parties reports and recommendations concerning such an arrangement as [the Committee] may deem appropriate.
- 1.4 parties withdrawing reservation exclusively among the parties to such an arrangement in accordance with this Article shall take appropriate measures in order to withdraw as early as possible the reservations in relation with Parties which are not parties to such an arrangement. [The Committee] shall review the status of withdrawal of the reservations in relation to Parties which are not parties to such arrangements every [2] years, until all such reservations are withdrawn.

2. Each Party shall set out in its Schedule III the withdrawal of reservations which are conducted under this Article exclusively among the parties to the arrangement on harmonization or mutual recognition of laws and regulations.

Article 304 Transparency

1. Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any Party, affecting any measure covered by this Agreement, shall be published promptly and at the latest by the time of their entry into force, in such a manner as to enable governments, and providers and consumers of covered services to become

acquainted with them. Agreements affecting any measure covered by this Agreement which are in force between a government or a governmental agency of any Party and a government or governmental agency of any other Party shall also be published. The provisions of this paragraph shall not require any Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular public or private enterprises.

2. Where publication referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly accessible and available.

3. Each Party shall ensure that one or more enquiry points exist which are able to answer all reasonable enquiries from interested parties in other Parties regarding any relevant laws, regulations, administrative rulings and other measures of general application, made effective by central government, as well as judicial decisions.

Each Party shall take such reasonable measures as may be available to it to ensure that one or more enquiry points exist which are able to answer all reasonable enquiries from interested parties in other Parties regarding any regulations affecting any measures covered by this Agreement adopted within its territory by local government bodies or non-governmental regulatory entities.

Such enquiring points, unless otherwise agreed, shall be established within [] years after the entry into force of this Agreement. They need not be depositories of laws and regulations.

4. Nothing in this Agreement shall be construed as requiring that laws, regulations, administrative rulings and all other decisions, rulings, or measures of general application mentioned in paragraph 1. shall be published other than in the language of the Party as well as their summaries in any language.

CHAPTER IV Market Access

Article 401 Establishment

Each Party shall within its territory permit service providers of any other Party to establish, maintain or expand a commercial presence for the provision of a covered service (including acquisition of an existing company, establishment of a new company or joint venture or affiliation with an existing company), and shall accord such service providers treatment no less favourable than that accorded in like circumstances to its own service providers.

Article 402 Cross Border Provisions

No Party shall, without a reasonable ground, prohibit or restrict the provision of a covered service within its territory solely on the ground that service or the service provider is located partially or wholly within the territory of another Party.

Article 403 Temporary Entry for Service Providers

Article 404 Licensing and Certification

1. With respect to any covered services, each Party shall ensure that licensing and certification systems are neither formulated nor applied with a view to creating obstacles to international trade in services. They shall likewise ensure that neither such licensing and certification systems themselves nor their application have the effect of creating unnecessary obstacles to international trade in services.

2. In cases where a positive assurance is required that service providers conform to requirements of licensing and certification for providing any covered service, each Party shall apply the following provisions to service providers of other Parties:

2.1 with respect to acceptance for testing, test methods and administrative procedures, and fees imposed for testing, each Party shall accord to the service providers of other Parties treatment no less favourable than that accorded to the domestic providers of like services in a comparable situation;

2.2 the confidentiality of information about the service providers of other Parties arising from, or supplied in connection with, such tests shall be respected in the same way as for the domestic service providers.

CHAPTER V National Treatment

Article 501 National Treatment

1. Each Party shall accord to service providers of any other Party treatment no less favourable than that accorded in like circumstances to its own service providers with respect to a series of activities for the provision of a covered service within its territory.

2. Notwithstanding paragraph 1, the treatment that a Party accords to services or service providers of another Party may be different from the treatment accorded to like domestic services or domestic providers of like services, as long as the treatment is equivalent in effect to the treatment accorded by the Party to domestic providers in like circumstances. Such differential treatment shall be listed in its Schedule II with its reasons.

3. The provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or services for commercial sale.

CHAPTER VI Other Provisions

Article 601 Exclusive or Monopolistic Service Providers

1. When a Party officially or in effect designates or maintains an exclusive or monopolistic provider of a service, the Party shall ensure that the entity enjoying such privileges will provide to consumers of any other Party who are located within its territory treatment no less favourable than that accorded in like circumstances to its own persons.

2. When a Party officially or in effect designates or maintains an exclusive or monopolistic provider of a service, the Party shall ensure that the entity enjoying such privileges will not use its exclusive or monopolistic position to engage in predatory practices that adversely affect service providers of another Party when it provides another covered service.

3. If a Party officially or in effect grants, after the entry into force of this Agreement, exclusive or monopolistic privileges to a service provider of the Party with regard to provision of a covered service, the Party taking the action shall enter into negotiations with other Parties which have substantial interest in the service pursuant to Article [] (modification of Schedules) in order to reach agreement on mutually acceptable compensatory adjustments by the Party.

Article 602 Government Aid

Article 603 Payments and Transfer

Article 604 Safeguard Measures

Article 605 Acceptance of Qualification and Certification System of Other Parties, Mutual Recognition, and Harmonization

1. Where a Party requires service providers of other Parties to be in conformity with its standards or qualifications with respect to provision of a given service in its own territory, the Party shall ensure, whenever possible, that its central governmental bodies;

accept assurances of conformity with the standards or qualifications given by relevant bodies of other Parties with regard to either provision of the given service or like services;

provided that the central governmental bodies are satisfied that the standard or qualifications and the relevant administrative procedures employed by other Parties provide a sufficient means of determining conformity with the relevant standards or qualifications of the Party.

1.1 When a Party accepts certificates of conformity issued by relevant bodies in the territory of other Parties in accordance with Paragraph 1, the Party shall answer all reasonable enquiries about the decision of the acceptance from other Parties.

- 1.2 Nothing in this Article shall prevent Parties from according differential treatment to service providers of other Parties that are certified on the basis of acceptance of assurances of conformity with standards or qualifications in accordance with this Paragraph, in comparison with those service providers that are certified in accordance with the regular certification procedures of respective Parties.

2. With the aim of promoting the mutual acceptance of assurances of conformity with standards or qualifications between Parties, which prescribed in Paragraph 1, Parties may, whenever possible, conclude among themselves agreements providing for the mutual recognition and harmonization of standard and qualification systems with respect to provision of services.

- 2.1 Parties which intend to conclude the agreements provided in this paragraph shall notify [the Committee on Trade in Services] of these agreements at an early appropriate stage, in such a manner as to enable interested Parties to become acquainted with them.
- 2.2 If other Parties request to take part in the negotiation on conclusion of these agreements, Parties which intend to conclude such agreements shall take account of the requests.
- 2.3 These agreements shall be kept open for accession by any Party that is capable of complying with them.

Article 606 Domestic Regulations

1. The right of each Party to regulate the provision of services within its own territories, in order to meet national policy objectives, shall be exercised in a manner consistent with the provisions of this Agreement. This includes the right of each Party to introduce new regulations consistent with its commitments under this Agreement. Parties recognize that developing countries may have a particular need to exercise this right.

2. Regulations shall not be applied in a manner which could constitute a means of arbitrary or unjustifiable discrimination between Parties or a disguised restriction on international trade in services. Parties shall administer these measures in an impartial manner.

3. Each Party shall maintain or institute judicial or administrative tribunals or procedures which guarantee, at the request of an affected provider or consumer of services, the prompt review and, where justified, correction of administrative decisions relating to the provision of services.

Article 607 General Exception

1. Nothing in this Agreement shall be construed:

- (a) to require any Party to furnish any information the disclosure of

which it considers contrary to its essential security interest; or

(b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests;

- (i) relating to fissionable materials or the materials from which they are derived;
- (ii) relating to the provision of services as carried on directly or indirectly for the purpose of provisioning a military establishment;
- (iii) taken in time of war or other emergency in international relations; or

(c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Party of measures;

- (a) necessary to maintain public order or protect public health, morals and safety;
- (b) necessary to protect the environment;
- (c) necessary to protect personal data and individual privacy.

CHAPTER VII Progressive Liberalization

Article 701 Commitments for liberalization

Each Party shall set out in its Schedule III all the reservations from the commitments for liberalization in accordance with the provisions of this chapter.

1. Each Party shall set out in its Schedule III in Column I its reservations regarding existing laws, administrative regulations and international agreements which are inconsistent with [Chapters IV and VI] of this Agreement.

2. Each Party shall set out in its Schedule III in Column II reservations concerning its commitments not to increase inconsistency with [Chapters IV and V] of this Agreement.

3. Each Party shall, in accordance with Article 704, set out in its Schedule III in Columns I and II its commitments made in the periodic negotiations.

Article 702 Application to Existing Measures

1. The provisions of this Agreement other than those in [Chapters IV and V] shall be applied in full by each Party to all covered services from the date of the entry into force of this Agreement.
2. [Chapters IV and V] of this Agreement shall be applied by each Party to any covered service to the fullest extent not inconsistent with existing laws, administrative regulations, or international agreements which are in force on the date of entry into force of this Agreement.
3. Unless otherwise provided for in the Schedule III in Column II, each Party shall not, in modifying or replacing its laws, administrative regulations or international agreements, increase the degree of inconsistency with [Chapters IV and V].
4. In order to maintain the inconsistency mentioned in Paragraph 2, each Party may reserve the application of the provisions of [Chapters IV and V].
 - 4.1 Each Party shall set out in its Schedule III in Column I all existing measures inconsistent with the provisions of [Chapters IV and V] and their relevant laws administrative regulations, or international agreements by [Year X].
5. Each Party shall progressively decrease the degree of inconsistency with [Chapters IV and V] which is reserved in its Schedule III.
6. With respect to the laws, administrative regulations, and international agreements, which are not reserved in accordance with Paragraph 4, each Party shall ensure their consistency with the provisions of [Chapters IV and V] of this Agreement by [Year Y].

Article 703 Reservations

1. Except for the cases provided by Articles 302 and 303, reservations set out on the basis of this chapter shall be applied to all Parties in accordance with Article 301.
2. Each Party shall endeavour to reduce and eliminate its reservations as early as possible. In reducing and eliminating reservations through the periodic review provided by Article 704, each Party shall give due consideration to requests of other Parties.

Article 704 Periodic Negotiations

1. Not later than 3 years after the date of entry into force of this Agreement, and periodically thereafter, Parties shall undertake negotiations, in order to reduce or eliminate the reservations set out in the Schedule III in Columns I and II with a view to pursuing the expansion of trade in services.

CHAPTER VIII Consultation and Dispute Settlement

CHAPTER IX Other Institutional Framework

Article 90X Sectoral Annexes

1. Sectoral annexes may contain provisions applicable to a specific sector or sub-sector, in the form of:

- 1.1 clarifications of a provision of the Agreement,
- 1.2 modifications of a provision of the Agreement,
- 1.3 additional provisions applicable only to that specific sector or sub-sector,
- 1.4 exemptions of the application of a provision of the Agreement to (a measure taken in) that sector or sub-sector.

2. Sectoral annexes are an integral part of this Agreement.

3. The effective application of the provisions of the sectoral annexes shall be reviewed [3] years after the entry into force of this Agreement and periodically thereafter, with a view to possible amendments.

Article 90Y Relation with International Organizations

Parties shall recognize a need to give consideration to the activities of international organizations dealing with a specific sector of service with respect to the fulfilment of rights and obligations provided by this Agreement.

Schedule I

LIST OF EXISTING INTERNATIONAL AGREEMENTS AS PRESCRIBED IN ARTICLE 302.1

Country: Country "X"

Schedule II

LIST OF EQUIVALENT TREATMENT AS PRESCRIBED IN ARTICLE 501.2

Country: Country "X"	Sector/Sub-sector/Activity	Different Treatment Accorded to Providers of Other Party	Reasons for Different Treatment
Service "A"		Branches of foreign providers are required to deposit security.	Consumer protection

Column I

Schedule III

LIST OF RESERVATIONS REGARDING EXISTING MEASURES INCONSISTENT WITH (CHAPTERS IV & V) AS PRESCRIBED IN ARTICLE 701.1

Country: Country "X"		Market Access			
Sector/Sub-sector/Activity	Establishment	Cross-Border Provisions	Temporary Entry for Service Providers	Licensing and Certification	National Treatment
Service "A"					
Sub-sector "p"		not applied for Art.ZZ, Law.XX			
Sub-sector "Q"		not applied for Art.WW, Law.XX			
Service "B"	Limited to subsidiaries for Art.YY, Law.ZZ (This reservation is withdrawn among parties to Agreement TT)				

Schedule III

Column II

LIST OF RESERVATIONS CONCERNING COMMITMENTS NOT TO INCREASE INCONSISTENCY WITH (CHAPTERS IV & V) AS PRESCRIBED IN ARTICLE 701.2

Country: Country "X"

Sector/Sub-sector/Activity	Market Access				National Treatment
	Establishment	Cross-Border Provisions	Temporary Entry for Service Providers	Licensing and Certification	
Service "B"	Reserved				
Service "C"	Reserved	Reserved	Reserved	Reserved	Reserved