

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNS/35
23 July 1990

Special Distribution

Group of Negotiations on Services

DRAFT

MULTILATERAL FRAMEWORK FOR TRADE IN SERVICES

Introductory Note by the Chairman on
the GNS Negotiations on a Framework Agreement

1. At its meeting in January this year, the GNS agreed to work towards the completion of a draft framework on trade in services including consideration of a first set of sectoral annotations by July this year.
2. In accordance with the discussion at the TNC meeting last April, the GNS should provide the TNC with as full a picture as it can of the progress achieved in developing a framework.
3. The attached text represents an effort to develop such a draft framework and is forwarded to the TNC on my own responsibility. It is being submitted to the TNC as constituting the document on which the GNS has based its consideration of the provisions of the framework at its last meeting.
4. It should be noted that many provisions of the draft text need to be developed, and that no provisions have been elaborated on Parts V and VI of the text. While some, but not all, important divergences have been identified by square brackets, the absence of brackets does not mean that any part of the text is accepted by the GNS. The entire text is thus subject to further consideration. It has already been the subject of a number of comments, and delegations retain their right to make additional proposals or to return to proposals made by them earlier. This applies also to the final placement of the various articles within a framework text.
5. It is my intention to continue work with a view to establishing the text of the framework, including provisions relating to Parts V and VI, for consideration by the GNS at its next meeting, taking into account comments already made and other proposals. At the appropriate stage, the draft text will also have to be considered by a legal drafting group.
6. In this connection, participants have identified a number of issues on which agreement needs to be reached urgently in order that satisfactory progress can be achieved in further negotiations. Among these are issues

such as scope/definition, coverage¹, m.f.n. treatment, reinforcement of provisions on increasing participation of developing countries, progressive liberalization and the negotiation and application of commitments (Part IV and the Annex).²

7. I also want to recall that under the auspices of the GNS, a number of sectoral working groups have held informal consultations on particular service sectors (i.e. on financial, telecommunications, transport, construction/engineering services as well as on issues relating to labour mobility). Such consultations will also be held with regard to professional, tourism and audiovisual services. The aim of these consultations is to arrive at sectoral annotations or annexes, where considered necessary, to interpret or effectively apply the provisions of the framework to specific sectors. These sectoral annotations, following agreement in the GNS, should then form an integral part of the framework.

¹Some delegations have taken the position that countries could have the right to exclude sectors.

²Some delegations have taken the position that there should be a baseline for the future liberalization process.

	<u>Page</u>
<u>PREAMBLE</u>	5
 <u>Part I</u> <u>SCOPE AND COVERAGE</u>	 5
Article I Scope/Definition	5
Article II Coverage	5
 <u>Part II</u> <u>GENERAL OBLIGATIONS AND DISCIPLINES</u>	 6
Article III Most-Favoured-Nation Treatment	6
Article IV Transparency	6
Article V Increasing Participation of Developing Countries	7
Article VI Economic Integration	7
Article VII Domestic Regulation	8
Article VIII Monopolies and Exclusive Service Providers	8
Article IX Behaviour of Private Operators	9
Article X Emergency Safeguard Measures	10
Article XI Measures to Safeguard the Balance of Payments	10
Article XII Payments and Transfers	10
Article XIII Government Procurement	11
Article XIV Exceptions	11
Article XV Subsidies	11
 <u>Part III</u> <u>SPECIFIC COMMITMENTS</u>	 12
Article XVI Market Access	12
Article XVII National Treatment	13

<u>Part IV</u>	<u>PROGRESSIVE LIBERALIZATION</u>	13
Article XVIII	Negotiation of Commitments	13
Article XIX	Application	14
Article XX	Schedules	15
Article XXI	Modification of Schedules	..
<u>Part V</u>	<u>INSTITUTIONAL PROVISIONS</u>	..
Article XXII	Consultation	..
Article XXIII	Dispute Settlement and Enforcement	..
Article XXIV	Institutional Machinery	..
Article XXV	Technical Cooperation	..
Article XXVI	Joint Action	..
Article XXVII	Relationship with Other International Agreements and Organizations	..
<u>Part VI</u>	<u>FINAL PROVISIONS</u>	..
Article XXVIII	Acceptance and Accession	..
Article XXIX	Entry into Force	..
Article XXX	Non-Application	..
Article XXXI	Denial of Benefits (New title needed)	..
Article XXXII	Amendments	..
Article XXXIII	Withdrawal	..
Article XXXIV	Definition of Terms	..
Article XXXV	Annexes	..

PREAMBLE

PART I

Article I

Scope/Definition

1. For the purpose 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].

Article II

Coverage

1. The framework shall cover trade in all services sectors.

PART II

Article III

Most-Favoured-Nation Treatment

1. With respect to any measure covered by this framework, each party shall accord to services and service providers of another party, treatment no less favourable than that it accords in like circumstances to services and service providers of any other [country] [party].

Article IV

Transparency

1. Parties shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant laws, regulations, administrative guidelines and, unless mandated otherwise by the judicial authority, all other decisions, rulings, or measures of general application, whether made effective by central or local government bodies or by a non-governmental regulatory entity, which pertain to or affect trade in services in their markets. International agreements pertaining to or affecting trade in services to which a party of this framework is a signatory shall also be published.

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

3. Each party shall notify, to the PARTIES, the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which affect trade in services covered by its specific commitments under the framework.

4. Parties shall respond promptly to all requests for information by other parties on any law, regulation, or measure within the meaning of paragraph 1 above. Parties shall also establish enquiry points to provide information, upon request, on all such laws, regulations and measures as well as on any matter subject to the notification requirement in paragraph 3. Such enquiry points shall be established within [...] years from the entry into force of the framework unless otherwise agreed to meet particular situations. They need not be depositories of laws and regulations.

5. The provisions of the above paragraphs shall not require any party to disclose confidential information.

Article V

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. Special consideration shall be given to the strengthening of the domestic services capacity of least developed countries as well as to their difficulties in accepting negotiated commitments. Specific measures in this respect need to be determined.

Article VI

Economic Integration

1. The provisions of this Agreement shall not prevent any party from being a member of an agreement aimed at establishing a higher degree of liberalization of trade in services, provided that such an agreement covers liberalization in substantially all trade in covered services with respect to the different sectors and modes of delivery among members.

2. At the time of entry into force, any agreement as referred to in paragraph 1 shall not result in new or intensified existing barriers to trade in services between their members and parties to this Agreement.

3. Any party deciding to enter into agreement as referred to in paragraph 1 shall promptly notify to the PARTIES, and shall make available to them, such information regarding the agreement as will enable them to make reports and recommendations to the parties as they may deem appropriate.

4. Any substantial change subsequently made in relation to agreements referred to in paragraph 1 shall be communicated to the PARTIES.

5. The provisions of this agreement shall not prevent the conclusion of preferential arrangements among developing countries.

6. If a party considers that benefits accruing to it under this Agreement are substantially affected as a result of an agreement of the type referred to in paragraph 1, it may address the situation under the procedures provided for in Article XXIII.

Article VII

Domestic Regulation

1. The right of parties to regulate the provision of services within their territories, in order to meet national policy objectives, shall be exercised in a manner consistent with the provisions of the framework. This includes the right of signatories to introduce new regulations consistent with commitments under the framework. It is recognized that developing countries may have a particular need to exercise this right.

2. Parties may require that services or providers of services of other parties meet certain regulations, standards or qualifications. Such requirements shall be based upon objective criteria, such as competence and the ability to provide such services, and not be more burdensome than necessary to achieve the national policy objectives. The fulfilment of such requirements may also be achieved by way of agreements providing for the harmonisation or mutual recognition of regulations, standards or qualifications which shall be open to accession by all parties and shall not constitute means of unjustifiable discrimination between parties.

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

4. Each party shall maintain judicial, arbitral or administrative tribunals or procedures which provide for, 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 VIII

Monopolies and Exclusive Service Providers*

1. Whenever a party designates or maintains exclusive or monopoly rights, it shall ensure that the entity or entities enjoying such rights will provide to service providers of any other party treatment no less favourable than that accorded in like circumstances to its own service providers.

2. Each party shall ensure that entities referred to in paragraph 1 do not, when competing either directly or through an affiliated company in the

*The question is raised of whether the disciplines of this Article should be of general application or apply to areas where market access commitments are undertaken.

provision of a service outside the scope of its exclusive or monopoly rights engage in anti-competitive practices, which might adversely affect service providers of another Party.

3. The PARTIES may, at the request of a party which has a reason to believe that its interests under this agreement are being adversely affected by an entity referred to under paragraph 1, request the party establishing, maintaining or authorizing such enterprise to provide information concerning its operations. This shall not require any party to disclose confidential information which would impede law enforcement or would prejudice the legitimate commercial interests of particular enterprises.

4. After the entry into force of the provisions of this agreement, if a party grants exclusive or monopoly rights regarding the provision of a service covered by a specific commitment under this agreement, it shall enter into negotiations pursuant to Article (modification of schedules) of this agreement, with the objective of reaching agreement with affected parties on mutually acceptable compensatory adjustments by that party.

5. For the purposes of this Article, a "monopoly provider of a service" is any entity, public or private, which in the territory of a party is authorized or established by that party as the sole provider of that service; and an "exclusive service provider" is one of a limited number of government-designated providers of that service.

Article IX

Behaviour of Private Operators

1. In exercising its right to enforce competition laws and regulations within its territories, and in order to prevent agreements, practices or abuses of dominant market positions which may result in market distortion or adversely affect competition in its market, a party may request information from service providers of another party providing services within its territories. Such requests shall not exceed that which would be made in like circumstances from domestic service providers. Statistical information may also be requested, provided that such request is not more onerous than what is required from domestic providers of like services.

2. Parties shall cooperate and exchange information, within the limits of the provisions of confidentiality of their respective laws, through consultations between authorities responsible for competition policy to prevent business practices referred to in paragraph 1.

3. Any information supplied under this article shall be dealt with by parties in such a way as to safeguard legitimate commercial interests.

Article X

Emergency Safeguard Measures

1. Any safeguard measure shall be of a temporary nature, and shall be subject to an agreed multilateral procedure involving requirements such as transparency, [specified time-limit,] consultation, notification and surveillance.

Article XI

Measures to Safeguard the Balance of Payments

1. In the event of balance of payments difficulties, and in order to safeguard its external financial position, a party may temporarily apply restrictions on the provision of services to its territory.
2. The needs of developing countries to take appropriate action in the case of such balance-of-payments difficulties shall be taken into account.
3. The balance of payments justification of such measures, as well as the appropriate consultation procedures, shall be established in cooperation with [the GATT and] the International Monetary Fund.

Article XII

Payments and Transfers*

1. Parties shall not, by exchange action, frustrate the intent of the provisions of this Agreement, nor, by action in the area of trade in services, the intent of the provisions of the Articles of the Agreement of the International Monetary Fund.

*Further provisions shall be elaborated on disciplines concerning payments and transfers.

Article XIII

Government Procurement

1. Without prejudice to any obligation of a party under the GATT Agreement on Government Procurement, the provisions of Articles III and XVII of this Agreement shall not apply to procurement covered by public procurement laws and regulations. Nevertheless, parties shall endeavour to take an early decision on the expansion of the application of this Agreement in its entirety to such procurement of services.

Article XIV

Exceptions

1. 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 like-conditions prevail, or a disguised restriction on international trade in services, nothing in this framework shall be construed to prevent the adoption or enforcement by any party of measures necessary:

- (a) to protect public morals and order, safety, health, [cultural values] or the environment;
- (b) to secure compliance with laws or regulations which are not inconsistent with the provisions of the framework.

2. 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 interests; 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 the provision of services as carried on directly or indirectly for the purpose of provisioning a military establishment;
 - (ii) relating to fissionable materials or the materials from which they are derived;
 - (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.

3. PARTIES shall be informed to the fullest extent possible of measures taken under this Article.

Article XV

Subsidies

1. Parties recognize that, in certain circumstances, subsidies could be distortive of trade in services.
2. Each party shall notify to the PARTIES all forms of subsidies which it provides to its domestic service industries and which affect trade in services.
3. Any party that may consider to be adversely affected by a subsidy of another party may request to consult with that other party on such matters. Such requests shall be accorded sympathetic consideration.
4. Parties shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid the distortive effect of subsidies on trade in services. Such disciplines shall take into account the needs of parties, particularly developing countries, for flexibility in this area.

PART III

Article XVI

Market Access

1. Parties shall make access to their markets available to services and service providers of other parties in accordance with the terms agreed and specified in the appropriate schedule of each party and in a manner consistent with the other provisions of the framework including Article I.
2. Parties shall grant foreign services and service providers of other parties treatment no less favourable than that provided for in their appropriate schedules.
3. Where more than one mode of delivery is available as a result of the negotiations, the foreign supplier shall be free to choose his preferred mode of delivery.

Article XVII

National Treatment

1. In conformity with other relevant provisions of the framework, and as set out in their appropriate schedules, parties shall grant to services and service providers of other parties, in the application of all laws, regulations, administrative practices, and decisions of general application, treatment no less favourable than that accorded to like domestic services or service providers in like circumstances.
2. When necessary, the treatment a signatory accords to services or service providers of another signatory 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 signatory to domestic providers in like circumstances.
3. The provisions of the framework on national treatment 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 use in production of services for commercial sale.
4. The provisions of the framework on national treatment shall not prevent the payment of subsidies or granting of incentives exclusively to domestic service providers.

PART IV

Article XVIII

Negotiation of Commitments

1. In pursuance of the objectives of the framework, parties shall enter into successive rounds of negotiations, beginning not later than ... from the date of entry into force of the framework and periodically thereafter, with a view to achieving a progressively higher level of liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.
2. The process of liberalization shall take place with due respect to national policy objectives and the level of development of individual parties. There shall be appropriate flexibility for individual developing countries for opening fewer sectors or liberalising fewer types of transactions or progressively extending market access in line with their development situation.

3. For each such round, negotiating guidelines and procedures shall be established. In drawing up such negotiating guidelines, account shall be taken of the results of an evaluation of previous negotiations with regard to the objectives of the framework. Such guidelines shall also take into account the serious difficulties of the least-developed countries in accepting commitments in view of their special economic situation, development, trade and financial needs.

4. The process of progressive liberalization shall be advanced in each such round through bilateral, plurilateral or multilateral negotiations with a view to:

- (a) total or partial elimination of conditions, limitations and/or reservations on market access, and/or further liberalization commitments;
- (b) total or partial elimination of qualifications, conditions and or reservations on national treatment;
- (c) similar undertakings with respect to other provisions of the framework; (See paragraph 2, of Article XIX.)
- (d) upon request, additional commitments to provide market access through the modification or elimination of measures which restrict the range of activities or otherwise deny service providers of other parties competitive opportunities on the market of the party concerned equal to those of its own providers.

5. Parties may negotiate, subject to provisions to be prescribed in the framework, agreements open to all signatories which provide for harmonisation and/or mutual recognition of the regulations, standards and qualifications with respect to specified services.

[6. Parties may negotiate further commitments on trade liberalization in covered services.]

Article XIX

Application

1. Provisions of the framework which constitute general obligations and disciplines shall be applied fully by all parties from the entry into force of the framework and in accordance with any relevant sectoral annotation.

2. Provisions relating to market access, national treatment and any other provisions to be decided upon shall be applied by each party in accordance with the negotiated specific commitments or reservations as set out in its schedule.

3. After negotiations are concluded and specific commitments or reservations are inscribed in national schedules, a party shall not:

- (a) place or maintain limitations and conditions on market access, in its different forms prescribed in the framework, other than as set out in its schedule;
- (b) modify its existing, or introduce new measures¹, which would result in according services or service providers of other parties treatment less favourable than that provided for in its schedule, with respect to national treatment, as well as any other provisions to be decided upon. (See paragraph 2 above.)

Article XX

Schedules

1. Each party shall set out in its schedule, after negotiations with other participants are concluded, the commitments undertaken including, where appropriate, the agreed time-frame for their implementation. After the conclusion of the negotiations, such schedules shall be consolidated and annexed to the framework within a time-frame to be agreed. A party's schedule shall contain, at the appropriate level of disaggregation, the following elements:

- (a) limitations, conditions and reservations on market access;
- (b) qualifications, conditions and reservations on national treatment;
- (c) undertakings with regard to other provisions of the framework; (See paragraph 2 of Article XIX.)
- (d) any additional measures to achieve market access;
- (e) date of entry into force of commitments.

¹To be defined in the Article relating to definition of terms (would include laws, administrative regulations and international agreements.....)

SCHEDULE OF COMMITMENTS OF COUNTRY X

Sector or Sub-sector	Mode of Delivery	Limitations, conditions and reservations on market access	Conditions qualifications and reservations on national treatment	Undertakings with respect to other provisions	Additional measures to achieve market access	Date of entry into force
-------------------------	------------------	---	--	---	--	-----------------------------

Cross-border
delivery

Movement of
consumer

Commercial
presence

Movement of
personnel

Cross-border
delivery

Movement of
consumer

Commercial
presence

Movement of
personnel

ANNEX

Initial Commitments [to be agreed in the Uruguay Round]

1. In addition to the general obligations and disciplines of the framework, and in order to secure an overall balance of rights and obligations, parties shall also negotiate specific commitments, to enter into force at the same time as the framework, in relation to the provisions mentioned in paragraph 2 of Article XIX of the framework. Such negotiations among parties shall take place, having regard to the level of development of each participant and the situation of countries in economic transition, with a view to achieving a balance of interests.

2. Negotiations shall proceed according to the following guidelines:

- (a) negotiations shall take place on the basis of an indicative list of sectors;
- (b) in order to provide appropriate flexibility to individual participants, in particular to individual developing countries, in line with their development situation, commitments or reservations shall be established at the appropriate level of disaggregation, in relation to categories of sectors, sectors, sub-sectors or transactions;
- (c) the extent of each party's commitment under paragraph 6 shall take into account:
 - the general level of liberalisation already achieved internationally in the services sector concerned, as well as the level of development and the degree of liberalisation of the party in that sector;
 - the need for appropriate flexibility through positive commitments, binding at a more restrictive level than the existing situation and/or recourse to generic reservations at the appropriate level of sectoral aggregation, in particular in relation to the individual level of development of the party;
 - the need for negotiation on sectors and modes of delivery of priority interest to developing countries;
- (d) appropriate flexibility shall be negotiated for parties, in particular for developing countries, to phase in on the basis of agreed time-frames the implementation of negotiated commitments under paragraphs 3;
- (e) during the course of negotiations, parties may request from other parties information concerning specific measures subject to reservations.

3. Negotiations shall take place among participants on the following:

- (a) commitments to bind the existing levels of market access and/or new market access undertakings, by indicating specifically limitations and conditions on market access, in its different forms prescribed in the framework and/or by positively indicating the specific liberalization undertaking;
- (b) commitments to bind existing conditions and qualifications on national treatment, and/or to bind the total or partial elimination of such conditions and qualifications;
- (c) similar undertakings regarding any other provisions of the framework; (See paragraph 2 of Article XIX of the framework.)
- (d) any additional measures to achieve market access.

4. Special consideration shall be given to the difficulties of least-developed countries in accepting specific liberalization commitments.