

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNS/36
24 July 1990

Special Distribution

Group of Negotiations on Services

NOTE ON THE MEETING OF 16-20 JULY 1990

1. The Chairman opened the meeting and presented the agenda. He indicated that under "Other Business", he would seek adoption of the autumn programme of meetings of the GNS and the sectoral working groups, and would present the reports of sectoral working groups.

2. The Chairman on the working group on financial services including insurance presented his report to the GNS on the most recent meeting of the working group. He said that the working group held its second meeting on 12-13 July 1990 with a view to furthering its understanding of the specificities of the sector and of any elements that may need to be taken into account in the application of the general framework on trade in services. In this context, the group discussed the following matters: payments and transfers in the provision of financial services; submissions before the working group, including a proposal by the European Communities on a Draft Financial Services Annex to the Agreement on Trade in Services (MTN.GNS/FIN/W/1); a submission by the United States on Financial Services (MTN.GNS/FIN/W/2); as well as a non-paper by the United States on Provisions regarding Financial Services. The working group requested the secretariat to prepare for its next meeting a background note on the functioning of the GATT's Balance-of-Payments Committee, and its possible relevance to a further consideration of matters relating to payments and transfers in the provision of financial services.

3. The Chairman of the working group said that during its June and July 1990 meetings, the Working Group on Financial Services including Insurance has: proceeded to a first examination of the main characteristics of the financial services sector and of elements which could warrant particular attention in considering both the need for - and the possible contents of - a sectoral annotation. The working group also engaged in a first round of substantive discussions of submissions, both formal and informal. In discussing the application of the concepts, principles and rules of a future multilateral framework to the financial services sector, participants in the Working group have devoted particular attention to a number of issues which may have a specific bearing in the case of the financial services sector. These include, inter alia: market access, in particular the distinction between trade conducted through an established/commercial presence and cross-border transactions; national treatment, in particular the distinction between de jure and de facto treatment; regulatory situation, in particular the complex and heterogeneous nature of regulatory regimes applying to the financial sector, as well as the right of all countries to regulate and to take reasonable measures necessary to safeguard the integrity of the financial system and to protect investors and depositors; payments and transfers, in particular the interface between the liberalization of financial services

GATT SECRETARIAT

UR-90-0452

and measures applying to current and capital transactions. Particular emphasis was laid on the modalities of progressive liberalization as well as on the means of increasing the participation of developing countries in international trade in financial services. He noted that the working group looked forward to pursuing its deliberations in September 1990 in accordance with its mandate, and on the basis of the progress achieved in the GNS in developing a draft multilateral framework on trade in services.

4. The Chairman invited discussion of the submission of the European Communities in document MTN.GNS/W/105 that was presented at the last GNS meeting. As there was no further comment, the Chairman invited the representative of Japan to introduce his two submissions: Draft Framework Text (MTN.GNS/W/107) and Modalities of Liberalization (MTN.GNS/W/108).

5. The representative of Japan reviewed the provisions of his delegation's proposed text of a framework agreement on trade in services. He explained that it contained blanks under some articles such as definition and coverage. For m.f.n./non-discrimination, he noted that exceptions were provided for existing international agreements and for harmonization of regulatory regimes among parties.

6. The representatives of the Australia, Bangladesh, Canada, Egypt, Hungary, India, Korea, Mexico, Switzerland, Thailand, United States and Yugoslavia, posed questions or offered comments on the Japanese text. The representative of the United States asked if the Japanese delegation had a position on whether reservations could be taken with respect to the provisions of a sectoral annex. The representative of India pointed to several areas where the positions of his delegation differed with those in Japan's proposed framework. The representatives of Australia and Korea noted that the provision on sectoral annexes appeared to take the role of these annexes further than that agreed under the currently held consensus of the GNS. Noting that the text addressed harmonization of regulatory regimes, but not economic integration, the representatives of Canada and Switzerland asked whether the delegation of Japan envisaged a provision for economic integration in the framework agreement. The representative of Korea asked for further clarification of the articles on harmonization of regulatory regimes. He said that his delegation generally supported an exemption for existing international agreements, but asked for clarification regarding the reference to further negotiations under such agreements. The representative of Egypt noted that in the market access provision, the right of establishment did not clarify whether it was referring to temporary or permanent establishment. The representatives of Egypt and Thailand wondered what the text envisaged as the relationship between the framework and other existing international agreements. Thailand asked what kinds of international agreements would be covered by the relevant provision. The representatives of Korea, Mexico and Hungary commented that the lack of elaboration under the articles on definition, scope and coverage made it difficult to fully evaluate the document. The representatives of Mexico, Hungary and Yugoslavia noted the sharp divergence between the proposed article on monopoly practices and GATT treatment. The representative of Hungary noted that licensing and

certification was put forward as a form of market access rather than as an element of domestic regulation. He asked whether this meant that a country could make a reservation with respect to this aspect of market access, under which it would maintain barriers to trade in services through the licensing and certification system. The representative of Mexico asked whether Japan expected progressive liberalization to take into account the levels of development of individual parties. The representatives of Mexico and Yugoslavia noted that the concept of freeze contained in the document posed problems for their delegations. The representatives of Australia and Yugoslavia noted that article 301 recalled more the notion of m.f.n. treatment than that of non-discrimination. The representative of Bangladesh asked what kind of treatment the Japanese delegation envisioned under the framework for least developed countries. He also noted that his delegation could not accept the negative list approach to negotiations.

7. In response to the questions and comments, the representative of Japan said that concerning coverage, his government had not yet decided on a final position, in particular regarding financial services and transport. On m.f.n., he said his delegation took the approach of qualified m.f.n. in contrast to the traditional GATT approach. He further said that the term international agreement as used in the Japanese proposal also covered bilateral and plurilateral agreements. The approach of his delegation clearly distinguished between the harmonisation of regulatory regimes and the harmonisation of standards and qualifications; in his view the latter was not an m.f.n. issue, and in the former case, such as in the example of regional integration, harmonization meant moving towards a higher level of liberalization. Concerning sectoral annexes, and taking the example of reciprocity in civil aviation, he noted that the straightforward application of the m.f.n. principle to this sector would result in chaos. It was therefore necessary to have provisions which enabled participants to modify or exempt the application of certain articles of the agreement in certain cases. Regarding the process of progressive liberalisation, he recognised that many delegations had expressed concern about the freezing of current regulatory regimes and noted that such a baseline for liberalisation seemed to be a realistic approach.

8. The representative of the European Communities said that, regarding the Japanese proposal, matters relating to coverage had to be resolved sooner rather than later to enable serious work to be carried out in the latter part of this year. The position of his delegation was fully in line with the overwhelming majority of GNS members who favoured universal coverage. Concerning non-discrimination, it was necessary to reflect, in depth, before establishing a general rule which provided for the grandfathering on a permanent basis by each signatory of any existing agreement which it happened to have with any country, whether or not a signatory; he said that m.f.n. had to be the basic rule with which the GNS approached liberalization and commitments under the framework.

9. The Chairman introduced the draft text concerning a multilateral framework on trade in services that he intended to present to the next meeting of the Trade Negotiations Committee (TNC). He said that the text, which could be found in MTN.GNS/35, would be accompanied by an introductory

note on the GNS negotiations on a framework agreement. The note stated that 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.

10. 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.

11. The attached text represented an effort to develop such a draft framework and was to be forwarded to the TNC on the responsibility of the Chairman. It was being submitted to the TNC as constituting the document on which the GNS had based its consideration of the provisions of the framework at its last meeting.

12. The Chairman said that it should be noted that many provisions of the draft text needed to be developed and that no provisions had been elaborated on the Parts V and VI of the text. While some, but not all, important divergences had been identified by square brackets, the absence of brackets did not mean that any part of the text was accepted by the GNS. The entire text was thus subject to further consideration. It had already been the subject of a number of comments and delegations retained their right to make additional proposals or to return to proposals made by them earlier. This applied also to the final placement of the various articles within a framework text.

13. It was his 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 would also have to be considered by a legal drafting group.

14. In this connection, participants had identified a number of issues on which agreement needed to be reached urgently in order that satisfactory progress could be achieved in further negotiations. Among these were issues such as scope/definition, coverage, 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).

15. The Chairman also recalled that under the auspices of the GNS, a number of sectoral working groups had 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 would also be held with regard to professional, tourism and audiovisual services. The aim of these consultations was 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.

16. He added that the word "coverage" in paragraph 6 was accompanied by a footnote which indicated that some delegations had taken the position that countries could have the right to exclude sectors. There was, as well, a footnote at the end of paragraph 6 relating to progressive liberalization and the negotiation and application of commitments (Part IV and the Annex) which stated that some delegations had taken the position that there should be a baseline for the future liberalization process.

17. The representative of the European Communities said that he had little difficulties with either of the documents which the Chairman intended to present to the TNC. He felt, however, that the second footnote at the bottom of page 2 of the Chairman's introductory note was not fully adequate. He did not object to it being in the note, but would not object to its removal, because the first footnote gave a biased presentation of the situation within the GNS on coverage. This was a situation which was fully and satisfactorily addressed in other parts of the introductory note, in particular in paragraph 4. He recalled that coverage was of central importance to the services negotiations, and that the latter were a key element of the Uruguay Round. He said that his delegation would have grave problems if the Chairman's introductory note went to the TNC with the two footnotes.

18. The representative of the United States felt that the Chairman's note was a faithful reflection of the current state of play in the GNS. He said that his delegation had requested the footnote on sectoral exclusions appearing in the introductory note, recalling that his delegation's long standing position was that it was not prepared to state that the framework would cover all sectors. He said that he read the footnote as an attempt to make the current situation appear as clear as possible. Were the footnote not to be there, there would be a very strong impression that some delegations might have changed their views on an issue as contentious and well publicized as that of coverage. He agreed that by virtue of paragraph 4 of the introductory note, no parties were bound by any of the provisions contained in MTN.GNS/35. Given however that the issue of coverage was an issue of great sensitivity, there was a need for as much transparency as possible. In his view, the footnote would help expedite a decision - one way or another - as to the status of coverage under the multilateral framework.

19. The representative of Japan said that the documents before the Group were a fair description of the current reality of the GNS. He noted however that Article 2 in MTN.GNS/35 contained a new sentence which was not in the draft upon which the Group's previous informal discussions were based. He said that his delegation wished to place brackets around the sentence on coverage so that the current differences of opinion on the issue be faithfully reflected in the Chairman's draft text. He agreed with the Chairman's cover note that countries were not bound by any of the provisions of the draft text but felt that the key elements of the text should be given equal treatment. Since other parts of MTN.GNS/35 contained brackets, he saw no reason for not putting brackets in regard to an issue of such critical importance as that of coverage. In regard to paragraph 7 of the Chairman's introductory note pertaining to sectoral annotations, he

said that Japan understood the term "effectively apply" as including possible modifications to - or the non-application of - some provisions of the multilateral framework.

20. The representative of Austria agreed that with the United States as to the importance of the footnotes contained in the Chairman's introductory note as they provided greater clarity on issues over which significant divergences of opinion remained in the Group. She supported the request by Japan to place brackets in Article 2 of MTN.GNS/35, noting that the issue of coverage was a very sensitive one in her country. She recalled that as far as coverage was concerned, the Austrian delegation would have problems at this stage of the negotiations to exclude the possibility to exempt at least parts of a sector, as the need may arise. This concerned a sphere which was merely of regional significance, but politically this problem was extremely sensitive in Austria. She said that her delegation would now seriously examine all aspects of the question in the capital on the basis of the draft framework agreement which it had received a few days ago.

21. The representative of Australia felt that the Chairman should present both documents to the TNC in their current form and said that his delegation did not endorse the introduction of brackets into the draft text. He agreed that the text should adequately reflect the tone of current discussions in the GNS, noting that of the 105 countries participating in the GNS, only two had proposed that whole sectors be allowed to be excluded from the coverage of the framework while another sought partial sectoral exemptions. He said that the current discussion had given rise to a situation in which the world's three major powers in the area of trade in services were quibbling over the issue of footnotes. This was all the more ironic as two of these delegations were in fact the major "demandeurs" in the services area. Since the whole of MTN.GNS/35 was in square brackets, the Chairman should present under his own responsibility both documents to the TNC as they currently stood.

22. The representative of Switzerland said that his delegation fully supported the Chairman's draft text and introductory note, all the more so as the text to be submitted to the TNC did not represent the result of a negotiating process. He recalled that nobody was bound by the Chairman's text, noting that it merely represented the Chairman's personal impression as to how best the GNS could reach its objectives by the end of the Round. He was concerned however that a text which the Chairman intended to present in his own capacity was being challenged by some Group members. He said that his delegation's aspirations in regard to the upcoming TNC were high and felt that the TNC would be a most appropriate forum for improving the text.

23. The representative of Canada said that his delegation saw no reason for questioning the contents of the two documents before the Group, particularly in view of what was said in paragraph 4 of the Chairman's introductory note. He felt that the new wording in Article 2 of MTN.GNS/35 reflected the balance of views within the GNS on coverage. While his delegation would have preferred to see no footnotes in the Chairman's cover note, it recognized that this was perhaps the best way to reflect the

situation that had developed. He said that this was an interim situation before the conclusion of an agreement.

24. The representative of Egypt agreed that the Chairman's cover note placed a bracket over the whole of the draft text found in MTN.GNS/35. He was somewhat concerned by the GNS's future work programme, noting that the Group appeared to have less guidance now than it did earlier in trying to resolve the difficult issues confronting it. This was true not only of coverage but of all the provisions in the draft text since all was subject to review and to the submission of new proposals.

25. The representative of Morocco said that his delegation endorsed the Chairman's cover note as it took the concerns of all participants fully into account.

26. The representative of Sweden, on behalf of the Nordic countries, was worried by the suggestion that brackets should be introduced into the draft text, noting that the documents before the Group represented the Chairman's assessment of the current situation in the GNS and no one else's. He felt that to introduce brackets ran the risk of opening up the possibility for brackets elsewhere, with the result that the draft text would wind up resembling MTN.GNS/28. He wondered what signal would be sent to the outside world should such a situation come about. He urged the Chairman to send both texts to the TNC as currently drafted.

27. The representative of Korea felt that the Chairman's note faithfully reflected the current situation in the GNS, and indicated that his delegation fully endorsed the presentation of both documents to the TNC. He said that his delegation was opposed to the idea of introducing brackets into Article 2 of MTN.GNS/35 given the wording found in paragraph 4 of the Chairman's introductory note.

28. The representative of Hungary said that paragraph 4 of the introductory note by the Chairman was very accurate in reflecting the state of play in the GNS negotiations by emphasizing that none of the language contained in the draft framework constituted agreed text and could thus be subject to further consideration. He urged those who asked for changes in the text to reconsider since the text was being submitted to the TNC on the Chairman's own responsibility and did not have the formal endorsement of the GNS. He joined others in disagreeing with the form and content of both footnotes contained in the cover note but would be willing to accept that they remained if that could facilitate the work of the Group. These views were endorsed by the representatives of Mexico and Hong Kong.

29. The representative of the European Communities said that the introductory note by the Chairman constituted a reasonable reflection of the state of play in the GNS. He objected to the approach adopted in paragraph 6 of the note, however, where problems particular to certain participants were addressed through footnotes. Such an approach in effect undermined the aim of a general presentation to the TNC by rendering it unclear.

30. The representatives of Cuba, Peru and India supported the submission by the Chairman to the TNC of both documents as they were drafted, without any further modifications. The representative of Pakistan added that no brackets should be placed around the language contained in Article 2 on coverage. If disagreement still remained in that respect it might have been more useful to leave that article blank as a means to indicate the extent of such disagreement.

31. The representative of Japan drew the attention of the Group to the fact that the sentence now contained under article 2 had not appeared in an earlier version of the same draft. Therefore countries had not had the opportunity to consider it in advance and should presently have the right to place brackets around it as a means to indicate their reservations in that respect.

32. The representative of New Zealand associated himself with the comments made by the representative of Australia that the footnotes to the introductory note were unnecessary while the language contained in Article 2 of the draft framework was indispensable.

33. Regarding a comment by the representative of Japan, the Chairman referred to his statement made on 11 June when he said that sectoral annotations or annexes where considered necessary to interpret or effectively apply the provisions of the framework to specific sectors, should be multilaterally agreed and would form an integral part of the framework, being reviewed at least every xx number of years. He reminded the Group that in accordance with a request made by the representative of Mexico, a checklist of points pertaining to this week's informal consultations would be prepared by the secretariat for the next meeting. He said that he would introduce at the following week's meeting of the Trade Negotiations Committee (TNC) both the draft multilateral text in MTN.GNS/35 and the accompanying cover note without any modifications. He recalled that he would be doing so under his own responsibility. He noted that there was a printing error at the end of paragraph 3, where the words "at its last meeting" needed to be added. He invited group members who might wish to comment further on both documents to do so at the TNC meeting.

34. The representative of the European Communities said that his delegation regretted that the text on definition contained in MTN.GNS/35 did not ensure the balance of interests that was needed to move forward in the negotiations. He underlined the need for provisions on m.f.n. which were provisions of substance and not merely of form. In regard to the section on application and initial commitments, he emphasized the need for a finalized text not to lead to a situation in which substantial deliberalization was the outcome of the Uruguay Round, nor to an outcome where services sectors that were ostensibly covered by the framework were in fact excluded.

35. The representatives of Japan and Austria said that their delegations' positions on coverage, which were well known by the GNS and had not changed, were not reflected in the text on coverage contained in Article 2 of MTN.GNS/35.

36. Under Other Business, the Chairman presented the reports of the Chairmen of the sectoral working groups (other than that on financial services including insurance) which had met since the June meeting of the GNS. (These reports have been appended to the current note.)

37. The representative of Yugoslavia said that his delegation believed that the general principle of transparency in the negotiating process had not been observed in the last few months. His delegation would be grateful if the Chairman could inform it of whether he intended to pursue negotiations in small groups with a view to making arrangements among a limited number of participants or whether he intended to arrive at a multilateral agreement adhered to by as great a number of participants as possible. He said that his delegation would appreciate the Chairman's guidance on this matter so as to save time and resources.

38. The Chairman said that his intention was to work towards the completion of a multilateral agreement that had as many adherents as possible, and that he would be making all the necessary arrangements to achieve this objective. He read out the schedule of meetings for the GNS, the sectoral working groups as well as the legal drafting group for the period starting on 27 August 1990. (The schedule has been appended to the current note.) He said that the agenda for the next meeting of the GNS, scheduled to take place on 29-31 August 1990, would consist of three items: firstly, a continuation of the Group's consideration of the multilateral framework; secondly, a discussion of the outcome of the deliberations of the sectoral working groups and the possible nature of sectoral annotations; and thirdly, a discussion of the commitments to be negotiated in the services agreement.

ANNEX

POSSIBLE SCHEDULE OF GNS MEETINGS AND
SECTORAL WORKING GROUPS

<u>Week starting</u>	<u>Dates</u>	<u>Meetings</u>	<u>Room</u>
27 August	27-28	Audiovisual W.G.	
	29-31	GNS meeting	
3 September	3-5	Labour Mobility W.G.	
		Construction and Engineering W.G.	
10 September	10-12	Telecommunications W.G.	
	13-15	Financial Services W.G.	
17 September	17-21	GNS meeting	
		Legal Drafting Group	
24 September	24-25	Maritime Transport W.G.	
	26	Land Transport W.G.	
	27-28	Air Transport W.G.	
1 October	1-2	Labour Mobility W.G.	
	3-4	Construction and Engineering W.G.	

8 October	8-9	Professional Services W.G.
	10-11	Tourism W.G.
15 October	15-17	Telecommunications W.G.
	18-19(?20)	Financial Services W.G.
22 October	22-26	GNS meeting
29 October	29-30	Maritime Transport W.G.
	31	Land Transport W.G.
	1-2 Nov.	Air Transport W.G.
5 November	5	Audiovisual W.G.
	6-7	Professional Services W.G.
	8-9	Tourism W.G.
12 November	12-16	GNS meeting