

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Group of Negotiations on Services

WORKING GROUP ON PROFESSIONAL SERVICES

Note on the meeting of 30-31 July 1990

1. The Chairman opened the proceedings by welcoming delegations to the meeting and drew the Group's attention to the aim of these informal consultations as contained in GATT/AIR/3045. On the Chairman's invitation, a secretariat representative briefed the Group on the main developments in the GNS since 1986.

2. The Chairman opened the floor for general comments. The representative of the United States noted that the sector had a number of special characteristics; namely that it consisted of many heterogenous services, some of which were accredited, and which differed in terms of scope from country to country. Furthermore, delivery of the service could take place on a across-border basis and by means of establishment in the importing country and could be performed by individuals or by firms. Finally, he noted that regulation in this sector could be national, sub-national or by private professional bodies. He then posed the question of whether, and how, the framework could result in liberalisation in certain specific situations: non-recognition of foreign qualifications and certifications, of study periods abroad, of professionals who were not citizens or residents of the importing country; requirements to, or prohibitions against, forming local joint ventures; restrictions on staff that could be employed; prohibitions against the use of internationally known firm names; denial of access to transborder data flows or computer facilities; and denial of temporary entry of professionals into the given country. He also said it was necessary to discuss whether m.f.n. treatment could be applied in the absence of internationally accepted minimum standards or mutual recognition of qualifications. He considered that the coverage of the framework agreement should encompass as many internationally traded professional services as possible, covering both firms and individual producers.

3. The representative of Australia considered that there was no need for derogations from applying any of the framework principles for this sector. She referred to a number of barriers in the non-accredited area, including denial or selective issuance of visas and work permits, regulatory impediments to commercial presence, and a range of barriers in the consultancy sector, including the use of subsidies and government aid. For the accredited professions she referred to problems of access to services, maintenance of professional standards and mutual recognition of qualifications, and visa limitations on the temporary movement of personnel. The areas of most concern to her delegation related to the temporary movement of personnel, right of establishment, standards and

qualifications, and subsidies. In broad terms, she considered that the framework provisions would cover these concerns.

4. The representative of Egypt emphasised the importance of discussing the definition of professional services, the development of relevant statistics, recognition of qualifications and the specific nature of professional services including aspects such as the confidential nature of the supplier/client relationship, and the fact that services were supplied by both companies and individuals. Concerning the definition of the sector, the representative of Austria asked whether medical services were also included under professional services for the purposes of this discussion.

5. The representative of Sweden, on behalf of the Nordic countries, said that the draft text was not clear enough yet to see what need there would be for annotations on professional services. There were certain issues that were of particular relevance to liberalization of trade in professional services. First, regarding the licensed professions, some countries required a licence (registration or certification) to allow a person to perform a given professional service - other countries did not. Requirements also varied between countries for the same professional service, which might be imposed both by public authorities and private professional associations. Requirements for licencing or recognition of exams could be effective obstacles to trade in those services that depended on the movement or presence of professional specialists. Two aspects of the framework agreement needing particular attention were transparency: both as regards what countries required and how those requirements were to be met, and the harmonization of licencing requirements and recognition of foreign licences. In order to create meaningful instruments for trade liberalization it could be useful to try to agree on an expanded transparency commitment, e.g. countries could agree to notify all professions for which they required licensing or other forms of prior approval of professional competence. Such notifications should also include information about appropriate regulatory bodies and application procedures; a similar notification system could be applied to recognition of exams which would facilitate further work on harmonization and recognition of professional requirements and exams. At this stage of the services negotiations it was not clear if the actual harmonization or recognition process could best be dealt with through annotations in an annex or on a broader basis through formula liberalization. One approach would be to set out in an annex how a formula approach would operate if applied to this sector and try to agree on a few professions to begin with. Second, when the new service provider was a very small firm consisting of only one or a few professionals, the distinction would not always be obvious between market access in the form of a market presence and traditional immigration. It might be necessary to have some clarifying language in an annotation that specified how the framework provisions were expected to apply to different forms of contractual relationships between the service provider and the professional expert.

6. The representative of the European Communities considered that a sectoral annex was probably not necessary for professional services on the

condition that in the framework the importance of professional qualifications would be duly recognised; furthermore, the use of international standards should be encouraged. The representative of Hungary noted that an important characteristic of the sector was the personal presence of the professional for delivering the service in the foreign market. He considered that the draft framework in document MTN.GNS/35 did not offer much guidance for the present working group and contained some gaps relating, inter alia, to the question of coverage and scope/definition. It was therefore premature at this stage to decide on the necessity of a sectoral annex. The representative of Switzerland considered that attention should be paid to areas such as the recognition of diplomas, academic degrees, and the temporary presence of service providers. The representative of Cuba said that the sector should cover the largest possible number of tradeable professional services.

7. The representative of Austria said there was no agreed definition of a professional service. It would be useful to specify whether certain professions would be dealt with in this working group, such as health related services like doctors, dentists, pharmacists and veterinaries. In her view, patent agents should be dealt with as a subgroup of legal services. On the other hand the reference to "mining and oil field services" should not cover mining and drilling activities as such but rather exploration and counselling connected with it. In order to proceed, delegations needed a common understanding of what professions were being dealt with.

8. The representative of Thailand considered that professional services should not be covered by the framework agreement because the regulation of most professional services had nothing to do with trade. The policy objectives of such regulation concerned social justice in the case of legal services or health promotion for medical services. The representative of Mexico said his delegation was in favour of the largest possible coverage of professions and agreed that both enterprises and individual suppliers should be included. He preferred to deal with the temporary movement of personnel on a general basis in the framework rather than in a sectoral annex.

9. The representative of Korea considered that it would be difficult to deal with the heterogeneous nature of professional services in an annex; it was preferable to deal with them in the negotiation of each national schedule. The representative of Indonesia believed that the sector could be adequately covered by the framework provisions.

10. Following the general comments, the Chairman opened the floor for observations regarding the application to professional services of different concepts, principles and rules included in the Montreal text and reflected in the draft framework contained in document MTN.GNS/35.

11. Regarding m.f.n. treatment, the representative of the United States said that m.f.n. treatment could be granted if there were mutually accepted standards that all countries adhered to; but if there were different standards across countries then mutual recognition and bilateral agreements

were necessary. The representative of the European Communities emphasised that her delegation supported the full and unconditional application of m.f.n. from the outset of the agreement. In her view, the related issues of standards, technical qualifications and mutual recognition should not necessarily be seen as an m.f.n. question but rather as an aspect of domestic regulation. She also noted that the issue of existing bilateral agreements should be discussed further. The representative of Australia was concerned to hear from the United States delegate that bilateral agreements were necessary in this sector which was of considerable importance to her country. She considered that it was possible to formulate strict criteria for the negotiation and application of standards which to a large extent removed the problem of standards as a derogation from m.f.n..

12. The representative of Hungary considered that a strong m.f.n. provision was required in the future services framework agreement. He did not think that the recognition of standards and qualifications was an m.f.n. issue, but belonged under the heading of domestic regulation. He drew attention to the distinction between accredited and non-accredited professions: the former might need either harmonisation or mutual recognition agreements between participants so that m.f.n. could become applicable; he suggested that appropriate guidelines would have to be developed for such agreements either on a sectoral basis or under the framework agreement. For the non-accredited professional services, however, he considered that m.f.n. could become immediately applicable.

13. The representative of Switzerland considered that one advantage of the future framework agreement could be that existing agreements which might have discriminatory components could become negotiable. He then raised a number of questions in dealing with m.f.n., for example, what would happen to those professions where a particular qualification was needed, such as in the agreement between Canada and the United States regarding architects? It was difficult to foresee that such a qualification would be automatically given and could therefore be an m.f.n. concession. This would be a case for article VII of the draft framework on domestic regulation. Regarding agreements which did not have a great deal to do directly with the provision of services, such as existing or future bilateral investment protection treaties or treaties which provided for administrative assistance, he considered that these should be taken into consideration in the further study of the m.f.n. provision in the framework agreement.

14. The representative of Canada said that the question of accreditation was adequately covered under article VII on domestic regulation in the draft framework which specifically recognised the need for countries to impose domestic regulation, and provided for recognition and harmonisation procedures. In view of the absence of established international standards in many professional services areas, professional associations often had joint recognition arrangements with counterparts, both within their nations and internationally; these were based on familiarity with each other's practices and training requirements. He noted that there might be some operational difficulty in immediately extending these on an m.f.n. basis.

15. The representatives of Egypt, Chile and Mexico favoured a strong and clear m.f.n. provision. The representative of Australia said a strong m.f.n. provision was one that was applied by all countries to all services so that wherever market access was made available it was made available on an m.f.n. basis. In her view, the application of the m.f.n. rule upon the entry into force of the agreement would have a significant liberalising effect particularly with respect to the non-accredited professional services; the application of m.f.n. could not wait for further international agreements to be negotiated.

16. The representative of the United States questioned the meaning of a strong m.f.n. provision as had been advocated by other speakers. If the m.f.n. principle meant that if a country treated all countries alike, but that no countries met its standards, then the m.f.n. principle was being honoured but trade liberalisation was not taking place. It was necessary to know more about how m.f.n. would apply to professional services: did this entail, for example, the grandfathering of existing or even future agreements? How could international standards be encouraged as a basis for applying m.f.n.? What had effectively prevented greater liberalisation in the professional services sector?

17. The representative of Austria said that the m.f.n. principle should apply to all new liberalization commitments under the condition that national provisions on training, standards, qualifications and the exercise of the profession be met by foreigners and nationals to the same or an equivalent degree. As far as existing bilateral, plurilateral or multilateral agreements were concerned, any extension of them on an m.f.n. basis might create problems, as they were not negotiated and concluded with a view to the possibility of such an automatic extension.

18. Regarding transparency, the representative of Austria said that the provisions contained in the draft framework text were acceptable except for prior notification of draft legislation and regulations. The required notification should be limited to the introduction of any new or changes to existing laws, regulations or administrative guidelines which affected trade in services, and perhaps a short summary thereof in one of the official languages of the agreement.

19. The representative of Sweden, on behalf of the Nordic Countries, said it was possible to try to specify all the various requirements for licensed professions in detailed country national lists, or to have such information somewhere else e.g. at enquiry points, or to have some kind of notification system introduced into the implementing process whereby countries would notify what their requirements were, which national bodies were involved, etc.

20. The representatives of Mexico and Switzerland emphasised the importance of covering the activities of non-governmental professional bodies. The representative of Turkey drew attention to the language and translation problems involved with respect to transparency. The representative of Egypt considered that transparency should also apply to the activities of transnational companies supplying professional services

in foreign markets. The representative of Hong Kong asked how self-regulating and independent professional bodies could be made to comply with the transparency provisions in the framework agreement.

21. The representative of Australia assumed that any government undertaking obligations under the agreement would also ensure that any independent professional body complied with any transparency provisions. Regarding the Swedish suggestion, she noted that there was no notification requirement from the outset in the current draft of the framework; her delegation questioned the aim of such a procedure and expressed concern about the administrative burden involved in assembling a mass of information at this point in time, a concern shared by the representatives of the European Communities, Thailand, Cuba and Indonesia.

22. The representative of the United States said it was important to identify the process by which non-nationals could qualify to perform professional services. If their application for certification was turned down, there should be some form of appeals process with the whole procedure needing to be fully transparent. He considered that the issue of governments taking responsibility for the compliance of professional bodies with the framework obligations should be raised as a question: was the draft framework suitable as it now stood or did there need to be some explicit statement to that effect?

23. The representative of Hungary said that there were transparency problems in the often discretionary issuance of work permits for foreign service providers. The representatives of the European Communities and Korea considered that article IV of the draft framework was an adequate basis for the sector under discussion, as it referred to sub-national laws and non-governmental bodies.

24. With respect to the increasing participation of developing countries, the representative of Egypt considered that in terms of access to professional services markets and to distribution and information channels, developing countries were more liberal than developed countries. He emphasised the importance of access to modern technology and know-how, training, and to financial support, as well as of preferential agreements between developing countries.

25. Regarding domestic regulation, the representative of Japan drew the Group's attention to the Japanese proposal contained in MTN.GNS/W/107 and in particular to article 404 on licensing and certification and to article 605 on mutual recognition and related matters. The representative of Sweden, on behalf of the Nordic countries, considered that it was not always possible to achieve mutual recognition at a certain point in time but that one of the countries might be prepared to recognise the other party's regulations or standards on a unilateral basis. Regarding mutual recognition, the representative of Australia, supported by the representative of Austria, noted the need to avoid the dilution of existing professional standards; she added that Australia had a body called the National Office of Overseas Skills Recognition which was engaged

in establishing cooperative arrangements with Australia's own states and professional bodies for recognition of foreign qualifications and skills.

26. The representative of the European Communities said that mutual recognition agreements should be open-ended allowing participants to take part in their negotiation on condition that participants met the given requirements. She considered that further thought should be given to the form and substance of such agreements. The representative of Hungary said that it was important to ensure that relevant domestic regulations and standards were based on objective criteria. The fact that mutual recognition agreements would be open to accession for all parties was not by itself sufficient; when it came to new agreements which would be negotiated after the entry into force of the framework agreement, he considered that such agreements should be open for negotiation, and the formulation of new standards, as well as for accession. The representative of Indonesia asked which standards would be used with respect to the mutual recognition of standards and qualifications: if developed country standards were applied, he could not imagine that many developing country services suppliers could attain those standards. Furthermore, if such standards were then used as domestic standards in developing countries, he was concerned about the effects on the domestic employment of professional service provider.

27. Regarding safeguards and exceptions, the representative of the European Communities, supported by Korea, said that consumer protection should be part of the list of exceptions in the framework. The representative of Austria considered that in addition to the list in the draft framework the following exceptions were necessary: consumer protection, privacy of personal data and social standards. The representative of Australia, supported by the representative of the United States, stressed the need to keep any exceptions article very tightly circumscribed and considered the list in the current draft framework to be sufficiently broad.

28. With respect to market access and national treatment, the representative of Australia said that market access in the professional services sector would consist of access commitments in relation to different activities within the sector e.g. various parts of legal, accounting services, etc. By way of example, she noted that a foreign legal service might be demanded in Australia for the interpretation of domestic, foreign or third country law; a market access commitment thus could be differentiated according to the area of expertise provided.

29. The representative of the United States suggested drawing up a list of different professions that each country would be willing to permit and make a commitment on, recognising that entry alone did not give the right to practice. Such a list could include accountants, architects, engineers, lawyers or other types of professions. If countries could agree on which types of professionals should be on the right of entry list, he then asked how each of these professions could be defined so that immigration officials would understand which foreign individuals were entitled to enter. The representative of Hungary considered that specific market

access commitments would be contained in national schedules as contained in article XVI of the draft framework. The modalities for negotiating such commitments might include bilateral request/offer negotiations and formula-type liberalisation, meaning that certain kinds of activities would be liberalised by all participants in a uniform way and to a uniform extent. Regarding the temporary nature of the stay of any foreign individual service supplier, he said that the movement of persons would be for a set temporary period which was an issue for negotiation. However, a commitment on personnel movement in the national schedule would be of a permanent nature like any other market access commitment.

30. With respect to other provisions in the draft framework, the representative of Australia raised the issues of government procurement and subsidies. Article XIII on government procurement in the draft framework was particularly relevant for providers of non-accredited services such as management consultants. The exclusion of government procurement from the m.f.n. obligation was likely to have a significant adverse trade impact on this category of professional services. Draft article XV on subsidies was very weak, providing only for a request for consultation to be accorded sympathetic consideration. She wanted to see greater transparency and stronger disciplines apply in relation to subsidies with trade distorting effects and considered that they could be the subject of negotiations on initial commitments.

31. The Chairman then offered a number of comments on what he considered to be some of the central issues which had arisen in the discussion. The coverage of the professional services sector was unclear although most delegations made the distinction between accredited and non-accredited services. Relevant questions related to: how to provide for accreditation that was neither burdensome nor discriminatory; relevant standards including criteria such as education, experience, skills, or other qualifications; the need for reference to, and where possible adherence to, international standards; ways to facilitate mutual recognition for accredited professions as way to deal with the issue of qualifications; and possible formula reductions of barriers to trade in professional services e.g. restrictions on scope of practice and on personnel movement.

32. The representative of India considered that it would be futile to address the question of coverage in this working group as it was being addressed in the GNS. He considered that labour mobility and the recognition and harmonisation of standards deserved further reflection, not least because they were closely linked to the increasing participation of developing countries in this sector. One possibility in this respect was to ensure that developing countries should be allowed to participate in the negotiation of recognition or harmonisation agreements. On coverage, the representative of the European Communities emphasised that the framework agreement should not apply to activities consisting of the exercise of official authority e.g. notary practices in certain countries or public administration; she added that such a condition could be stipulated in the provision on scope/definition in the framework agreement. The representative of Austria welcomed this suggestion regarding the exercise of public authority. She added that as delegations did not yet know what

the exact wording of the general framework was going to be, she would like to be free to come back to the possibility of special sectoral annotations for professional services, should the need arise.

33. The representative of the United States suggested that delegations identify those professional services that might be candidates either for facilitation of harmonisation or of labour mobility in order to achieve liberalisation in specific professional services. The representative of India noted that the question of coverage and classification of market access commitments could be resolved if countries followed the so-called positive list approach. The representative of Sweden, on behalf of the Nordic countries, agreed with the United States suggestion and considered that under the heading of government procurement it would be possible to list a number of professional services, perhaps starting with the non-accredited services, where countries could apply the framework agreement without draft article XIII. The representative of Hungary said that candidates for early liberalisation by a possible formula approach would be non-accredited or non-licensed professional services. He suggested that it might be helpful for the secretariat to prepare by the next meeting an informal list of those professional services which in practically all countries were not accredited, licensed or regulated and where typically harmonisation or mutual recognition was not a problem. The representative of Egypt agreed with the Hungarian suggestion and considered that the formula approach to liberalisation deserved further discussion at the next meeting of the working group. The representative of Brazil, however, supported by the representatives of Mexico and Korea, considered that delegations should keep in mind that discussion of the formula approach, or other modalities for liberalisation, should primarily be kept under the aegis of the GNS. The representative of Australia also welcomed the Hungarian suggestion with respect to a list of less-regulated professional services as a way forward for liberalisation in this sector, but noted that it was necessary to await progress in the GNS regarding procedures for negotiation. The representative of Korea said delegations should concentrate on the categorisation of professional services rather than on coverage which was a GNS matter.

34. The Chairman turned to the question of the organisation of the next meeting which was provisionally scheduled to take place on 8-9 October 1990. His own view was that most delegations were not looking for an annex to cover professional services. It was not clear whether there might need to be some other forms of annotation, but he noted that he had not heard many requests for such annotations. However there might need to be some further work on the relationship between the discrimination that might be allowed by the framework agreement as part of national regulations on the basis of qualifications in accredited services, and separate recognition agreements that might take place between parties to the framework agreement. He considered it necessary to have more information in this regard on accredited and non-accredited services and invited comments on this and other issues.

35. The representative of Canada suggested that each delegation submit two lists of professional service sectors where they would like to see detailed

discussion take place: one list could deal with non-accredited services where early discussion of both definition and modes of delivery might lead to a more common approach in any request/offer process; the second list could deal with accredited professional services where delegations felt that harmonisation or mutual recognition might seem to be a priority or an early possibility. In this respect delegations should also review the scope of any existing or planned potential mutual recognition agreements.

36. The representative of the European Communities said discussions should focus on the relationship between mutual recognition agreements and the framework as well as on the scope and content of such agreements. It was also necessary to elaborate on the entry conditions for professional service providers once qualification requirements had been fulfilled and on issues involved in the right to practice in various professions. The representative of the United States supported the suggestions made by the delegations of Canada and the European Communities but considered that the lists should not be exhaustive; the Group could start with the secretariat's paper in MTN.GNS/W/67 which highlighted a mix of both accredited and non-accredited professional services; furthermore, these submissions should be made before the next meeting to allow the secretariat to organise the list. It was also worthwhile to try to get information on the scope and content of a possible mutual recognition agreement. The representative of Hungary supported the dual-track discussion of liberalisation issues for accredited and non-accredited professional services and considered that the secretariat's indicative list might help delegations to indicate their preferences on the lines proposed by Canada. The representative of Mexico questioned the aim of drawing up lists as he considered that there was no time to seek agreement on what could be universally considered to be an accredited or non-accredited service.

37. The Chairman considered that the purpose of the proposed secretariat list was to help delegations to have a better idea of the professional services where liberalisation might take place by means of mutual recognition and of those (non-accredited) services where liberalisation might take place without recognition of qualifications. Second, where mutual recognition/harmonisation agreements were being worked on, it would be useful to have concrete examples of these for the second meeting. Third, it had been suggested that delegations should look at the question of labour mobility in professional services agreements and how the recognition of qualifications could help with cross-border movement of personnel. Finally, it was necessary to decide how to deal with the differences in the scope of various practices between countries. He then closed the proceedings.

OFF THE RECORD

Note on "informal" session on mutual recognition/harmonisation
of accredited services:

United States: Delegations should note the work by International Federation of Accountants on ways of standardising requirements for accounting profession. Through the framework accountants want recognition and promotion of use of international standards as a basis for determining credentials of accountants. Wherever there are differences in national requirements, accountants want to create examinations which would address only material differences in the professional requirements and would be basis for determining accreditation across national lines. See also mutual recognition of architects' qualifications in US/Canada FTA where there is a procedure whereby immigration services in both countries can facilitate entry of certain types of professionals. Regarding the question of whether the FTA could be a model for multilateralization he considers it would be difficult to apply across the board in a multilateral setting.

Canada: There is greater potential for liberalisation in non-accredited area which has been the experience in the FTA which includes scientists, research assistants, economists, teachers, etc. Progress made in liberalisation partly because professional accreditation was not a major constraint. This working group should identify a number of sectors, and reach agreement on definitions for these services. For each, delegations could discuss possibility of undertaking specific commitments for various modes of delivery. In the FTA progress much slower in accredited areas and architects only group which has undertaken detailed work on mutual recognition of each other's accreditation standards which is still not complete today. Real progress may only be possible through very technical work on mutual recognition of standards. Suggestions for future work for working group: encourage discussion on (a) common areas in the non-accredited services and (b) key accredited services for which technical work can proceed on protocols dealing with recognition/harmonisation of accredited standards.

European Community: Mutual recognition more feasible approach to facilitating liberalisation than harmonisation of standards. Accession to mutual recognition agreements should be open to countries who meet requirements. Did not see such agreements under GATS auspices at least at beginning as this might slow down liberalisation process.

Australia: Accreditation issues: entry, recognition of qualifications/skills, right to practice which are in effect the three stages of market access. Recognition is a technical issue with two possible ways forward: adoption of international standards formulated by existing international regulatory bodies and/or negotiation of mutual recognition agreements where key problems are transparency and multilateral nature of such a process. Should be closer link than that suggested by EC i.e. existing agreements should be notified to GATS (already provided for

under transparency provision) and for future agreements parties should be obliged to notify GATS that they are intending to carry out these negotiations and that this would be open for participation by others. Should be some recognition that such agreements might have to start on bilateral/plurilateral basis. Question: what is acceptable level of multilateral transparency and of objectivity in standard setting in order to achieve liberalisation? Review mechanism and dispute settlement procedures required in order to maintain multilateral character without actually wanting to discourage or stop such agreements going ahead.

Hungary: Referred to procedural guidelines in the TBT code on how standards were to be prepared, how certification systems were to be operated in order to prevent them being used as means of protection. What kind of procedures should be elaborated to facilitate the negotiation of mutual recognition agreements? What would be link to GATS?

Chairman: Key questions: (1) what to do about accreditation as potential access restriction? Role of mutual recognition agreements: some believe they should not be part of framework agreement, others think there are particular requirements that should be written into the framework agreement about recognition agreements. Should be discussed. (2) What could be done in non-accredited services area? Delegations should discuss which services might fall into which categories using the secretariat list. (3) Which sectors could be subject to formula approach? (4) Relationship between mutual recognition agreements and GATS should be further discussed.