

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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Group of Negotiations on Services

WORKING GROUP ON LABOUR MOBILITY

Note on the Meeting of 3-4 September 1990

1. The Chairman welcomed participants to the second meeting of the working group on labour mobility and recalled that at the previous meeting a number of questions had been identified which required further consideration. For example, regarding definitional matters, what was the meaning of "essential" when applied to service providers? How should the distinction be made between temporary movement of labour needed to produce services and immigration issues? Should there be a distinction between types of labour? More fundamentally, how should the question of labour mobility be dealt with in the GNS context? Was it feasible to make a distinction between categories of labour based, inter alia, on levels of skill, and if so, how?

2. The representative of the United States proposed that an annex on labour mobility should not attempt to cover all forms of labour mobility essential to providers of services but should concentrate on certain categories of labour - comprising managers, executives and specialists - in which liberalisation during this round would be possible and meaningful. Her delegation would furnish more details of this approach at a later stage of the meeting.

3. The representative of India said that one of the main tasks of this working group was to help the GNS to find a solution to the problem of symmetry of treatment of the movement of factors of production. Confining the discussion to the aspect of essentiality was too narrow an approach to the problem. Unless labour mobility was facilitated via negotiation for the purpose of temporary relocation, as advocated in the annex proposed in document MTN.GNS/W/106, developing countries did not have much to gain from a services agreement. The representative of Mexico was in agreement with the previous speaker and reiterated his delegation's view that the framework should apply to the progressive liberalisation of the movement of all types of labour. These views were also supported by the representative of Korea. The representative of Malaysia considered that the United States proposal would favour only one set of countries.

4. The representative of the European Communities considered that labour mobility was a horizontal issue which might not need a specific annex; the negotiation of specific concessions would be the appropriate place for determining what was essential or necessary in terms of labour movement for the provision of a service. The representative of Hungary said that it might be necessary to have a general provision in the framework which

stated that parties should not let regulations concerning visas or work permits frustrate the intent of the provisions of the services agreement, or undermine the market access concessions which had been provided. Regarding the possibility of an annex, he said that actual specific liberalisation commitments could be included, possibly based on a formula. He thought that the success of such an approach depended on a balanced outcome regarding the interests of all participants. The representative of Austria stated that national regulations concerning the stay of foreigners would have to be respected and that the rules of the agreement should not in any way lower national social standards.

5. The representative of India said it was necessary to look beyond labour mobility as a horizontal issue which dealt with only the definitional aspects, and look at its potential as a sector in order to bring about the required balance of interests in the liberalisation process. The representative of the United States said that any clarification or elaboration of the provision on definition/scope should be done in an annotation to the agreement and, due to the complexities involved, not in the agreement itself. The representative of the European Communities considered that progress first had to be achieved on the relevant provision in the framework on definition and scope. The representative of Mexico, however, felt that lack of progress in the GNS should not hamper further work in this Group.

6. The representative of the United States circulated and introduced her delegation's non-paper on the temporary entry of certain service employees. The proposal focused on employees of firms which provided services in the importing country and which had some form of commercial presence, such as a corporation, branch or subsidiary. Qualified employees would be those whose relationship with the services firm was essential to the conduct of the firm's operations for purposes of trade in services. There were three broad categories of persons falling into that category: managers, executives, and specialists. A criterion for a minimum length of prior employment, e.g. one year, with the services firm would have to be developed. Personnel granted temporary entry under this proposal would be permitted to remain in the importing country for a limited duration, e.g. no more than three to five years. Provisions for the admission of dependents of the qualifying employee would also be necessary. She added that national immigration authorities should be encouraged to use their existing authority to admit persons essential to the provision of services whose activities were outside the scope of bound obligations concluded during this negotiation.

7. In response, the representative of Mexico considered that the service personnel mentioned in the U.S. proposal was limited in scope and did not seem to have serious mobility problems in terms of entry restrictions. The representative of India agreed with Mexico on the restrictive character of the U.S. approach and noted that the movement of personnel envisaged by the United States was very closely linked to the issue of commercial presence which might require the presence of personnel from the home country. His delegation, on the other hand, was talking about facilitating, first, the movement of people who delivered services and for whom commercial presence

might, or might not, become necessary, as explained in the draft annex on the temporary movement of services personnel contained in MTN.GNS/W/106.

8. The representative of Australia noted that her delegation shared a number of the broad objectives of the draft annex contained in MTN.GNS/W/106 and considered that it should be up to countries to progressively liberalise as many aspects of temporary movement of personnel as they saw fit. The categories spelled out in the United States approach could be usefully included under article 4 of MTN.GNS/W/106. She considered, however, that it would be difficult for countries to agree to a formula approach of broad application in this negotiating round; for example, her country imposed labour market testing in some categories of personnel which would be very difficult to eliminate under a multilateral commitment.

9. With regard to the submission by the United States, the representative of Hungary asked (a) what the relationship would be between a proposed annex and the definitional part of the framework agreement, and, (b) what the coverage of the proposal would be. The drafting of the U.S. text indicated that permanent commercial presence would be covered as well as the labour flows connected to such presence. It was not clear to his delegation how the definitional approach which characterised the paper would help the liberalisation process. The representative of Canada asked what kind of liberalisation was being proposed by the United States delegation and, more specifically, whether under the U.S. proposal prior approval procedures and labour certification tests were being suggested for progressive liberalisation. The representative of the European Communities suggested that the categories of personnel movement should be defined in a country's market access commitments rather than in an annex.

10. In response to the comments that had been made, the representative of the United States said that, first, if it could be agreed that a market access commitment on labour movement associated with commercial presence comprised the categories that had been spelled out in her delegation's non-paper, that would constitute a relatively simple way for countries to enter into such commitments and would make the country schedules less complex. Second, she was concerned that the inclusion of unskilled workers within the scope of the agreement would undermine fundamental social and labour practices, and she felt that beginning the liberalisation process with this category would probably end in failure. Third, the cross-border movement of service providers without an explicit link to commercial presence was important, her delegation did not consider that an appropriate definition could be found at this stage that would lead to a meaningful multilateral commitment. Fourth, regarding the suggestion that managers, executives and specialists already entered freely into other markets, this in fact was not the case. Fifth, she reiterated her delegation's view that the export of unskilled labour itself would be very difficult to facilitate, but that the service product of unskilled labour in developing countries could be exported through exporting, for instance, processed data, software or other products. Sixth, regarding the question of country schedules, she considered that where a country made a commitment on establishment, it would also give a market access concession for associated

labour movement and no further clarification would be necessary. Seventh, in her view the purpose of a labour mobility annex would be both to further define the framework provision on definition and to facilitate countries taking market access commitments.

11. The representative of Japan was of the view that the aspects of temporariness and essentiality needed to be discussed in more specific terms than had hitherto been the case. Regarding essentiality, the representative of Sweden noted that for a person to be considered essential to the provision of a certain service, he had to fulfil at least two requirements: such a person had to be part of the key personnel and be of such a kind that could not be easily recruited on the local labour market. In addition to the categories proposed by the United States as possibilities for progressive liberalisation, she suggested that some agreed text with a view to formula liberalisation might be possible concerning persons that moved together with transport vehicles, e.g. for crews attached to either vessels or aeroplanes.

12. The representative of Mexico, supported by the representatives of Hungary and Korea, doubted that a balance of interests could be reached on the basis of the United States approach as this did not adequately take account of the need for symmetry in dealing with the cross-border movement of the factors of production and was too restrictive in its coverage of the kinds of personnel that should be liberalised. The representative of Switzerland considered it difficult to distinguish between temporary and permanent entry as in most countries temporary entry was also subject to immigration laws. On the subject of essential personnel, he considered that the United States proposal presented an excellent starting point. For the representative of Austria the categories of essential personnel proposed by the United States constituted an interesting definition which required further study; in her view, market access commitments were best placed in the national schedules. With regard to the temporary nature of entry, the representative of India noted the applicability of the criteria of discreteness of transaction and pointed to examples of projects in the construction sector; in such cases the temporariness of entry was clearly related to the period required by the service provider to complete the job.

13. The representative of the United States considered that her delegation's approach contained elements of balance; it was not limited to executives and managers only but contained a fairly wide range of skill levels in the specialist category. In addition, her delegation was prepared to entertain requests from other countries for commitments on cross-border labour movement in certain sectors, not necessarily covered by the three categories above, although in her view it would be harder to agree on common definitions in such cases.

14. Following the discussion of the United States approach outlined in its non-paper, the Chairman invited comments from delegations on what they perceived to be the main issues in the different approaches that had been put forward in the working group. In this regard he highlighted the importance of questions relating to temporariness, essentiality and skill levels.

15. The representative of India considered that the approach contained in document MTN.GNS/W/106 could be a basis for the group's future work. Regarding the critical issues of temporariness, essentiality and skill levels, he said the challenge for delegations was to arrive at broad parameters for addressing such issues.

16. The representative of the United States said that the question of skill levels formed a sub-set of the essentiality criteria; the criteria of temporariness was also important and had to do with the intent of an individual not to acquire permanent residence in another country. Both criteria were admittedly difficult to pin down although her delegation's non-paper had attempted to be practical and specific. If it was not possible to agree on common definitions in this negotiating round, the only other alternative was to rely on explicit transparent national definitions that varied widely from country to country, in her view this would not lead to meaningful commitments and liberalisation. Regarding the proposal contained in MTN.GNS/W/106, she considered that the idea of unrestricted free trade in labour was not feasible; there were limited circumstances under which countries allowed the movement of unskilled labour on a case by case basis, although not on a permanent and bound basis. Article 3 of the proposal was not an appropriate provision for a general labour mobility annex but her delegation was prepared to look at recruitment services as a service sector. Article 4 on the movement of service employees contained good ideas and ways of implementing these ideas were included in the United States non-paper.

17. The representative of Hungary said that with respect to what could be defined as "temporary movement", countries regulated the length of the time periods involved in different ways. Regarding essentiality, he said that the labour in question should not be available on the local labour market although it would be difficult to attempt to include such aspects into a provision on definition. It would be difficult to make appropriate distinctions in any sort of definition of levels of skill. In his view, for labour mobility, as for other forms of trade, all countries should be free to negotiate the type of concessions or commitments they wished to make. Countries that did not want to provide entry beyond one year would not do so; similarly, countries that did not want to provide entry for unskilled labour would not take up any obligation in that regard. He did not think it was advisable, for definitional purposes, to exclude certain sorts of labour flows. It was necessary to separate issues of definition and issues of obligation otherwise it would be very difficult to make progress in the discussions.

18. The representative of Austria considered that national schedules should spell out how far a country felt it was ready to liberalise and for what categories of personnel in the context of the need to maintain social standards. The representative of the European Communities had earlier indicated that labour movement should relate primarily to personnel essential to the provision of a service, i.e. key and senior personnel needed for a specific purpose; in this regard, essentiality, as well as temporariness, depended on the sector as well as on the type of transaction which was best defined in national schedules when market access

commitments were made. She reiterated the Community view that an annex was not needed in order to deal with the issue of labour mobility. The representative of Hong Kong found the United States non-paper helpful in delineating the major categories of personnel which could be considered to be essential; skill levels and local market conditions would have a definitive role to play in deciding whether a party could accept a specific market access commitment in specific service sectors. Regarding temporariness, he said that any attempted definition of this notion would need to give due regard to the immigration laws of individual parties.

19. The representative of Yugoslavia said that his delegation still had an open mind as to how to deal with labour mobility but saw benefits in having an annex along the lines proposed in MTN.GNS/W/106 on temporary movement of service personnel. The representative of India noted that the European Communities' delegation was, for a number of reasons, not in favour of an annex on labour mobility. He stated that the sponsors of MTN.GNS/W/106 were not seeking any change in immigration laws, but insofar as such particular laws and regulations also dealt with temporary entry of personnel, he could not see why such legislation should not be on the table for negotiations in this forum. Regarding essentiality, he endorsed the view that it would be a difficult and cumbersome process to negotiate in detail, on the basis of essentiality, the kinds of access for labour essential to the provision of a service. Essentiality was what the provider considered essential for him to be able to deliver that service. In his view labour mobility was both a facilitator for the delivery of services and also constituted a sector in itself.

20. The Chairman then turned to the question of what should be discussed at the next meeting.

21. The representative of the United States said that participants should try to arrive at a concise definition of labour movement in the annex which was realistic and achievable in the short run in order to work towards meaningful liberalisation. The representative of Mexico encouraged a more detailed discussion of the proposal contained in MTN.GNS/W/106. The representative of Egypt considered that further debate of the key labour mobility issues as identified by the Chairman would be useful. The representative of Austria suggested that the framework provision on exceptions should be expanded to include social standards, consumer protection and protection of privacy and personal data.

22. The representative of India suggested that discussions should continue with a view to narrowing down differences between delegations, and perhaps aiming for some kind of a consensus recommendation to the GNS. Regarding the special characteristics of the sector, there was some measure of agreement in the working group that there were some specificities which required spelling out, even if this was only to say that this was a very difficult and sensitive subject. Concerning the question of how to deal with the peculiarities, he said there were two approaches: first, that a framework article on definition/scope could handle the issue and, second, that further elaboration was necessary through an annex. On the second

option, there were differences on what should be the scope of that elaboration.

23. The representative of the European Communities supported the idea of holding informal consultations prior to the next meeting. The representative of Austria also endorsed this approach and stressed the need for transparency in the negotiating process. The representative of Hungary suggested that the main issues for discussion at the next meeting were: definition/scope; what general provisions or obligations might be appropriate with respect to the movement of persons; the possibility of specific liberalisation commitments in the area of labour mobility. The representative of Japan did not consider that labour movement was a sectoral issue; in terms of future work, he also supported the approach proposed by the Indian delegation.

24. The Chairman confirmed that the next meeting would take place on 8-9 October.