

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

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**Group of Negotiations on Services**

NOTE ON THE MEETING OF 12 AND 22 NOVEMBER 1990

1. The Chairman opened the thirty sixth meeting of the GNS and suggested to adjourn the meeting until further notice in order to permit participants and himself to carry out informal consultations with a view to making progress on the framework agreement itself as well as on related sectoral concerns.

2. When the meeting of the GNS resumed on 22 November 1990, the Chairman said that the GNS had now reached the end of the four year negotiating process on trade in services. The task now was to take stock of the results of the efforts made and to take a decision with respect to the forwarding of texts to the TNC as a basis for further consideration and negotiation at a higher level. It was his intention to submit, as explained in the cover note to the text, upon his own responsibility, the draft text of a General Agreement on Trade in Services together with its Sectoral Annexes and a Decision relating to guidelines and recommendations for negotiations on Initial Commitments.

3. In his view, considerable progress had been made in evolving a structure and framework for multilateral commitments and obligations for the expansion of trade in services. However, while the GNS had travelled a long distance, it had to be recognized that some very critical questions regarding the nature and magnitude of the results the Group hoped to achieve were unresolved. There remained many divergences of views among participants both on the Articles of the Agreement and on the Sectoral Annexes, including the need for some of these Annexes. Most of the divergences had been identified in the text and on a number of points participants had reserved their right to review their positions and to make additional proposals. Also, detailed work remained to be completed on some technical matters such as the definition of terms used in the Agreement. Moreover, in some areas, including the Annex on Financial Services, substantive provisions had still to be agreed. The legal consistency and some formal aspects of the draft also required further examination before the Agreement could be formally adopted. While giving participants the opportunity for comments and final statements, he made it clear, however, that there was no purpose in engaging in a discussion on the substance of the various Articles or Annexes of the Agreement or in seeking to introduce any changes in the text at this stage. The Chairman drew the Group's attention also to a letter from the General Legal Counsel of the IMF and the Director of the IMF office in Geneva. With regard to Article XI, paragraph 2, the IMF wished to spell out more clearly what the rights and obligations referred to were in order to ensure clarity. Accordingly, the

following redraft was proposed: "Nothing in this Agreement shall affect the rights and obligations of members of the International Monetary Fund under the Articles of Agreement of the Fund, including (a) the right to use exchange controls, exchange restrictions and other exchange actions which are in conformity with such Articles, and (b) the obligation not to adopt or maintain exchange restrictions, or engage in other exchange actions, except in conformity with such Articles.

4. Finally, the Chairman thanked all the participants in the GNS for the efforts they had put into these negotiations and expressed the hope that the outcome of these efforts which was now in front of the Group, while it might not be fully satisfactory and might not meet the expectations which many participants had had at the beginning of this negotiating process, would serve as a useful basis and input for the successful conclusion of the process.

5. The representative of Australia said that, in his view, it had been agreed that the whole text of the telecommunications annex should be in square brackets. He also noted that in that annex there were three agreed options under paragraph 7 and that with the present language one of them could be construed to have been lost; he would provide the agreed wording to the secretariat.

6. The representative of Tanzania suggested that the following sentence should be added to paragraph 2 of Article XVIII: "A least developed country shall benefit from the extension of all concessions exchanged under this Agreement". Regarding the section in the text on initial commitments he suggested an alternative wording for paragraph 4 which read as follows: "Least developed countries are not expected to make any initial commitments".

7. The representative of Chile said that the evaluation of initial commitments had to be done multilaterally and should take into account the position of developing countries. He found it difficult to accept any commitments from participants "not to take any measures which would improve their negotiating position and leverage". Turning to the framework text, he said that the alternative m.f.n. formulation was not acceptable and endangered the result of the negotiations. He considered furthermore that the extension of the proposed coverage of the audiovisual services annex to include broadcasting, sound recording and publishing went too far and was unacceptable to his delegation.

8. The representative of Singapore observed that in the draft framework, in Article XIV:1(a) on exceptions, "national security" had been placed together with "environment", "cultural values", etc. In the discussions it had been requested that "national security" should be placed between the words "to protect" and "public morals". Regarding Article XVII:1 on national treatment, he remarked that the phrase "in like circumstances" was deleted and noted that he could not recall a collective decision to delete the phrase, although it was in square brackets. Regarding the blank page of the draft on financial services, his delegation thought there was an emerging consensus and agreement on an informal text on the specificities

of the sector regarding, in particular, the prudential carve out. While acknowledging that there was no agreement on wording on specific commitments on financial services, the lack of text on specificities was regrettable.

9. The representative of Argentina observed that the lack of square brackets on the text on guidelines and recommendations for negotiations on initial commitments could give the impression that the GNS had accepted the guidelines. His delegation had reservations regarding the guidelines and requested that they be placed in square brackets.

10. The representative of Mexico expressed concern about the limited results achieved after four years of negotiations. The draft was disappointing and was an unmanageable basis for discussion by ministers due to the large number of square brackets. Mexico was in favour of the m.f.n. clause applying in all sectors, with perhaps the single exception of civil aviation in which existing international regulations already covered the subject. But also for this sector one should consider an m.f.n. derogation only of a temporary nature.

11. The representative of Morocco said that the general balance that had begun to appear in the framework discussions was not reflected in the document now before the Group.

12. The representative of India said that in his view the text reflected the divergent positions that had been adopted in the Group. The text was a basis for discussions at the political level in Brussels.

13. The representative of European Communities described the results as disappointing. Although it might present a basis of discussion, the text would make it difficult for ministers to have a clear view of the situation. Some proposals in the draft, such as the alternative proposal by one delegation for Article II, were not a basis for conclusion of a meaningful multilateral agreement. Other substantive concerns were missing or not adequately covered. It was worrying that the greatest density of square brackets were in the article on exceptions. There were also elements missing from the article on dispute settlement. The draft schedule needed to be examined in light of the revision of Article I of the framework. On the text on labour mobility no substantive discussion had taken place. An important missing element was the fact that there was no text on financial services. Some elements were not fully covered in some of the transport sectors. The objectives of the Community were an agreement with universal coverage, broad participation by countries and effective multilateral disciplines that together could lead to substantive liberalization based on m.f.n. and meaningful commitments across the range of sectors. The document before the Group did not set forth for ministers the political options among which they would have to choose. However, all the elements of a possible agreement were on the table.'

14. The representative of Switzerland said that the paper was the result of missed opportunities. M.f.n. would have to be the corner-stone of the future agreement and it was crucial for small countries. Universal

coverage in sectors and modes of delivery was another central point. His delegation hoped that the protection of the environment would be included in Article XIV. Regarding Article XXXVIII:1, it was his delegation's understanding that the Principality of Liechtenstein would be able to join under the provisions of this article.

15. The representative of Austria recalled that his delegation had put mental brackets around Article I:3(b) of the framework subject to the progress made in the annex on road transport services and in regard to a number of substantial provisions of the framework, in particular Articles VI and XIV.

16. The representative of Brazil said that his delegation was still hopeful that adequate political decisions could make it possible to negotiate in good faith with a view to arriving at a set of rules which could provide for progressive services trade liberalization in a balanced manner. He noted that his delegation had made significant efforts in attempting to take a negotiating position which would permit the elaboration of a framework to suit its interests and was, like others, concerned by the recent turn of events in the negotiations. His delegation fully supported the earlier statements of the Argentinian delegation with regard to guidelines for initial commitments.

17. The representative of Japan expressed disappointment at the outcome of the negotiations. He felt that there were far too many brackets, some of which were of a technical nature and could probably be resolved, others which appeared to shake the very foundations of the philosophy upon which the negotiations were based. He was particularly heartened by the resolve of group members to avoid language which could leave room for misinterpretation. His delegation was also encouraged to see delegations attempt to strike a balance between the need to address developing country concerns on the one hand and ensuring that the rights and obligations of parties under the agreement were not compromised on the other. He felt that such positive signs could be detected because group members had drawn clear lessons from the experience of over forty years of GATT practice. This experience, he felt, should help in ridding the current services text of its many brackets, whether in Brussels or afterwards. With regard to Article I:3(b), he recalled that his delegation had always maintained the position that in order to make up its mind on coverage, it needed to look at the contents of both the framework and the annexes. He recalled that the sectoral annexes were crucially important to the efforts of countries to give concrete substance to the general framework and the negotiated commitments. His delegation was disappointed about the inability to agree to some substantive wording in regard to the key area of financial services.

18. The representative of Korea noted that the text currently being discussed would be unmanageable for ministers given the large number of brackets it contained. His delegation nonetheless hoped that a successful outcome to the negotiations might still be achieved in Brussels. His delegation shared the concerns of other delegations in regard to m.f.n., noting that it was an essential ingredient to secure a meaningful process

of multilateral liberalization. He underlined the need for balance and consistency in developing sectoral annexes.

19. The representative of Pakistan expressed disappointment and dismay at the results of the group's endeavours after four years of hard work, noting that his delegation was particularly concerned by developments during the last few days of negotiations on the issues of coverage and m.f.n. There was a need in his view to restore balance to the text and to bring on board points which could not be introduced so far for various reasons. He hoped that ministers could do the job in Brussels or at least give clear guidance to their negotiators in regard to future work.

20. The representative of Egypt shared in the sense of disappointment after four years of negotiations, noting that while the draft text before the GNS was a good basis for further discussions, it was nonetheless quite confusing. He emphasized the central importance which his delegation attached to a strong m.f.n. provision and to the principle of universal coverage. He noted that, much to his delegation's regret, last minute changes had been made to Article XII of the framework which went against the spirit of what had been earlier agreed. He supported the views of Argentina and Brazil in regard to the language on initial commitments, noting that brackets were made necessary in view of the absence of a concrete understanding on the general framework. He considered that the draft framework text was not balanced. His delegation was disappointed by the numerous brackets which appeared in the sectoral annexes, particularly in regard to labour mobility. This pointed to the need for further discussion. He recalled the need for negotiations in the important area of financial services to follow appropriate procedures in order to bear fruit. He noted that the reference to movement of personnel appearing on page 48 of the draft text should be changed to movement of natural persons as referred to in Article I:2(c).

21. The representative of Sweden, on behalf of the Nordic countries, expressed disappointment over the number of brackets found in the draft text. It was an unwieldy document which he doubted could serve as the basis for political consideration in many instances. He recalled that of the 106 countries participating in the GNS, 105 favoured a GATT-like unconditional m.f.n. provision, whereas one delegation favoured language which could not be readily likened to the m.f.n. principle. He felt that some fundamental reconsiderations would be needed in regard to a number of the sectoral annexes which were attached to the general framework.

22. The representative of Jamaica agreed that the results so far were not commensurate with the efforts made but remained optimistic that the final outcome of the negotiations could be satisfactory. He noted in regard to Article V:2 that his delegation saw the alternative language currently proposed as covering both agreements between developing countries only as well as agreements including both developed and developing countries. As concerned Article XXXI, he felt that appropriate guidelines should be developed in regard to the origin of services, as this could become a loophole with adverse implications for the balance of concessions under the agreement. He stated that the many brackets in the draft text reflected the

conflict of interest between individual countries. He hoped that an appropriate balance could be struck in Brussels in removing the brackets and finalizing the text in a manner that would adequately reflect the interests of developing countries.

23. The representative of Peru expressed his delegation's discontent at the results of four years of work in the area of trade in services, noting that the equilibrium that seemed to be emerging a few months ago in the GNS had suddenly collapsed. The current draft text was in his view quite unmanageable and could not be easily explained or used for the purposes of taking political decisions. It was essential that priority attention be given in Brussels to the operation of the m.f.n. provision in the services agreement. In view of recent developments, he doubted that his delegation would be forthcoming on the issue of initial commitments so long as uncertainty prevailed as concerned matters of coverage and m.f.n.

24. The representative of Australia said that a strong m.f.n. provision in the framework was essential for an agreement aimed at achieving wide-ranging liberalization in services trade. His delegation continued to be in favour of substantive initial commitments being made which would enter into force at the same time as the agreement.

25. The representative of Canada said that the GNS had done considerable work since the launching of the Uruguay Round negotiations at Punta del Este. Nevertheless, he regretted that further progress had not been possible. In particular, his delegation warned against proposals which deviated from the application of the m.f.n. principle as a general obligation across sectors. It supported full sectoral coverage and was disappointed that the draft text did not include more than a recognition that an annex on financial services was necessary though there was a lack of agreement regarding its scope and contents. He shared the views of those who regarded initial commitments as an essential part of the overall package on the liberalization of trade in services.

26. The representative of Uruguay said that the changes suggested by the International Monetary Fund were unacceptable to his delegation since they might imply new legal ties covering rights which had already been acquired. Uruguay had always wished to maintain a rigorous attitude concerning its external responsibilities.

27. The representative of Yugoslavia said that the concerns of developing countries regarding their trade and development needs had been incorporated and constituted an integral part of the agreement. However, it would be difficult for small countries to justify acceding to an agreement on trade in services which provided for m.f.n. treatment only where commitments had been made. The m.f.n. principle was crucial in providing for an agreement which was truly multilateral in nature and should remain a general obligation applying across sectors. He warned that unless the framework and sectoral annexes were finalized it would be very difficult for countries to engage in meaningful negotiations on initial commitments.

28. The representative of Hungary regretted to see that certain recent changes introduced to the draft framework had serious implications for the very nature of the agreement. The alternative text on m.f.n., for example, qualified considerably the application of this principle, making it even easier to circumvent the multilateralization of concessions granted in the services area than was already the case in the goods area. Most draft sectoral annexes contained derogations to the m.f.n. principle, some of which were sought on a permanent basis. Areas of special interest to his country such as transport and labour mobility were included among those. Regarding safeguards, he noted that as drafted Articles X and XII contained many areas of contention. Article XII on restrictions to safeguard the balance of payments contained more stringent conditions on the use of BOP-related safeguards for services trade than was the case for goods trade. Given the current state of the draft framework, it could be said that there was still a very long way to go in order to arrive at a multilateral agreement which was based on a balance of interests and of rights and obligations among participants.

29. The representative of New Zealand said that the m.f.n. principle constituted the cornerstone of the multilateral trading system and could not be absent or essentially modified in its application to services trade. The principle allowed benefits to be available for smaller countries such as New Zealand which these countries might not otherwise be able to negotiate on their own behalf. In return for receiving those benefits, these countries would be prepared to make significant commitments and undertake disciplines as parties to such an agreement. The alternative text proposed at a very late stage by the United States concerning the m.f.n. principle, if included under the framework, would change the essential nature of the agreement and as such would not have the support of her delegation. If the principle of m.f.n. were to appear under the framework as something other than a general obligation applying across all services sectors, there would be no universal coverage nor any meaningful initial exchange of commitments among countries. Decisions were in order at the appropriate political levels providing for the necessary basis on which to restore some of the balance which had been achieved in the GNS negotiations.

30. The representative of Bangladesh said that it was not clear to his delegation whether the many brackets appearing under the draft framework were supposed to indicate areas where no agreement had been possible or whether such brackets were merely tactical in nature. In the 1979 Ministerial Decision regarding the enabling clause, it was clearly stated that given the special difficulties of the least developed countries and their special situation, they would not be expected in the course of multilateral trade negotiations to undertake any commitments or obligations. He suggested that brackets be removed from around the language contained in the sentence under paragraph 3 of Article IV on increasing participation of developing countries. He also sought some recognition under paragraph 4 of the attachment on initial commitments that least developed countries were not expected to make such commitments given their difficulties in accepting specific liberalization commitments. Finally, he stressed the need for the annex on labour mobility to be unequivocal in

providing for a more liberal environment for the mobility of manpower at all levels of skill.

31. The representative of Côte d'Ivoire shared the disappointment expressed by others regarding the result of four years of strenuous work and drew the attention of the Group to the second alternative paragraph to paragraph 2 of the draft annex on maritime transport services which, if ultimately adopted, would have very detrimental implications for Côte d'Ivoire and other developing countries.

32. The representative of Kenya said that recent developments in the negotiations had served to confirm his delegation's initial opposition to the inclusion of the services area under the multilateral trade negotiations agenda. Adherence by his country and many other developing countries would depend on the recognition of the relative strengths of the services industries in these countries and on the benefits accruing to them as a result of negotiations in this area. So far, offers had been made which neglected to include meaningful commitments in the mode of delivery of greatest importance to African countries - i.e., labour mobility.

33. The representative of Nicaragua said that her delegation was firmly attached to the notion of m.f.n. as a general obligation applying across all services sectors and would oppose an agreement which contained any deviation from such a notion.

34. The Chairman said that the draft dated 22 November 1990 would be submitted to the Trade Negotiations Committee. He shared the hope expressed by many that agreement would be reached by ministers at Brussels on some areas of crucial importance for services trade liberalization and thanked all participants for their efforts towards a multilateral set of rules and disciplines governing trade in services. He then closed the meeting.