

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Group of Negotiations on Services

WORKING GROUP ON TELECOMMUNICATIONS SERVICES

Note on the Meeting of 15-17 October 1990

1. The Chairman said that the purpose of this meeting would be to continue discussing the need for and the possible contents of a sectoral annex or annotation dealing with telecommunications. He had prepared and circulated a draft text of possible elements of an annotation that the group could examine. He requested the secretariat to provide an overview of current discussions in the GNS regarding sectoral developments. The secretariat representative noted that agreement had been reached in the GNS inviting the chairmen of the sectoral working groups to report to the GNS by 20 October; he indicated that the latest draft of the framework text was available for use as a basis of consultations, and reviewed the procedures for the ad hoc sectoral working group that the GNS had agreed to establish.
2. The representative of Chile requested that the report to be submitted to the GNS be a report of the Chairman and not of the working group as such.
3. The Chairman introduced the draft text of possible elements of an annotation, briefly described its provisions and sought comments from delegations.
4. The representative of Brazil said that his delegation would seek most possible coherence between possible sectoral annexes and provisions of the framework. An annex could not be fully endorsed by his delegation before being examined in light of each provision of the framework that finally resulted. Therefore, while the report of the working group to the GNS would be useful, it could not be viewed as a final consensus.
5. The representative of India said that his delegation was willing to explore the need for an annex. The draft text in most respects addressed telecommunications as a mode of delivery. It was not clear at this time whether or not there was a need to assume obligations in an annex related to providing basic telecommunications services to facilitate the delivery of other services. Annexes should not weaken the framework agreement and should only be developed where absolutely necessary.
6. The representative of Mexico said that much of the draft text could be agreed. However, by taking a general approach to telecommunications as a mode of delivery, the text introduced an imbalance with respect to other

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modes of delivery. Services as a whole, and other modes of delivery, would need to be compared at the end of discussions. Furthermore, it was not yet clear what implications the final text of the framework would have on the possible annex.

7. The representative of Egypt said that some provisions in the draft text might be more appropriately included in the framework. His delegation remained open minded but was not yet convinced of the need for an annex. The section on increasing participation in the draft text did not draw adequately from the material submitted in two proposals MTN.GNS/TEL/W/1 and MTN.GNS/TEL/W/2 submitted jointly by his and certain other delegations.

8. The representative of Yugoslavia said that his delegation remained open regarding the need for an annex, but its final determination would depend on results in other working groups.

9. The representative of the European Communities said that the draft text represented useful work and took note of the view expressed by some delegations that a final decision on an annex would be incumbent on the GNS.

10. The representative of Argentina said that some parts of the draft text might represent some redundancy with the framework.

11. The representative of the United States said that it was the view of her delegation that a telecommunications annex was necessary. However, the draft text provided little in the way of trade liberalization. The draft was intended to afford service providers access to and use of telecommunications transport services which they needed to provide their services. Yet, there was nothing in the text that specifically addressed those needs. For example, businesses needed to be assured that they would be able to attach to the network the terminal equipment they considered necessary for the conduct of their business operations, subject to a no harm to the network or network personnel standard. The draft text nowhere recognized even the ability of services providers to use telecommunications transport services in the provision of their services. The text placed too much emphasis on the rights of regulators and too little on the needs of service providers. Although many participants agreed to the concept, the text did not make clear that parties were agreeing to limit their regulations in the interest of promoting trade. This approach was consistent with Article VII of the framework which addressed itself to restraining the exercise of domestic regulatory powers. The abuse of regulatory powers was a serious issue that could have a profound negative affect on trade in services. Another concern was that the text still appeared to place obligations directly on private entities, where as this was an agreement between governments and could impose obligations only upon governments. Regarding a provision on pricing, she said that service providers faced excessive and discriminatory prices for public telecommunications transport services that adversely affected their ability to use these services.

12. The Chairman opened the floor to a consideration of issues which delegations felt the working group had not dealt with so far.

13. The representative of Japan said that his delegation attached considerable importance to the continuous and stable provision of certain public telecommunication transport services. His delegation understood that, as currently drafted, the framework text allowed for the possibility of reserving such services in countries' national schedules. However, it felt that this might not be sufficient to safeguard national policy objectives in this area. He wondered whether such matters could not be treated under Article XIV (Exceptions) of the framework or, as some delegations were suggesting, through an m.f.n. derogation for certain types of public telecommunication transport services. Since there was little time available to group members to discuss such matters, he suggested that the Chairman include this issue in his report to the GNS.

14. The representative of Australia asked the delegate of Japan if he was expressing his government's position on this particular matter.

15. The representative of Japan said that his delegation had not yet decided whether or not to agree with the idea of universal coverage. However, in the event that the scope of coverage was universal, his delegation had concerns over its ability to address potential problems in the area of public telecommunication transport services through framework provisions dealing with domestic regulation or exceptions.

16. The representative of the United States said that during the course of the services framework negotiations, many delegations had become aware of the US position on the application of m.f.n. to basic telecommunications services. She felt that formally raising the matter in the working group would serve two purposes: on the one hand, it would allow an issue to be discussed by the group it had not had the opportunity to examine so far; on the other hand, it appeared that developments in the GNS indicated that the telecommunications services annex was the proper place for language to address this matter. In setting out the US position, she provided some background on the regulatory situation in her country as regards basic telecommunication services. In the early 1980's, the FCC opened the domestic basic telecommunications market to all, including foreign, providers. Subsequently, the FCC deregulated all competing firms for domestic service, with the exception of AT&T. Opening the US basic telecommunications market to competition was undertaken under the assumption that competition and deregulation would be beneficial to the US economy. The regulatory implications of foreign monopoly PTT entry into the US market were not considered. Under current FCC rules, foreign entities can provide basic service throughout the US without any authorization. They can do this either by laying down their own fibre optic cables or by leasing microwave facilities from US carriers. With the possible exception of one or two countries, no other countries in the world permit US carriers to enter their markets for the sake of providing basic services domestically. Given the highly asymmetrical situation between the US basic telecommunications market and that in most of the rest of the world, an m.f.n. obligation on basic telecommunications services would have a

negative impact for the US. Indeed, since in most other countries basic services were provided on a monopoly basis, an m.f.n. obligation would have no impact for such countries. No one, whether domestic or foreign, competed with the monopoly in the provision of basic services. However, since foreign entities were allowed to provide basic long distance services in the US, entities from any GNS country could, after the signing of this agreement, gain immediate access to the US basic services market. She noted that, from a political viewpoint, such an outcome was totally unacceptable. M.f.n. would place the US in a situation where it would receive no market access commitments from any nation while its market was frozen open to any country which signed the agreement. She was well aware that, in making this statement, one response would be to point to m.f.n. as the underlying trade liberalizing principle of the GATT. It was not self-evident however that traditional m.f.n. arguments were applicable in the case of basic telecommunications services. She noted that were the US to be bound by the m.f.n. principle for basic telecommunications services, the leverage of access to the US market would be lost since countries would be guaranteed access to the US market without having to move away from their traditional monopoly situations in regard to basic services. As such, the m.f.n. principle would simply reinforce the status quo. An even more serious consideration was that countries that might otherwise be interested at some time in opening up their basic service markets to competition with one or more selected countries would in fact be deterred from doing so as a result of the m.f.n. obligation. She felt that few countries would be willing to open up this politically sensitive sector to all signatories of the agreement. Far from being trade-liberalizing, m.f.n. as applied to basic telecommunications services was in fact trade-restrictive. Since few parties were currently interested in making market access commitments in regard to basic telecommunications services, it was not reasonable to expect her delegation to accept m.f.n. obligations in this area. Her delegation's approach was to seek to introduce flexibility into the m.f.n. provision of the services agreement by developing language in the telecommunications annex which would provide for a derogation to the application of m.f.n. to public telecommunication transport services in the schedule of commitments.

17. The representative of Australia expressed concern at the statement by the US delegation, noting that the views that had just been expressed were unacceptable to his delegation. He felt that such views were based on a misunderstanding of how the framework would operate and wondered why such a basic and important issue was being raised so late in the working group's deliberations. He said that the basis of the US argument seemed to be that market access had to be extended automatically once a country signed the services agreement, an assumption that was simply incorrect since market access was a commitment to be negotiated among parties. Under an m.f.n.-based regime, were the US to allow additional participants into its basic telecommunications services market, it would have to be done on an objective and non-discriminatory basis. The US appeared to wish to retain the right in future to do deals in the telecommunications area on a reciprocal and selectively discriminatory basis. M.f.n. derogations had some logic in cases, such as in civil aviation, where existing arrangements of a bilateral nature could not be easily multilateralized. This was not

the case however of basic telecommunications services, since the US did not at present have an m.f.n. problem in the sector but merely wished to retain bilateral leverage. This amounted in his view to a debasing of the concept of m.f.n.. Referring to the previous intervention by the Japanese delegation, he said that the concept of having exceptions for basic telecommunications services was simply not acceptable, particularly as it differed from the position Japan had been taking, or had remained silent on, in GNS discussions.

18. The representative of the European Communities felt that the issue under discussion, while important, was nonetheless horizontal in nature and should be addressed in the GNS. He recalled that the Community's position was that m.f.n. should apply to all services sectors. He remained puzzled by the US statement, noting that no valid reasons, particularly from a trade point of view, had been given in support of the position taken. The fact that basic telecommunications services were a politically sensitive area was not in his view a convincing reason for seeking an m.f.n. derogation. He sought further clarifications from the US delegation on the issue.

19. The representative of Japan recalled that public telecommunication transport services, which were called Type I carriers in Japan, were already open -albeit not fully- to competition. Foreign ownership of Type I carriers was indeed limited to 33.3 percent. In view of the situation currently prevailing in the country's telecommunications market, Japan had no intention of excluding the sector from the agreement's scope of coverage. Telecommunications was essential to the provision of services and for any economy's overall economic development. It was as well essential to a country's national security. For all these reasons, Japan sought some special treatment for public telecommunications transport services so as to ensure their sound and stable provision. These concerns could be met by applying Article XIV of the framework to such services.

20. The representative of the United States recalled that the concerns of her delegation in regard to m.f.n. had been raised in earlier informal discussions of the working group. The intent of her delegation was not to protect its domestic basic telecommunications sector but to retain some flexibility in view of the marked asymmetry in market situations between the US and most other countries in the area of basic telecommunications. The uniquely open situation of the US meant that it would be the only country to lose from the application of an m.f.n.-based regime to basic telecommunications services, a result which was simply not politically acceptable. She noted that her delegation was seeking a temporary derogation from the m.f.n. principle since its overriding objective remained trade liberalization. Her delegation would sincerely welcome the opportunity to engage in market opening negotiations with others who were looking to liberalize their basic telecommunications services market. She suggested that language permitting an m.f.n. derogation in national schedules be formulated in such a way as to bring out its temporary nature. Her delegation could look forward to applying an m.f.n.-based regime when countries stood ready to undertake market access commitments in the area of basic telecommunications services.

21. The representative of Mexico said that the US proposal for an m.f.n. derogation on basic telecommunications services was unacceptable to his delegation. He felt that the issue was, in any event, of a horizontal nature and saw little reason in taking it up in the working group. He questioned the logic of seeking derogations wherever a country operated a liberal regulatory regime, noting that an overall balance of benefits among all participants could never be achieved were all participants to pursue this line of thought.

22. The representative of Australia said that the US delegation's latest intervention had done nothing to allay the fears of his delegation. He reiterated the point that nothing in the framework agreement would require a country to provide unlimited market access. To invoke the unique openness of the US market for basic telecommunications services as a justification of the need for an m.f.n. derogation was thus simply not credible. He was unsure of what the US delegation meant when it spoke of a derogation in the national schedule of a party, noting that the only derogations that were currently being envisaged were ones that were multilaterally agreed and either part of a sectoral annex/annotation or drafted as footnotes to Article III of the framework. The concept of a derogation in a national schedule was new to his delegation. He found the assertion that an m.f.n. derogation could in fact promote trade liberalization fairly extraordinary, adding that the real intent of the US delegation was to negotiate, through such a derogation, reciprocal and discriminatory arrangements on a bilateral basis. He recalled that the very purpose of a multilateral framework was to achieve a balance of benefits among all parties. Use of the word "asymmetry" was thus highly dangerous. His delegation remained totally unconvinced by the US proposal and he urged the US to reassess its position on the matter.

23. The representative of the European Communities sought clarifications from the US delegation on the so-called "special" nature of the basic telecommunications sector. He said that the assumptions behind the US proposal were questionable since the US was far from being in a unique situation in this regard. There were a number of segments of the Community's market for public telecommunications services which were open to competition, for example in the area of data services. Other countries were in a similar situation, e.g. Sweden, Canada and Japan. His delegation also sought multilateral liberalization, not bilateral reciprocity.

24. The representative of Sweden, on behalf of the Nordic countries, expressed concern at the US proposal, which her delegation viewed as unhelpful since the m.f.n. principle stood at the very centre of the services negotiations and was the most important tool with which to achieve trade liberalization. Were this tool to be taken out, the only alternative left would be bilateral reciprocity, a result which her delegation saw as running counter to the very object of the current negotiations. She emphasized the need for delegations to think in terms of an overall balance of rights and obligations and agreed that the US basic telecommunications services market was hardly unique in its openness.

25. The representative of the United States said that the practical effect of an m.f.n. obligation was to open the US market because the country's domestic regulatory regime allowed foreign participants to enter freely without any notification or registration requirements. She felt that rather than focusing on the relative degrees of market openness, group members should be paying greater attention to the unique nature of the services under consideration, in particular the duality of basic telecommunications services and the uniquely unbalanced market situation that applied in the telecommunications area. Her delegation was willing to consider favourably m.f.n. commitments when other countries would be making meaningful commitments in opening up their basic telecommunications services markets. The US was not seeking the same sorts of commitments by other countries but did require that some meaningful level of commitments be reached so as to ensure that a negotiation did lead to meaningful liberalization. As to the use of the word derogation, she said that what the US was suggesting was to include in the telecommunications annex language which would allow a party to reserve the application of the m.f.n. principle in its schedule of commitments with respect to basic telecommunications services.

26. The representative of Chile said that his delegation favoured the unconditional application of the m.f.n. principle to all service sectors and was deeply concerned by the numerous calls for sectoral exceptions or derogations, whether in this working group or in others.

27. The representative of Australia agreed that the duality of the telecommunications sector was a distinguishing feature but noted that this was also the case of financial services. He felt that, precisely because of this duality, it was essential that the m.f.n. principle should apply in full. He thought that seeking an m.f.n. derogation in the very sector that underpinned all service sector activities went against the spirit of a services agreement. He did not believe that it was feasible to include an m.f.n. derogation in a country's schedule of commitments with regard to a particular sector. He recalled that the need to placate the recourse to sectoral reciprocity was the basic reason for which countries, including the United States, had sought to include services on the Uruguay Round's agenda.

28. The representative of Canada said that his delegation saw no major difficulty in applying m.f.n. to either basic or value-added telecommunications services. There was already substantial foreign investment in domestic common carriers, the second largest one was in fact over fifty-one percent foreign owned. He noted that the country had since 1986 pursued a policy aimed at limiting foreign investment to twenty percent of domestic common carriers, a policy he expected to see maintained. He said that, despite such limitations, his delegation could envisage future foreign participation in common carriers, albeit not necessarily in the traditional land-based market segments but rather in the satellite and mobile segments. He noted that an auctioning system could be devised as one way of pursuing non-discriminatory policies in sectors where market access possibilities could be quantitatively restricted.

29. The Chairman felt that the only conclusion that could be drawn at this stage was that the issue of the application of m.f.n. required further discussion. He proposed to include in his report to the GNS a reference to the need to further consider the application of Articles III (m.f.n.) and XIV (exceptions) of the framework in regard to public telecommunications transport services.

30. The representatives of Australia, Sweden, on behalf of the Nordic countries, and Mexico felt that it would be useful if the Chairman's report could mention the fact that many delegations believed that there was no need to consider this issue further. It was important in their view to indicate that there was no general support for the proposal put forward by one delegation to seek an m.f.n. derogation for basic telecommunications services.

31. The Chairman introduced the proposed text of the draft report to the GNS for the consideration of the working group. The report covered areas of agreement and disagreement that arose in the course of the group's discussions. It would also highlighted points that might require further discussion. The text of possible elements of an annotation would be attached to the report. He invited delegations to comment on the report.

32. The representative of India said that it was his delegation's understanding that the report would be submitted to the GNS on the chairman's own responsibility. However, many points which were raised and debated were not treated in a symmetrical manner in the report. His delegation would have preferred more provisions related to increasing participation of developing countries. The representative of Indonesia endorsed the comments of the representative of India.

33. The representative of Egypt said that the distinction between telecommunications as a mode of delivery and as a services sector was crucial. The representative of Cuba supported the statements of the representatives of India and Egypt.

34. The representative of Korea noted that the proposed definition of intra-corporate communications still included affiliates and did not reflect his delegation's concern. Without clarity on this, intra-corporate communications could represent an escape from obligations of the annex.

35. The representatives of Australia, Austria and Sweden, on behalf of the Nordic countries, said that the Chairman's report appeared to accurately reflect discussions and, as a working document, should go forth with few, if any, further changes.

36. The representative of Mexico noted that many of the positions of various delegations had been reconciled by the Chairman. The incorporation of specific proposals related to the increasing participation of developing countries was still desirable.

37. The representative of the European Communities said that certain points raised by his delegation were not incorporated, including access to

markets, fair competition, substantive provisions on access to information, as well as some wording suggested on intra-corporate communications. His delegation reserved its right to return to some of these matters at a later stage.

38. The representatives of Singapore and Yugoslavia said that their delegations shared the concern for deleting the word affiliate from the definition of intra-corporate communications.

39. The representative of the United States noted that the text did not include many of the points considered important by her delegation. In general, there was a shift away from user needs toward the rights of regulators. The rights of regulators were not sufficiently circumscribed. Matters related to privacy should be dealt with under the framework.

40. The representative of Japan said that concerns remained for his delegation regarding the definition of public telecommunications transport services.

41. The representative of Chile noted that his delegation was not convinced of the need for an annex.

42. The Chairman said that there clearly would be a need for further negotiations and discussions on telecommunications, using the report and draft elements of an annotation as a basis, and closed the meeting.