

MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND

RESTRICTED

MTN.GNS/21

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Group of Negotiations on Services

GROUP OF NEGOTIATIONS ON SERVICES

Report to the Trade Negotiations Committee meeting
at Ministerial level, Montreal, December 1988

1. In Part II of the Ministerial Declaration of Punta del Este, Ministers agreed that "negotiations in this area shall aim to establish a multilateral framework of principles and rules for trade in services, including elaboration of possible disciplines for individual sectors, with a view to expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting economic growth of all trading partners and the development of developing countries. Such framework shall respect the policy objectives of national laws and regulations applying to services and shall take into account the work of relevant international organizations."

2. The Group of Negotiations on Services (GNS) agreed on a programme for the initial phase of the negotiations and identified the following elements which should be addressed in 1987 in conformity with the negotiating objective: definitional and statistical issues; broad concepts on which principles and rules for trade in services, including possible disciplines for individual sectors, might be based; coverage of the multilateral framework for trade in services; existing international disciplines and arrangements; and measures and practices contributing to or limiting the expansion of trade in services, including specifically any barriers perceived by individual participants, to which the conditions of transparency and progressive liberalization might be applicable.

It was understood that neither the formulation of the items, nor the order in which they are listed prejudice the relative importance of any of them, or imply any ordering for negotiating purposes.

It was also understood that there would be a periodic overview of progress in order to, inter alia, facilitate determination of the technical support to be provided by relevant international organizations and a stocktaking in order to determine how to carry forward the negotiating programme.

3. The stocktaking took place in December 1987 and the Chairman concluded "the Group has made progress during 1987 in pursuance of the programme for the initial phase of negotiations as elaborated in MTN.GNS/5. It was recognized that, subsequent to the stocktaking, the negotiating programme will have to be carried forward further on the basis of the examination of the five elements in MTN.GNS/5, as well as other issues arising therefrom.

In this process, submissions and statements by delegations will be addressed with a view to achieving concrete progress in the negotiations in accordance with the negotiating objectives in the Punta del Este Declaration on trade in services. The Group appreciated the contributions made by participants in the shape of papers, proposals and statements. Participants are encouraged to make further contributions."

4. The GNS has held nineteen meetings. Discussions have followed the agenda structured around the elements elaborated in the negotiating programme and have also covered other issues arising therefrom with the Chairman exercising a degree of flexibility. Discussions have also addressed a large number of proposals by participants and other presentations. Discussions in the GNS were conducted in full recognition of the objectives of the Punta del Este Declaration as set out in paragraph 1 above. The Group considers that useful progress has been made in examining and seeking common understanding on a wide range of matters related to the achievement of these objectives.

5. At this stage of the negotiations it is understood that no participant's final position is prejudged or pre-empted in any area of the negotiations and in each of the areas of the negotiations it remains open to participants to bring forward new ideas, proposals, concepts and approaches.

6. On the basis of the work carried out so far, Ministers agree that as of 1989, the GNS shall proceed, in [a] parallel [and inter-related fashion], on the matters set out below.

[Growth and development]

[It is understood that the main objective of promoting growth and development will permeate through all the matters to be addressed and the elaboration of the multilateral framework.]

Statistics

7. Improved availability of statistics relating to trade in services will assist in assessing the implications of rules and principles and the interests of participants in specific sectors. Further work on available statistical data, in particular their disaggregation, is essential. The GATT Secretariat will continue its interaction with other organizations in order to obtain the most disaggregated and complete information possible on classification, trade flows and features of trade in services.

International organizations

8. In considering how the negotiating objectives of the Punta del Este Declaration will be met, due account should be taken of the rôle of existing international arrangements and disciplines. The relevant international organizations should be invited to provide technical support, as necessary.

Definition

9. [Work should proceed on the basis that the multilateral framework [shall] [can] include trade in services involving cross-border movement of services, cross-border movement of consumers, and services for which the movement of factors of production is essential for the provision of services abroad. [Further] examination is needed on to what extent the framework would cover the movement of production factors such as capital or labour flows.]

[In particular, the multilateral framework will provide facility for foreign service providers to establish.]

[In particular, the multilateral framework will provide facility for labour, labour-intensive and professional service providers [from developing countries] to take residence [in developed countries] for the purpose of providing such services.]

[An approach to definition should take into account the following criteria:

- (i) Cross-border movement of service and payment.
- (ii) Specificity of purpose.
- (iii) Discreteness of transaction.
- (iv) Limited duration.]

Coverage

10. Work should proceed, without excluding any sector of trade in services on an a priori basis, with a view to reaching agreement on the sectoral coverage under the multilateral framework in accordance with the following considerations:

The coverage should permit a balance of interests being achieved for all participants;

Sectors of export interest to developing countries should be included;

[Developing countries should have the right to include or exclude sectors on the basis of development considerations;]

[Sectors already covered by existing international arrangements shall not be included;]

[The coverage should be consistent with the agreed definition;]

[Certain sectors or activities could be excluded for certain over-riding considerations (e.g. security and cultural);]

The framework should provide for the broadest possible coverage of sectors of interest to participants.

Concepts, principles and rules

11. [The elements of the framework will contain general commitments, as well as specific rules. The general commitments will be progressively implemented according to the modalities provided for in the specific rules.]

[On the basis of progress to date in the GNS in pursuing the objectives of the Punta del Este mandate the agreement for trade in services shall contain [provisions] [obligations] based on, inter alia, the following:]

[In its work on concepts, the GNS shall address the following:]

It is understood that there is no order of priority implied in the listing of the [provisions] [obligations] [concepts] addressed.

[National treatment]

[National treatment means that [the services exports of any signatory] [foreign services and foreign service suppliers] that are granted access to the market of any other signatory will be accorded, in respect of all laws, regulations and administrative practices, treatment "no less favourable" than that accorded domestic services [or service suppliers] in the same market. "No less favourable" is considered as treatment which for certain clearly defined reasons, that is for prudential or other reasons, is not necessarily identical but is equivalent in effect. [National treatment shall be accorded among all signatories.]]

[National treatment is to be provided to cross-border services and labour, but not to foreign direct investment. Developing countries are to provide this treatment to foreign services (and not to FDI) in the long run, i.e. as a goal to be fulfilled in the long run in their participation in the framework agreement and in the eventual sectoral agreements.]

MFN/Non-Discrimination

[MFN means that signatories grant all other signatories [under the same conditions] any advantage granted to another country unilaterally or as a result of trade negotiations. Non-discrimination means that signatories accord to each other treatment no less favourable than that accorded to any country.]

[The agreement shall provide that signatories to the agreement shall receive the same benefits granted by one signatory to another.]

[This principle or provision will apply in relation to foreign suppliers, not implying the same treatment as for domestic suppliers of the same or like services.]

In the agreement and in the sectoral agreements, provisions will be included by which developed countries undertake to grant developing countries unconditional and unrestricted most-favoured-nation treatment.]

Transparency

[The agreement shall establish:

- Provisions to ensure that all laws, regulations and administrative guidelines which affect the provision of services must be published and made publicly available, at the latest by the time of implementation.]
- [- These requirements shall also apply to international agreements and arrangements to which the signatories are parties.]
- [- Provisions to allow interested parties wherever possible to comment before entry into force of laws, regulations and administrative guidelines which affect the provision of services.]
- Procedures, including any agreed notification, [counter notification] and information requirements to ensure that all laws, regulations and administrative guidelines which affect trade in services can be made available to signatories.]

[All national laws and regulations on international trade in services shall be published; all enterprises operating in international trade in services shall provide full information on their operations to national and local authorities of the countries in which these operations take place.]

[[Market Access] [Preferred mode of delivery]

[When market access is available to signatories, it will be on the basis that, consistent with other provisions of the agreement, foreign services may be supplied [, unless negotiated otherwise,] according to the preferred mode of delivery essential to market access, e.g. through movement of factors, through establishment or other forms of commercial presence and through the temporary movement of skilled or other qualified persons.]

[Signatories will ensure that, consistent with other provisions of the agreement, foreign service suppliers, when accorded access to the market, can provide services including through establishment or other forms of commercial presence.]]

Safeguards and exceptions

It is understood that in the course of further negotiations there is a need to examine the question of provisions to deal with matters relating to safeguards and exceptions, e.g. exceptions, based on security and cultural policy objectives, to be made in the application of the principles, elements or provisions as stipulated.

[There should be safeguard provisions for balance of payments reasons.]

Consultation and dispute settlement mechanisms

[Regional economic integration]

[The desirability of increasing liberalization of market access by the development, through voluntary agreements, of closer regional economic integration is recognized. The agreement shall contain provisions to allow regional economic integration to be pursued independently of the multilateral process of progressive liberalization.]

[The agreement shall contain provisions in respect of regional economic integration.]

[Regulatory situation]

[The asymmetry in the regulatory situation of developed and developing countries is recognized. The right of developing countries to establish new regulations applying to services necessary for their development is recognized.]

[Obligations to respect the value of concessions]

[New laws, regulations and administrative guidelines relevant to trade in services shall provide national treatment, non-discrimination and MFN in services covered by bound concessions. It is understood that existing laws, regulations and administrative guidelines shall not be changed in a way which raises the effective level of protection for services covered by bound concessions.]

[Provisions for competition]

[The framework shall include rules to promote competition in international trade in services. It shall recognize the right of developing countries to regulate services sectors including, inter alia, [establishment of state enterprises and] granting exclusive rights in sectors necessary to promote their development.]

[The framework shall include provisions to promote competition in international trade in services. It shall recognize the right of countries [, in particular developing countries,] to regulate services sectors including, inter alia, through the granting of exclusive rights.]

[It is understood that the increase and maintenance of the level of international competition will be important to obtain the objectives of the agreement. The provisions of the agreement should reflect this.]

[Development compatibility]

[The agreement shall be compatible with the objectives of promoting the economic growth of all trading partners and the development of developing countries, including the improvement of signatories' technological capacities and their capacity to attract and generate higher levels of investment.]

It is understood that negotiations shall proceed on the basis that individual developing countries might open fewer sectors or liberalize fewer types of transactions than other signatories, in line with their level of development, or that market access might be phased in over a longer period.]

[Relative reciprocity]

[Developing countries will not be expected to make contributions and shall not be required to make concessions which are inconsistent with their individual development, trade and financial needs; particular account shall be taken of the serious difficulty of the least developed countries in making concessions and contributions in view of their special economic situation and their development, trade and financial needs.]

[Preferential market access opportunity] [Priority liberalization of market access]

[In order to promote services exports of developing countries, specific provisions shall be included to facilitate their access to developed country markets through, inter alia, access to distribution channels and information networks and the liberalization in those markets, on a priority basis, for services exports of interest to developing countries.]

[Access to modern technology]

[Provisions should be made to ensure access by developing countries to latest technological developments in different forms, i.e. soft and hard technology. Since technologies vary considerably from one sector to another, specific provisions would be required as appropriate in sectoral disciplines. Developed country governments should undertake the commitment not to impose regulations which would restrict developing countries' access to modern technology.]

[The agreement should facilitate the improvement of signatories' technological capacities. Accordingly, under its provisions governments should undertake the commitment not to impose regulations designed to restrict access to modern technology.]

[Enhancing of national services capacity]

[The right of developing countries to take border and other measures to strengthen national services capacities, including infrastructure and producer services shall be recognized. It will also imply protection of domestic services markets and promotion of their services exports, in order to increase their participation in international trade in services.]

[Increasing participation of developing countries]

[The multilateral framework should recognize that increasing participation of developing countries in the world exports of services is an essential condition for attainment of the objective of development of developing countries. The framework should elaborate measures and modalities which would help fulfil this condition.]

[Activities and practices of market operators]

[Compatibility of the activities and practices of market operators with the national policy objectives of developing countries would have to be ensured. The right of governments to regulate the activities and practices of such operators must be preserved in order to ensure such compatibility and to maintain national control of domestic sectors. Obligations and disciplines for both market operators and their home governments shall be established. Appropriate provisions shall be included to ensure that the implementation of progressive liberalization does not result in an even greater concentration of market power in international trade in services.]

[Sovereignty of national economic space]

[The right and duty of any government to regulate all sectors of its national economy in the national interest shall be fully recognized. This shall be the starting point and the governing principle in the elaboration of all rules and disciplines.]

[Autonomy of macroeconomic policies]

[The framework shall not impinge on the autonomy of developing countries to pursue macroeconomic policies, including those required to safeguard their external financial position and to ensure a level of reserves adequate for the implementation of their programme of economic development.]

[Preferential arrangements among developing countries]

[Developing countries may enter into preferential arrangements among themselves, exchanging concessions which would not be extended to developed country signatories to the framework. Such arrangements would help promote developing countries' exports of services and consequently facilitate the fulfilment of the ultimate objectives of growth and development of developing countries.]

[Financial support]

[An increased participation of developing countries in international trade in services shall be supported by financing rules and mechanisms; the disadvantageous position of suppliers from developing countries in international tenders shall be made up by access to preferential financial rates and more favourable pre-requisites for participation.]

12. The concepts, principles and rules should be examined with regard to their applicability and the implications of their application to individual sectors and the types of transactions to be covered by the multilateral framework.

13. [It is recognized that [actual] [final] agreement on concepts and principles would not be possible before examination of their application in relation to specific sectors and the types of transactions to be covered by the multilateral framework.]

Progressive liberalization

14. [The [framework] agreement shall contain [mechanisms and rules] [provisions] to achieve progressive liberalization, on an MFN and non-discriminatory basis, through, inter alia, negotiated [and bound] commitments, e.g. on market access.]

[The agreement shall also provide for successive rounds of multilateral negotiations.]

[The aim of these mechanisms and rules should be the achievement [, through, inter alia, such successive rounds of multilateral negotiations, of the fullest possible market liberalization by] [of the highest possible similar level of liberalization by reducing the trade distorting effects of all existing laws, regulations and administrative guidelines within each signatory's market by, inter alia, moving towards both the full implementation of national treatment and a comparable level of effective market access in the markets of] all signatories.]

[The agreement shall also contain mechanisms for signatories to implement progressively certain provisions of the agreement. In this respect signatories will have the possibility for temporary exceptions from applying particular provisions to particular sectors or activities covered by the agreement. Any temporary exception shall be limited in scope. The negotiations will establish firm guidelines and mechanisms for any such exceptions procedures.]

Progressive implementation shall take into account national policy objectives, levels of development and the overall balance of rights and obligations among signatories under the agreement.]

[Countries can negotiate phase-in periods for the commitments they assume under the agreement.]

[Sectors to be covered would be scheduled to the agreement. Reservations with respect to specific non-conforming measures would be attached to an annex to the agreement. In rare instances signatories may establish separate sectoral agreements with rules that are legally outside the provisions of the framework agreement.]

In implementing the agreement, attention will be given to particular needs and interests of developing countries in order to facilitate their growth and development. This would be accomplished through the reservation of certain measures as outlined above and more generous phase-in periods for the obligations they assume under the agreement.]

[Subsequent negotiations shall ensue with opportunities, at agreed intervals during the course of the Uruguay Round and following its conclusion, for participants to engage in request/offer negotiations on the reservations identified, including any progressive liberalization to be undertaken.]

[Criteria would be established to allow countries not to apply the benefits in whole or in part of the agreement to countries whose sectoral coverage and reservations would otherwise undermine the balance of concessions to which all participants are entitled. In this regard, countries which notify reservations should, with limited exceptions, do so in the context of phasing-in their obligations over a specific period of time.]

[It is understood that the acceptability of the agreement will be dependent on the initial level of negotiated commitments of signatories.]

[It is agreed that, in parallel, negotiations shall also take up specific measures and practices for progressive liberalization with a view to agreement and binding as part of the overall results of the work of the GNS.]

[Liberalization in international trade in services shall be progressive and implemented in such a way as to assure a balanced participation of all signatory countries; it shall start in the markets of developed countries; it shall envisage preferential opportunities for developing countries in terms of, inter alia, preferential access in developed markets for services of export interest to developing countries; and unrestricted and unconditional extension to developing countries of benefits resulting from liberalization agreements concluded among developed countries.]

[Standstill]

[Developed countries undertake not to impose any further restriction on imports of services from developing countries as from today (the Montreal meeting).]

[Future work]

15. [An [illustrative] [indicative] list of sectors shall be produced by the secretariat by February 1989 [on the basis of consultations with participants] in order to provide guidance as to the universe of services that may be subject to the provisions of the agreement.]

16. [Participants shall submit by May 1989 to the GNS an [illustrative] [indicative] list of sectors they would [propose be covered by the agreement] [be willing to negotiate under the framework.]

[The process of examining the applicability and the implications for concepts, principles and rules of their application to particular sectors [and specific transactions falling under the agreed definition of trade in services], should begin [by March 1989] [immediately after submission of the [illustrative] [indicative] list provided by the secretariat].]

17. [Participants are invited to submit by June 1989 indicative lists covering different sectors and types of transactions of interest to them, taking into account the progress of work in the GNS on coverage and definition.]

[The process of examining the implication and applicability of concepts, principles and rules for particular sectors and specific transactions should begin as lists become available.]

[As part of this examination, the rôle of international disciplines and arrangements that relate specifically to the sectors discussed as well as available statistical information on these sectors will be taken up.]

18. [The GNS should adopt the target date of November 1989 to arrive at an initial draft of the agreement including all essential concepts, questions of definition and procedures, sectors generally agreed to be excluded, and the sectors for which sectorally-specific rules are needed.

This initial draft will be agreed subject to satisfactory subsequent agreement on the schedules of coverage, exceptions, bindings, sectoral rules, etc. which may be needed to render the agreement operational.]

[Negotiations shall pursue completion of an initial draft of the agreement establishing the multilateral framework of principles and rules for trade in services. In this regard participants are encouraged to submit proposals for such texts, preferably by June 1989.]

[October 1989: Negotiations will achieve an initial draft of the agreement containing obligations and procedures governing trade in services.]

[The GNS should carry forward further the work on the questions of definition and statistics and the consultations with relevant international organizations, as necessary. In view of the fact that considerable work needs to be accomplished in relation to the modalities and measures to be incorporated in the multilateral framework to help achieve the objective of development of developing countries, the GNS will give special attention to devising these modalities and measures in the remaining period of the negotiations.]

19. [On the basis of the initial draft of the agreement, negotiations would take place in 1990 with a view to arriving at a multilateral agreement containing a list of sectors [and measures] subject to, or reserved from, the disciplines under the agreement, procedures for further negotiations and arrangements for application and entry into force.]

[During 1989: Participants will submit illustrative lists of measures which are perceived as obstacles to the expansion of trade in services. Following this, on the basis of procedures to be agreed, participants will engage in negotiations, including on the basis of request and offer, in order to ensure that the fullest possible liberalization of trade in services is effected within the Uruguay Round and that further liberalization will take place progressively including in the context of subsequent negotiations.]

[Delegations are invited to bring forward their proposals in regard to taking up specific measures and practices for progressive liberalization, including possible notifications and cross-notifications, preferably by June 1989.]

[The GNS will conduct a review of the progress achieved in its work at an appropriate time early in 1990].

20. All parts of the agreement will be finalized at the same time by the end of the Uruguay Round negotiations.