

## Appendix H

### ELEMENTS FOR A DRAFT WHICH WOULD PERMIT NEGOTIATIONS TO TAKE PLACE FOR THE COMPLETION OF ALL PARTS OF THE MULTILATERAL FRAMEWORK\*

#### I. Scope/Definition

Paragraph 4 of the Montreal Declaration provides the agreed basis for the following text on scope/definition.

1. Trade in services shall include transactions involving cross-border supply of the service; [cross border movement of data and information] [including, where required for this purpose, through public telecommunication networks and domestic distribution systems]; [access to the services of public telecommunication networks and domestic distribution systems]; cross-border movement of consumers; [cross-border movement of services embodied in goods]; cross-border movement of factors of production [necessary for the effective production, marketing, distribution, sale or delivery of a service] [under conditions of specificity of purpose, discreteness of transactions and limited duration] [under conditions such as specificity of purpose, discreteness of transactions and duration.]

2. [Cases involving permanent establishment, foreign direct investment or international immigration shall not be covered by the definition of trade in services.] [As regards factors of production, trade in services shall include all transactions involving commercial presence and transactions involving the movement of personnel essential to the supply of the service (i.e. key personnel and other skilled personnel) for a limited duration.] [Factors of production are to be treated symmetrically in the framework and in the negotiations.]

3. A list of all modes of delivery applicable under the framework may need to be established through further negotiations.

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\* The following is from a framework agreement submitted in the GATT for reference and discussion. The contents are printed here in the form in which they existed at the time this issue went to press. —Ed.

## II. Concepts, Principles and Rules to be Embodied in a Future Framework on Trade in Services

### (a) Transparency

Paragraph 7(a) of the Montreal Declaration provides the agreed basis for the following text on transparency.

1. Information on all relevant laws, regulations, and administrative guidelines and judicial decisions of general application relevant to trade in services as well as international agreements concerning trade in services [covered by the framework] shall be published [or, where this is not practicable made publicly available.] This requirement shall also [to the extent possible] cover sub-national entities and non-governmental regulatory bodies. Such publication [or public availability] of information shall take place not later than the date of entry into force of measure concerned [and to the extent possible prior to that date.] Such information shall be published [or made publicly available] in the official national language(s) of signatories.

2. National enquiry points [shall] [may] be established to provide information upon request [of signatories] to the extent that it is within the administrative and financial capacity of each signatory to do so.] These enquiry points need not be depositories of laws and regulations. [Developing countries shall have appropriate time to establish enquiry points.]

3. [Information required under national legislations from domestic enterprises regarding their operations [may] [shall] also be required to an [equivalent] [comparable] extent from foreign enterprises operating within the jurisdiction of a signatory.]

#### Alternative text for paragraph 3

3. [Nothing in this framework will prevent the application of national laws and regulations requiring the provision of information by economic operators within the jurisdiction of a signatory for statistical and other purposes, with due respect to the privacy and confidentiality of the data and information provided.]

4. [Transparency requirements shall be applied to service suppliers as well as governments to ensure that the objective of the framework is accomplished.]

5. [The introduction of new—or changes to existing—laws, regulations, etc. which apply to trade in services subject to a commitment

shall be notified in summary form in the official languages of the framework.]

6. [Signatories may cross-notify measures relating to trade in services subject to liberalization commitments.]

7. [Except in urgent circumstances, before instituting new or revised regulations affecting the provision of services subject to a liberalization commitment, a signatory shall provide other signatories with the opportunity to consult or make comments.]

#### (b) Progressive Liberalization

Paragraph 7(b) of the Montreal Declaration provides the agreed basis for the following text on progressive liberalization.

1. With a view to achieving a progressively higher level of liberalization, the adverse effects of all laws, regulations and administrative guidelines should be reduced or eliminated as part of the process to provide effective market access. This process shall [be long-term] and take place with due respect for national policy objectives and the level of development of individual signatories, and with a view to securing an overall balance of [interest] [rights and obligations] [with regard to market access opportunities], for all signatories.

[This process shall become operational with the entry into force of the framework.]

[The first step in this process shall be taken on entry into force of the framework.]

2. Not later than . . . from the date of entry into force of the framework and periodically thereafter, unless agreed otherwise, signatories shall undertake further negotiations in pursuance of the progressive liberalization commitment.

3. Rules, modalities and procedures (e.g., further negotiating rounds, periodic reviews) shall be established for progressive liberalization in trade in services.

4. The rules, modalities and procedures for progressive liberalization shall provide appropriate flexibility for individual developing countries for opening fewer sectors, liberalizing fewer types of transactions or progressively extending market access in line with their development situation.

5. [Rules, modalities and procedures shall be established for the negotiation in this Round of progressive liberalization, including appropriate guidelines and arrangements for the increasing participation of developing countries.]

6. [The process of progressive liberalization shall be governed by the following:

- conformity with the development and technological objectives of developing countries, including, *inter alia*, the role assigned to the services sector in the national economy and the state of development of the particular sector;

- expansion of the services exports of developing countries.]

7. [Negotiated commitments shall be consolidated through binding.]

8. [Sectors of export interest to developing countries shall be negotiated on a priority basis.]

(c) Market Access

Paragraph 7(e) of the Montreal Declaration provides the agreed basis for the following text on market access.

1. [Market access shall be deemed to exist when trade in services is not inhibited by the existence of a regulation or any other measure.]

2. Market access shall be consistent with the other provisions of the framework and in accordance with the definition of trade in services. [[The obligation to provide] market access shall be based on the contributions of signatories [under the provisions of the framework and] deriving from their individual commitments.]

3. Market access which is made available [under the provisions of the framework or] through negotiations would cover the modes of delivery made available to the foreign supplier [and the conditions [for the entry and operation] to be fulfilled by foreign suppliers in order to gain access to the market of the importing country.] Where more than one mode of delivery is available as a result of the negotiations, the foreign supplier shall be free to choose his preferred mode of delivery [subject to the conditions of entry [and operation]] embodied in the negotiated commitments.

4. Market access, made available [through negotiations], shall be consolidated through binding of the negotiated commitments.

5. [Market access shall not be made dependent on reciprocal concessions within the same sectors.]

Alternative text for paragraph 5

5. [Market access shall be negotiated on a basis of overall reciprocity.]

6. [If measures limiting market access are allowed, they shall be clearly defined under the framework.]

7. [Market access will be considered to be a legal obligation subject to the specific forms of the market access prescribed in the framework.]

(d) National Treatment

Paragraph 7(c) of the Montreal Declaration provides the agreed basis for the following text on national treatment.

1. When accorded in conformity with other provisions of the framework, national treatment means that services exports and/or exporters of any signatory are accorded in the market of any other signatory, in respect of all laws, regulations and administrative practices, treatment no less favorable than that accorded domestic services or services providers in the same market.

2. When necessary, the treatment a signatory accords to service providers of another signatory may be different from the treatment accorded to national providers, as long as the treatment is equivalent in effect to the treatment accorded by the signatory to national providers [in like circumstances.]

3. [Irrespective of whether identical or different treatment is accorded to foreign suppliers, national treatment should provide [equivalence in opportunity of] [equivalent competitive opportunity for] access to, and conditions for operation in the market.]

4. [National treatment shall be [extended to a foreign provider] [qualified by the conditions of entry and operation] once market access has been made available [in accordance with conditions to be negotiated]].

5. [In the case of developing countries national treatment shall be subject to preferential treatment for domestic providers of services.]

(e) M.f.n./Non-Discrimination

Paragraph 7(d) of the Montreal Declaration provides an agreed basis for the following text on m.f.n./non-discrimination.

1. Any benefit, negotiated or autonomously granted, [with regard to trade in services [covered by] [bound under] the framework] by a signatory [to any country] [to another signatory] shall be extended immediately and unconditionally to all other signatories.

2. There shall be no discrimination between foreign service suppliers of signatories [in regard to entry and operating conditions [in sectors covered by the framework]].

3. [Where national regulations, qualifications or standards exist for the provision of a service, [the extension of negotiated benefits]

to signatories may depend on mutual recognition of national regulations or qualifications, harmonization of standards, etc. Such extension shall be open to all signatories. This shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination among signatories or as disguised restrictions on international trade.] (See subheading (i), paragraph 2).

4. [Exceptions [and reservations] to m.f.n./non-discrimination shall be provided for.] [In special situations provision shall be made] under conditions to be negotiated [e.g., regional integration arrangements, free-trade areas, preferential trading arrangements among developing countries.] (See sub-heading (j), para. 1).

#### (f) Increasing Participation of Developing Countries

Paragraph 7(f) of the Montreal Declaration provides the agreed basis for the following text on increasing participation of developing countries.

1. [The elements of the framework should be structured in a way which encourages the effective participation of developing countries in the long-term process of progressive liberalization.]

2. The increasing participation of developing countries in world trade and the expansion of their service exports shall be provided for, *inter alia*, through the strengthening of their domestic services capacity and its efficiency and competitiveness. This shall be facilitated through specific agreed measures taken in relation to trade in services.

3. [The framework shall establish a clear understanding of the extent to which any such specific measures may be applied by individual developing countries in specific service sectors, under specific conditions.]

4. [The framework shall contain appropriate provisions assuring an efficient and competitive services environment in developing countries.]

5. [In making access to their markets available to foreign providers, developing countries may attach to it the following conditions: limitations or requirements with regard to the type of commercial presence; minimum requirements for training and employment, associated with different stages of producing the service; surcharges and different tax rates; local content requirement.]

6. [It is recognized that the export potential of developing countries will depend on the liberalization of cross-border movement of personnel covering the entire spectrum of skills from unskilled or semi-skilled to highly-skilled professionals. National regimes should be liberalized so as to enable not only developing country firms supplying

services abroad to recruit personnel from their own domestic sources, but also for all service firms to recruit personnel from the source which is economically most advantageous.]

7. Developed countries shall: establish enquiry points to provide exporters from developing countries with commercial information; and establish contact points to assist developing country exporters with questions relating to registration, recognition of professional qualification, completion or obtaining such qualifications in cases of lack thereof.]

8. [Developing countries shall be permitted to provide incentives to strengthen their domestic services capacity and take necessary measures to secure a minimum level of domestic production with due regard to the need to avoid undue distortion of trade.]

9. [Developing countries shall have the flexibility to require foreign service providers to transfer technology and know-how through contractual arrangements as a condition of market access.]

10. [There shall be provisions:

- for the granting of preferential market access to developing countries' exports and/or exporters of services;

- that prohibit measures and practices that limit or impede the access to information networks and to distribution channels for services;

- towards the elimination of measures that impede or limit free choice in the acquisition of technologies, as well as those that restrict access to such technologies;

- for the facilitation of training programmes for local personnel and the exchange of personnel;

- promoting the participation of national suppliers in the research and development activities conducted by foreign suppliers.]

11. Special consideration shall be given to the strengthening of the domestic services capacity of least developed countries as well as to their difficulties in accepting negotiated commitments. Specific measures in this respect need to be determined.

12. [Due consideration shall be given, in the negotiation process, by the developed countries to the financial constraints which may exist in developing countries arising from the foreign debt situation.]

(g) Safeguards

Paragraph 7(g) of the Montreal Declaration provides the agreed basis for the following text on safeguards.

1. Any safeguard measure shall be of a temporary nature, and shall be subject to an agreed multilateral procedure involving re-

quirements such as, transparency, [specified time-limit], consultation, notification and surveillance.

2. Safeguard measures may be applied for balance-of-payments purposes. The balance-of-payments justification of such measures will have to be established [in consultation with the IMF] [in conformity with the Articles of the IMF] [and in coordination with the GATT].

3. [Safeguard measures may also be applied to avoid or remedy unforeseen injury arising from increased supply of services resulting from liberalization commitments.]

4. [Safeguard measures may also be applied by developing countries when there is a need to: (a) promote the creation of certain service sectors, sub-sectors and/or activities, (b) correct structural problems, such as those related to technological changes and capital formation in a sector, sub-sector and/or activity, when they have an important bearing on the trade balance.]

5. [Safeguard measures could also be applied in order to deal with adverse trade effects caused by situations of concentration of ownership, market domination and restrictive business practices.] (See also paragraphs 2 and 4 under sub-heading (i)).

6. [If a signatory resorts to a safeguard measure other than for balance-of-payments reasons, other signatories shall be free following consultations, if agreement is not reached with respect to the safeguard actions, to suspend relevant obligations of the framework in whole or in part, and withdraw or modify commitments contained in their national schedules.]

#### (h) Exceptions

Paragraph 7(g) of the Montreal Declaration provides the agreed basis for the following text on exceptions.

1. Exceptions from provisions of the framework shall be permitted from the outset to deal with situations involving, for example, [protection of public order, national security, public morals, health, cultural or social values, environment, safety and [development].] Such exceptions shall not be used as a means to circumvent the objectives of the framework nor as disguised restrictions on international trade in services.

2. [The signatories may decide [upon request] to review the list of exceptions.]

Alternative text for paragraph 2



2. [The signatories shall conduct a regular review of exception measures taken in pursuance of this Article, and make recommendations as appropriate.]

3. [Appropriate offsetting measures may be taken with respect to services, the provision of which is dependent on products/services subject to access restrictions.]

(i) Regulatory Situation

Paragraph 7(h) of the Montreal Declaration provides an agreed basis for the following text on regulatory situation.

1. Signatories to the framework shall have the right to regulate the provision of services within their territories in order to meet national policy objectives. This includes the right of signatories to introduce new regulations consistent with commitments under the framework. It is recognized that developing countries may have a particular need to exercise this right. Regulations shall not be applied in a manner which could constitute a means of arbitrary or unjustifiable discrimination between signatories.

2. [Where national regulations, qualifications or standards exist for the provision of a service, [the extension of negotiated benefits to] signatories may depend on mutual recognition of national regulations or qualifications, harmonization of standards, etc. Such extension shall be open to all signatories. This shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination among signatories or as disguised restrictions on international trade.] (See sub-heading (e), para. 3).

(j) Other provisions

1. Arrangements such as regional integration agreements, free-trade areas, and preferential agreements among developing countries, which allow parties to the arrangements to undertake measures of liberalization among each other without extending them to other signatories, shall be permitted under the framework [under conditions to be multilaterally agreed]. Such arrangements shall, *inter alia*, not create any new, or raise existing, barriers to trade in services in relation to other signatories and shall in this respect be subject to multilateral discipline and surveillance. (See sub-heading (e), para 4).

2. The framework shall contain provisions [to ensure that trade in services subjected to negotiated commitments is not distorted by] [relating to] government aid/subsidies (including export credits and other forms of export assistance), monopolies, [government pro-

curement], [and dumping]. [However, in the case of developing countries, this will not apply to the flexibilities available to them under the framework in respect of preferential treatment to domestic services providers and to financial and non-financial incentives to them.]

3. Appropriate provisions shall also be made to provide for renegotiation of commitments, [rules of origin, payments and transfers for service transactions, and standards for licensing and certification.]

4. [The framework shall have provisions to deal with the adverse trade effects of restrictive business practices.] [Signatories shall undertake a commitment to control and discipline their national services suppliers who have engaged in restrictive business practices.]

5. [Nothing in the framework shall interfere with the signatories' rights to apply or adopt non-discriminatory laws to prevent abuses by economic operators engaging in unfair practices to the prejudice of other service producers and/or consumers, or by creating market distortions through the obstruction of competition.]

### III. Coverage and Application of a Future Framework on Trade in Services

#### (a) Coverage

Paragraph 5 of the Montreal Text provides the agreed basis for the following text on coverage.

1. All [existing and future] internationally traded and tradable services shall [, in principle,] be covered by the framework.

2. A list of services which would constitute the universe of traded and tradable services [shall] [might] be established [for illustrative purposes] [as the basis for those services covered by the framework]. The reference list in MTN.GNS/W/50 may be used as a basis for establishing such a list. [A covered service is, for each signatory, any service included in the universe except, for those services specifically excluded from its schedule.]

3. [Signatories of the framework may conclude Special Agreements providing for rights and obligations with regard to any service excluded from the framework. Such agreements shall be notified to the signatories of the framework.]

#### (b) Modalities of Progressive Liberalization: Initial Commitments and Mechanics of Liberalization

##### A. Initial commitments

Paragraph 9 of the Montreal Declaration provides the agreed basis for the following text on initial commitments.

1. Certain provisions of the framework shall apply as obligations from the outset to all services subject to the framework (e.g., relating to transparency, institutional [measures] [provisions], [m.f.n./non-discrimination], [national treatment] [progressive liberalization], [increasing participation of developing countries]).

2. Each signatory shall undertake initial commitments upon entry into force of the framework. In order to achieve an overall balance of [rights and obligations] [interest] [with respect to market access opportunities], these commitments shall take the form of:

(i) [In the case of developing countries, subscription to the obligations of the framework shall be deemed to constitute a sufficient commitment to ensure a minimum initial level of commitments.]

Alternative text (ii) to (iv):

(ii) [Binding, at the outset, the current level of market access and entry conditions affecting services trade [in particular sectors or sub-sectors] [in relation to all services] covered by the framework.] [Where necessary to ensure an initial balance of [rights and obligations] [interests], additional liberalization measures by individual signatories may be required] [according to their development situation.]

(iii) [An initial level of commitments may be constituted by a combination of measures included in a schedule of reservations and of concessions included in a schedule of bindings.]

(iv) [Each signatory shall assume at the outset all obligations applicable under the framework for services covered by the framework, unless reservations are made on a non-discriminatory basis.] [Each signatory shall assume such obligations under the framework as are specified under a schedule of positive bindings.]

Alternative text for sub-heading (A), paragraph 2 (ii) through (iv):

(a) [Each signatory shall, from the entry into force of the framework, apply to trade in [all] services [covered by the framework,] [in particular sectors or sub-sectors to be negotiated] the provisions of the framework to the fullest extent not inconsistent with existing [legislation] [measures] or international agreements to be reflected appropriately in a national schedule [of reservations] [in accordance with its development situation].]

(b) [Signatories may negotiate, [where existing [legislation] [measures] or international agreements are consistent with the provisions of the framework,] some additional flexibility to permit modifications of [this legislation] [these measures] in a manner which is inconsistent with the provisions of the framework. Unless permitted under such previously negotiated flexibility] signatories may not, in modifying or replacing existing [legislation] [measures] or international agreements, increase the previously existing degree of inconsistency with the provisions of the framework [nor place new or more restrictive limits on market access [in the sectors concerned].]

(c) Signatories may also negotiate liberalization measures through:

(i) total or partial elimination, whether immediate or on the basis of a time schedule, of [legislation] [measures] [inconsistent with the provisions of the framework as] [that restrict the level of market access or national treatment] reflected in national schedules [of reservations],

(ii) the total or partial elimination of limitations on market access, or

(iii) additional commitments to achieve [effective] market access. [In this process, due consideration shall be given to the development situation of each signatory.]

3. The outcome of the above process shall be consolidated by each signatory in its schedule.]

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3. [Initial commitments may differ depending on the level of development of individual signatories.]

4. [Credit shall be given to signatories which have already achieved a high level of market access before entry into force of the framework.]

5. [If one signatory does not consider, the initial commitments, at the time of the implementation of these obligations, of another signatory to be adequate [taking into account the level of development of that signatory], it shall have the possibility of withholding the application of some or all obligations under the framework from that signatory.]

6. [The framework shall not apply as between any two signatories if either of the signatories, during the process of the negotiations, does not consent to such application.]

## B. Mechanics of liberalization

Paragraphs 1, 2, 3, and 4 represent alternative proposals.

1. [Liberalization shall be progressively extended through the gradual removal of reservations made with respect to market access, national treatment and government aid, and through expansion of coverage in periodic negotiations.]

2. [The process of liberalization shall be carried forward through bindings resulting from the establishment of a multilateral set of commitments to be applied by all signatories. Liberalization may also take place through bilateral or plurilateral negotiations based on exchanges of specific concessions to be extended to all signatories on an m.f.n. basis. Bindings shall relate to sectors, transactions, modes of delivery, or factors of production. Further liberalization shall be achieved through the binding of commitments resulting from periodic negotiations.]

3. [Liberalization at the multilateral level shall take place through the gradual removal of reservations from national schedules, the provision of market access through an exchange of concessions, and the reduction or elimination of types of measures limiting market access.]

4. [The long-term process of progressive liberalization is to be achieved through the reduction of adverse trade effects of all laws, regulations and administrative guidelines. The following stages of negotiation should be observed: (i) multilateral discussion of the types of adverse trade effects to be covered in future negotiations. Objective criteria for the identification of adverse trade effects in this context should be established; (ii) countries claiming to have identified the type of trade effects which were multilaterally recognized to deserve attention would negotiate with those countries holding allegedly restrictive measures.]

5. [Signatories may negotiate separate [protocols] [agreements] open to all signatories affecting sectors covered by the framework providing for [additional and expanded liberalization] applicable between the parties to these [protocols] [agreements].] (See also paragraph 3 under sub-heading (e) and paragraph 2 under sub-heading (i))

6. [Signatories may negotiate, subject to provisions to be prescribed within the framework, protocols open to all signatories providing for harmonization and/or mutual recognition of regulations, standards and qualifications with respect to specified services [,as a means of additional liberalization,] [taking into account the level of development of individual signatories].]

### (c) Sectoral Annotations

Sectoral annotations [or agreements], where considered necessary, shall be multilaterally agreed and form an integral part of the framework [in the light of specific provisions prescribed in the framework and consistent with the provisions of the framework]. Such annotations may be envisaged, *inter alia*, for interpreting and/or clarifying framework provisions, adding provisions applicable to certain sectors [modifying provisions, permitting non-application of certain provisions], etc.

