

**GENERAL AGREEMENT ON
TARIFFS AND TRADE**

SERVICES

MINUTES OF THE MEETING HELD ON
27 AND 30 JUNE 1986

Chairman: Ambassador F. Jaramillo

1. The Chairman noted that, as agreed at the last meeting (MDF/W/68, paragraph 47 and GATT/AIR/2294), the meeting would first continue and conclude the discussion on issues raised in connection with possible multilateral action on services. It would then conduct a stock-taking of the work carried out so far under the Decision of the CONTRACTING PARTIES at their 41st Session (L/5924).
2. The representative of India said that it was not appropriate to consider that this meeting had concluded its discussions on possible multilateral action on services. Until now, only one view of possible multilateral action had been presented, and since this meeting should not be informed by one view only, a further examination of various possibilities had to be conducted. For example the case could not yet be sustained that an across-the-board approach was appropriate or that such services as tourism could be dealt with in the same manner as banking services. If this group decided to conclude temporarily its discussions, it was only for stock-taking purposes.
3. The representative of Japan said that the following eight elements were among those which could be examined for possible inclusion in a multilateral framework on services: definition of services and scope of application, most-favoured-nation treatment, national treatment, transparency, dispute settlement, treatment of developmental aspects of developing countries, public monopoly entities providing specific services, relationship of secondary rights and duties for federal States. Regarding the remarks by India, he noted that the treatment of services under GATT did not necessarily negate the usefulness of other international organizations and that a better balance and co-ordination could be envisaged among these, including GATT, whose work was complementary and mutually supportive.
4. The representative of India said that the documents circulated among delegations and the views expressed by representatives from international organizations could not be taken to mean that these meetings had dealt adequately with the crucial issues in services, or that any of these issues had been resolved. For example, it had already been noted in the exchange of information that the concept of national treatment as applied to services was not founded on sound theory since it purported to put on an equal footing foreign and local suppliers of services: no government assured such national treatment in terms of equality of opportunity to nationals of other countries. Other issues which had yet to be examined more fully included dispute settlement, transfer of technology, restrictive business practices, transborder data flows and the competence of relevant international

organizations. He concluded that these meetings had discussed only generalities and that, furthermore, it was inappropriate to assume that these issues could be addressed in a multilateral framework across-the-board.

5. The representative of Japan said that essential elements had already been covered and discussed in the meetings and that answers had now to be given in the process of negotiation.

6. The representative of India pointed out that so far there was no common view on even the definition of trade in services; he referred to the concept used by the European Community, which included an unspecified form of commercial presence. On the other hand, the Canadian national study excluded any notion of establishment as a part of trade. In addition, he noted that commercial presence was very different in insurance, banking and financial services and in tourism services. Furthermore, the national studies presented so far failed to make a distinction between trade and investment in services and listed purely investment policy instruments as obstacles to trade.

7. The representative of Nigeria said that his authorities were still working on a national study. He noted that there were many aspects of trade in services which deserved further study; inter alia, GATT should move into exploring the possibilities of having a multilateral framework in services. He was of the opinion that the inclusion of services on the agenda of the new round was premature since delegations supporting such an inclusion were unclear about the treatment of specific services issues. There was no basis at this stage for taking a meaningful decision on multilateral action, and the best solution would be to continue the exchange of information, which had proved to be a useful exercise.

8. The representative of Argentina said that certain aspects of services called for more elaboration and clarification, such as national treatment, across-the-border transactions as opposed to establishment, and national monopolies. Drawing attention to the complexity of the various forms of foreign direct investment, he questioned the approach which would consist of including representative offices in a definition of trade. If this led to such offices selling high technology services instead of producing them locally, a country like his would become a net importer of these services, which it would never be economic to produce locally, and this situation would have strong repercussions on local employment. Concerning national monopolies, he questioned the justification of the attitude which would consist of opening them to foreign competition. The exchange of information had strengthened his opinion that these issues had not been sufficiently discussed. He also suggested that this meeting think of the possibility of inviting other international organizations, such as the Latin American Economic System (SELA).

9. The representative of the United States commented that he was encouraged by the views expressed by the representative of Nigeria concerning the relations between GATT and services. He agreed that more time was needed to examine the various services issues although meetings had already discussed a great number of them. Regarding the opinion expressed by the representative of India, he commented that he could not accept that a consensus should exist on all issues before entering into the negotiations.

10. The representative of India reiterated that the exchange of information did not provide an adequate basis for consideration of the question of multilateral action. Issues needed to be clearly examined before any suggestion of the possibility of negotiations was made. Referring to the concept of MFN as applied to services, he recalled that whereas, so far, the principle of reciprocity had applied to key services sectors like civil aviation and banking, no answer had yet been given as to the modalities of the possible application of the most-favoured-nation principle, i.e. whether the suggestion was that it should be applied across-the-board or in terms of specific sectors.

11. The representative of Egypt said that it had become evident from the discussions that State sovereignty, development policies and the non-generic nature of regulations related to services rendered it most difficult to believe that these regulations are meant to be restrictive or subjected to international disciplines. Furthermore, only 25 per cent of the contracting parties had submitted national studies and only three international organizations had participated in these discussions while several of them had authentic competence in various services together with clear disciplines. More national studies, in particular from developing countries, were needed. His delegation was not yet convinced about the feasibility of an across-the-board action of a multilateral nature, about the desirability or the need for such action, nor about the competence of GATT in the field of services.

12. The representative of Tanzania said the more his delegation tried to understand the subject of services, the less it understood what it really was supposed to mean. In this context it seemed strange to talk about trade in services insofar as services were already included as costs of various goods. In addition, he had not yet seen any goods exchanged across the border which did not have any element of services, e.g. telecommunications, utility services or transport. Furthermore, various specific arrangements dealt already with a number of services. Regarding the eight elements suggested by Japan to be part of a multilateral framework on services, he was of the opinion that considerable work had to be carried out to explain and clarify these elements before national constituencies could be convinced. Until this had been done, his delegation would not be in a position to contribute to the discussion at the September Ministerial meeting. He said that perhaps part of the problem rested not in the question of whether services should be part of the GATT framework, but in the fact that protagonists were complaining about the restrictive nature of sovereignty itself. If so, somebody should enlighten as to how sovereignty could cease to be restrictive. It restricted all countries, large and small.

13. In presenting his delegation's stock-taking of the work carried out so far under the Decision of the CONTRACTING PARTIES at their 41st Session, the representative of the European Community said that the exchange of information had been a useful process, and that the discussions had perhaps not been exhaustive but balanced since they had been based on views from developed and developing countries. All main issues had received appropriate attention and were duly addressed. The purpose of addressing issues was to identify problems and the purpose of negotiations was to resolve them. His delegation was of the opinion that, on the basis of the work done, a decision on the appropriateness of multilateral action could now be taken. Multilateral action should take the form of negotiating an agreement within the GATT. This view was not shared by all delegations. However, the

Economic Community believed that contracting parties had reached a position where this decision could be taken.

14. The representative of the Republic of Korea recalled that his country, which had been supporting the inclusion of trade in services as a subject matter for the forthcoming Multilateral Trade Negotiations, preferred a multilateral approach to a bilateral approach, since it was placed under ever-increasing bilateral pressure concerning the opening of some national services markets. His country did not submit a national study, not because of lack of intention to do so, but because it was not able to produce such a study in a comprehensive way. So far the studies submitted by developed countries did not devote positive attention to services interests of developing countries such as the elimination of restrictions on the movement of manpower across borders. Regarding airline landing rights, his country was prepared to open all its cities to foreign airliners in return for access to their own cities for Korean Airlines. The idea of one-sided benefits could not be accepted in future services negotiations. Concerning the provisions of the future multilateral framework on services, a number of elements should be reflected in concrete terms, e.g. different level of development in the services area of each country, national security, cultural sovereignty, consumer protection and special and differential treatment. In this connection, developing countries should be clearly defined as "countries at the primary stage in respect of trade in services". In addition, consideration should be given to the notion that developing countries were aware of the long term benefits of market opening, but on terms and at speeds deemed appropriate by their authorities. In this respect, the representative of the Republic of Korea showed the difference between the amount of net profits of the 53 foreign bank branches in Korea in 1985 (over US\$100 million) and the amount of net profits of the 64 Korean bank branches operating overseas (US \$0.5 million) to exemplify the necessity and validity of giving special and differential treatment to developing countries.

15. The representative of Brazil said that, although a considerable amount of information had been collected and exchanged, it was difficult at this stage to prepare any recommendation for consideration by the CONTRACTING PARTIES at their next session as decided in 1985. Furthermore, his delegation was reinforced in its conviction that no multilateral action was necessary since this meeting did not even agree on a definition of trade in services and that no answer had been given to questions like what to do, when and under what conditions. It could not be said that the interests of developing countries had been discussed since national studies originated only from developed countries. Issues in trade in services had not been examined properly and it was thus unfair to expect that time was ripe for multilateral action. Since any action in services was premature, the answer of his delegation would be negative if a recommendation was to be considered.

16. The representative of Canada said that the work and the discussions had not been limited to sixteen countries, but had concerned all countries and that consequently the exchange of information had been very useful and the amount of information gathered had been sufficient. The meetings had discussed extensively the issues and concepts related to regulations affecting international transactions in services. He noted that many governments created barriers to international transactions in services and that these barriers had become the subject of international disputes. There was a need to reflect the principles of trade liberalization and the interests of less powerful trading nations in the development of rules

related to services. Submissions from international organizations had shown that no international organization except GATT could apply trade principles to services. The issues covered in national examinations and in the exchange of information, which were grouped under the four main headings in paragraph 15 of document L/5911, had been discussed in considerable detail and all aspects had been clearly identified. It was now appropriate to take a decision on the question of multilateral action.

17. The representative of the United States said that discussions had shown that national regulations satisfied legitimate domestic needs and that the question was to identify at what point they created trade distortions. Divergence of opinion was expressed, inter alia, on the delicate issue of tradeability and the important role played by transnational corporations. Contracting parties had now reached the point of negotiating multilateral rules in services under the GATT aegis to ensure predictability, security and certainty, i.e. order and discipline versus anarchy. Discussions of the work being done by other international organizations had shown that none was dealing specifically with trade in services. The material contracting parties had examined allowed them to identify issues which should be subject to negotiations in a near future. Time had come to start multilateral negotiations on trade in services in GATT.

18. The representative of Australia said that his delegation did not look at the liberalization of services as a zero-sum game, but as an opening of markets with additional benefits for all economies. Sufficient work had been done to start negotiating. Like India, his feeling was that discussions had not resolved many issues. However, substantial progress could be made only in negotiating a multilateral agreement.

19. The representative of Japan, referring to the four main headings in paragraph 15 of L/5911 and to the discussion of the work done by international organizations, pointed out that the work programme of these meetings had been well covered and that any shortcomings in the information available should in no way hinder the start of negotiations. The latter should deal with the reduction or dismantling of obstacles to trade in services and the building-up of a horizontal framework to secure greater discipline and transparency. While recognizing that some countries were engaged in the preparation of national studies and that a good understanding of the services sectors was needed, his delegation was of the opinion that contracting parties should think seriously about the possibility of applying dynamic rules and mechanisms able to promote trade in services.

20. The representative of India said that, although his delegation agreed with those delegations which had stated that the continuation of the exchange of information in 1986 had been useful, he noted that many of these delegations had initially been reluctant to continue the exchange beyond November 1985. However it was totally inappropriate to draw the conclusion that discussions had dealt properly with issues raised and that negotiations could start. This meeting had not even achieved clarity on the meaning of trade in services, which was a matter distinct from trade in goods and, consequently, could not be covered by a GATT-type framework. His delegation's answer as to whether any multilateral action in services was appropriate and desirable was a firm negative one.

21. The representative of Yugoslavia concurred with the views of those delegations which felt that the exchange of information was useful, but not

balanced and sufficient for consideration of the appropriateness of possible multilateral action. Therefore the exchange of information and deeper study of numerous relevant elements should be continued. She pointed out the difficulty for a country like her own to come to terms with the complex issues of services, as under the federal system most of the responsibilities for regulations in the area of services had been transferred to the level of republics and provinces. Also, her country's interests in trade in services were not yet clear. Thus, if some statistics indicated a high rate of trade in services for her country, this situation was in large part due to the important flow of workers' remittances. Furthermore, in addition to submissions received from international organizations, complementary information from the OECD should be made available.

22. The representative of Sweden, speaking on behalf of the Nordic countries, said that, although only sixteen countries had submitted national studies, the exchange of information had generated substantial and balanced discussions. Most countries had put forward views on the various issues and, in addition, delegations had had an opportunity to listen to three representatives from international organizations. The Nordic countries were convinced that many issues which had been raised could only be solved in the context of multilateral negotiations. Based on the extensive information exchanged so far, they had drawn the conclusion that the time was ripe for multilateral action. Concerning the issue of national sovereignty, for the Nordic countries the fact of looking upon services in a trade context did not mean that other countries should disregard their sovereign rights or individual development objectives.

23. The Chairman stated that, given the wide-ranging and intensive discussions which had taken place in 1986, including the stock-taking exercise undertaken at this meeting, he had been tempted to look back and assess, from his point of view as Chairman, the extent of the ground covered and what may still lie ahead. He recalled that the exchange of information on services initiated under the Agreed Conclusions of 30 November 1984 (L/5762) and continued under the Decision of CONTRACTING PARTIES at their 41st Session (L/5924) had occupied fourteen meetings, of which eight were held in 1985 and six (including the present one) in the current year. He had reported on the work carried out in 1985 to the 41st session of CONTRACTING PARTIES, in document L/5911. Concerning the information which had been made available, in addition to sixteen national studies, documentation had been received from thirteen international organizations, and the secretariat had summarized the information available to it on a fourteenth one, IBI. Three organizations had been invited to make presentations on specific aspects of their work. Finally, the secretariat had prepared a discussion paper for the meetings, contained in document MDF/W/59. As a basis for discussing the issues in the services sector, the information available had provided an extensive set of data and analyses, which had made it possible to address many of the relevant themes and concepts to which various delegations had drawn attention. Clearly, however, in the absence of national examinations from developing contracting parties, and perhaps of some other elements of information on specific subjects which might be thought desirable, the documentation at hand could not be said to be exhaustive. Therefore, he thought it would be wise at this stage to leave open the possibility of examining any new information that could be made available.

24. As regards the exchanges of views themselves, which had taken place during the reference period, especially since the beginning of 1986, the

Chairman felt that the meetings had gone a long way towards examining the relevant aspects of the items identified in paragraph 15 of his report to the 41st Session of the CONTRACTING PARTIES (L/5911). The discussions which had taken place in connection with the presentations by representatives of UNCTAD, ITU and UNCTC had also provided an opportunity to deal with development aspects, with some key sectoral activities, and with the rôle of transnational corporations in international trade and investment in services. Generally speaking, these exchanges of views had been useful in bringing to light supplementary information, and in permitting a more thorough analysis of themes and concepts than appeared in the available documentation. He would not contend that all items had been fully explored as a result, but he thought that by now one had a fairly good idea of what the main issues were and how they related to each other. His third and last comment related to procedures. The Decision of CONTRACTING PARTIES at their 41st Session (L/5924) provided for the continuation of the exchange of information and for the preparation of recommendations to CONTRACTING PARTIES at their next session. He found, however, that there was no consensus among the participants in these meetings on the issues before them. Given this situation, the only possibility he saw would be to recommend to the CONTRACTING PARTIES that they take note of the exchange of information that had taken place, take note of the stock-taking of the work carried out by individual delegations and by himself, as reflected in the minutes of these meetings, and consider any further steps towards the implementation of the Ministerial Decision of 1982 in the light of these elements.

25. The representative of the European Community said that, although the Chairman's recommendation that the CONTRACTING PARTIES take note of his own stock-taking and the stock-taking done by delegations represented a minimum, his delegation could go along with it, if only with considerable regret. The representatives of Israël said that in his view the exchange of information had been completed and the meeting should recommend that CONTRACTING PARTIES undertake multilateral action. The representatives of Canada, Switzerland and Sweden (speaking on behalf of the Nordic countries), while supporting the Chairman's remarks, stressed that they would have preferred a recommendation calling for multilateral action. The representative of Japan recognized that the Chairman had chosen a pragmatic approach. The representative of the Republic of Korea said that, although the Chairman's remarks reflected the difficulties of contracting parties to reach consensus, it was nevertheless mandatory for this meeting to submit a recommendation to the next session of the CONTRACTING PARTIES. The representative of Uruguay recalled that in Latin America national and regional meetings on services, which had dealt with developmental issues, had clarified views on a number of complex services issues. He agreed with other delegations that, while the examination of all relevant issues had not yet been completed, the decision on multilateral action in services had to be taken by the CONTRACTING PARTIES.

26. The representative of the United States said that his delegation concurred with the implication of the Chairman's suggested recommendation, that contracting parties should draw on the exchange of information as they saw fit in determining whether trade negotiations should be launched in services. Delegations which had submitted national studies had provided considerable data and analysis which contributed to a better understanding of the importance of services for the world economy. Although a number of delegations did not submit national studies, their interventions in the meetings had reflected a considerable amount of preparation and thought.

While his government's views frequently did not coincide with theirs, he had benefited considerably from their observations. These meetings had heard a number of countries at various levels of development support the inclusion of services in the next GATT round. Others did not take a formal position on the question of multilateral action. His delegation was confident that these countries would be reflecting carefully on the services issue over this summer. The purpose of these meetings was to generate an organized discussion on issues of critical concern to contracting parties. He agreed with the Chairman's assessment that the record was by no means exhaustive. Nevertheless, these meetings had identified the pivotal issues and discussed them at considerable length. There was no agreement on the disposition of many of these issues, but the record showed that delegations had put forward specific ideas on their approach to these issues. Regarding a possible multilateral set of rules, a blueprint could be laid out in terms of the limitations of any such rules. In services, countries would always retain their basic sovereignty to regulate in a manner consistent with their overall economic objectives. A services understanding, worked out under GATT auspices, would offer greater predictability and transparency in traded services and would also lead to a more competitive environment that could strengthen, rather than inhibit, services development in all economies. In final analysis, perhaps not every GATT contracting party would find it in its national interest to join such an understanding. However, the United States government was confident that a large number of contracting parties would find such principles to be consistent with their economic objectives. That was why his delegation would continue to press for services negotiations, within GATT, building on the record established by these meetings.

27. The representatives of Argentina, Brazil, Egypt, India, Pakistan and Yugoslavia, emphasizing the divergence of views among contracting parties, pointed out that so far only preliminary views had been exchanged on services, especially on the developmental aspects. Further in-depth discussions were needed to take into account any national studies of developing countries as well as additional contributions from relevant international organizations. Consequently, this meeting could not take any position on possible multilateral action, and, furthermore, it had to take into account the fact that contracting parties had not yet taken a decision about the status of the September Ministerial Meeting. If the latter was not to be a CONTRACTING PARTIES Session, there was no need for delegations to reach conclusions at today's meeting. Conversely, a further meeting should be convened to deal with this matter if the Preparatory Committee decided in favour of a CONTRACTING PARTIES Session in September.

28. The Chairman, taking note of the stock-taking of the work carried out so far by individual delegations, drew the discussion to a close and suggested that, if the Preparatory Committee were to decide that the September meeting should be a meeting of CONTRACTING PARTIES at Ministerial level, the next meeting on services would be held before the summer recess; otherwise it would be convened after September. It was so agreed.