UNICE

THE VOICE OF BUSINESS IN EUROPE

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UNICE STRATEGY ON WTO SERVICE NEGOTIATIONS (GATS 2000)

1. Introduction

- The services sector contributes more to world-wide economic growth and job creation than any other. It is central to the future of the world economy and an increasingly important competitive tool for EU businesses, even for the manufacturing sector.

- The EU is the world leader in this field – largely due to its openness to competition; the EU services' market is one of the freest in the world. The EU therefore leads in the drive to liberalise trade in services worldwide and remove barriers to a truly global market in services. The services sector is also a major source of innovation, especially in electronic commerce, and provides essential infrastructure and value-added investment for trade in goods. Services are also essential to improving economies of both industrialised and developing countries.

- World trade in commercial services, measured on a balance of payments basis, accounted for around one fifth of total world exports of goods and services. Services account for 60%, or USD 210 billion of annual flows of foreign direct investment. The European Union, which is the world's largest exporter of commercial services, accounting for 26 % of total global services' transactions, has a key interest in playing a major part in the new round of multilateral negotiations.

- Moreover, in the coming decades, issues related to international trade in services will present challenges to the multilateral trading system that at least equal, in terms of importance and difficulty, tariff and non-tariff barriers to the development of trade in goods.

- Therefore, UNICE, which is the official voice vis-à-vis the institutions of the European Union of the more than 16 million small, medium and large companies active in Europe today, from all sectors including a large part in services, supports and encourages liberalisation of services markets throughout the world.

2. The importance of the services sector for manufacturing industries

Industry and services are closely connected

Interdependence between industry and the services sector is increasing. More and more, industry is a provider of services. At the same time, services are being incorporated in industrial products on a large scale in the context of the combination between industry and services on preliminary services (services not delivered directly to the consumer). One expression of services and industry growing closer together is the fact that by now, up to 90% of the added value in products comes from services.

The software of a mobile phone contributes 80% to the added value. An automobile already comprises a services share of 50%, even if only the services linked to production are taken

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into consideration. Therefore, the traditional separation of industry and services has long been overtaken by reality. Both sectors interact and thereby constitute a new key economic area. The available statistics clearly demonstrate that this distinction is no longer valid. It is the reason why UNICE supports the extension of article 133 to international negotiations on services (as well as on intellectual property and investment). This extension would give the Commission the necessary power to defend European business interests effectively in international fora and WTO in particular.

Industry is increasingly a services provider

Industrial firms are increasingly service providers themselves, both at home and abroad. Their customers often no longer buy standard offers, which they then have to adapt to their needs. Today, industrial companies not only sell goods, but also solutions to problems. They now offer their customers a large number of services such as planning and consultancy, production of customer-specific software, tele-service, maintenance and repairs, assembly and commissioning, waste disposal, plant operation, etc.

Increasingly, world market successes can only be achieved through intelligent interweaving of industrial products and complementary services. Many traditional industrial enterprises have already turned services into an important element in their scale of offers. Automobile producers offer financial services and software, cable producers have become telecommunications providers, and raw material and technology firms have turned into tourism specialists.

The transition from a pure services provider to a provider of industrial goods with accompanying services is in full flow. Take the example of investment goods: in this sector, firms can be found that exist exclusively on services. Practical examples are engineering firms which plan installations with their customers, build those installations and operate them with external firms, but also software companies that depend solely on the productive sector. Machine and plant producers that are less dependent on the actual machines than on complementary services. These companies realise the largest shares of their turnover with maintenance contracts.

The physical product is only the ticket to the market. Lastly, many machine producers not only produce their machines and installations, but also operate them themselves. Often, this is accompanied by financial services, as for example rent-to-buy or leasing. Especially in industrial businesses, services around the product are a decisive factor in competition, which industrial companies successfully apply in order to secure their markets for export goods, and to open new markets. Regarding foreign investments by industrial companies, the service aspect often plays a special role. Often, they invest abroad in order to establish sales structures and a customer service. The internationalisation of services via foreign subsidiary firms is very rapidly becoming more important, also for industrial companies because of dynamic growth in direct investments.

International trade in services is also increasing in areas such as telecommunications, transport and construction as well as energy provision, partly because of the increase in BOT (build-operate-transfer) projects in developing countries. With BOT projects, the borders between industry and services blur almost entirely. Such projects increasingly form a component of international trade in services with less developed and newly industrialising countries.

Generally speaking, international projects involve a transfer not only of goods and technologies but also an export of services. Export of services in parallel with export of goods makes it possible to win new markets.

Industry is the largest user of services

Industry is a major user of services. In particular, it is the largest customer for business-related services such as legal advice and consultancy, advertising, trade, transport, information and communication, finance and insurance. In the context of preliminary services, services companies in Europe will deliver more than EUR 500 billion of preliminary services from their own production to industry in the year 2000.

Additionally, cooperation on preliminary services is being strengthened by the restructuring of production processes in industry. The most important element in this respect is the concentration on core skills and outsourcing of peripheral activities, sometimes even the separation of entire business fields. Often, activities such as legal consultancy or market research are hived off into pure service firms. In that way, new enterprises in the services sector come into existence, and the intra-sectoral combination of preliminary services becomes stronger.

The processing business is buying more and more services due to this trend. The share of incorporated services in production value in the processing business was about 1/6 in 1991, today it is almost 1/4 - and ten years from now, this figure is likely to have risen to up to 1/3.

Liberalisation of the world market for services is improving the competitiveness of industry. Industry has a great interest in further liberalisation of the world market, not only as a supplier but also as a user. Liberalisation offers industrial enterprises good possibilities to improve their market position. Liberalisation of services markets abroad is going to improve industry's chances of success for improving cross-border services exports and services activities of foreign subsidiary firms, and it will facilitate movement of personnel who provide services abroad. International trade in services makes it possible for industrial firms to reduce the cost, and increase the choice of services it uses and offers. Industry and consumers are both profiting equally from this development.

3. <u>What is "international trade in services"?</u>

There are no generally applicable definitions. What is relevant from the angle of external relations is the distinction made by WTO in its General Agreement on Trade in Services (GATS) which lays down the rules for international trade in services and where international trade in services is broken down into four different types:

- from the territory of one WTO Member into the territory of any other WTO Member (mode 1: cross-border supply);

- in the territory of one WTO Member to the service consumer of any other Member (mode 2: consumption abroad);

- by a service supplier of one WTO Member, through commercial presence in the territory of any other Member (mode 3: commercial presence abroad);

- by a service supplier of one WTO Member, through presence of natural persons of a Member in the territory of any other Member (mode 4: delivery of services by natural persons abroad).

Virtually all services sought or provided by industry fall into one or more of these categories, for instance:

- business-related services and independent professions (including EDI, R&D, management and personnel consultancy, printing and publishing, legal, accounting, architecture and engineering services),
- construction and related services,
- marketing services,
- post and courier services,

- telecommunications services (basic services, added-value services),
- financial services,
- health-care services and services in the social field,
- tourism services,
- environmental services,
- energy services
- transport services including sea, inland-waterway, air and road transport services.

4. Obstacles to international trade in services

International trade in services has hitherto been liberalised far less than international trade in goods. For that reason, suppliers of services in international trade often have to overcome obstacles, especially at the local level. Examples include:

- restrictions on making investments (e.g. restrictions on acquisition of land, majority shareholdings not allowed, minimum number of shareholders required, requirement to employ local managers, no free choice of legal form, etc.),
- disadvantages in the award of public contracts (opaque award criteria, unfair award practice),
- problems with temporary relocation of personnel (visa, work permit) abroad,
- monopoly positions of domestic firms effectively hampering market access,
- restrictions on foreign exchange,
- opaque national/local rules,
- licences as instruments for excluding and controlling foreign competitors,
- discriminatory qualification rules and standards,
- subsidies available only to domestic firms.

5. The importance of WTO services negotiations

- UNICE supports the launch of a new comprehensive round of multilateral trade negotiations. It believes that, to achieve balanced results, negotiations for the launch of a new WTO round should be comprehensive and concluded by a single agreement.

- The GATS negotiations on further liberalisation of services markets started in January of this year. Alongside sector-specific market access negotiations, horizontal issues also play an important role, e.g. liberalisation of e-commerce, free movement of personnel, liberalisation of investments, appropriate national treatment rules, public procurement and subsidies.

- UNICE believes the goal of the GATS negotiations must be to open markets outside the European single market for as many services as possible in order to improve the export opportunities of European companies and complete the international rules on services. At the same time, European industry, as a user of services, has a strong interest in further market opening within the EU, since this will tend to improve the offer of services and reduce their cost. In addition, equal treatment of domestic and foreign providers must be the underlying principle in as many WTO countries as possible, and in all sectors.

- The General Agreement on Trade in Services (GATS), which established a set of rules and obligations regarding world trade in services is crucial in ensuring that businesses can operate on a 'level playing-field' in the services sector. This brings benefits to all parties. But there is still room for improvement in the new comprehensive WTO trade round, which the EU believes should create even greater market opening, enable developing countries to participate more and cover important new sectors.

- UNICE is therefore convinced that the new round of trade negotiations will also be a chance to improve GATS as a whole and to strengthen the place of services in the WTO structure.

- While bilateral and regional agreements and initiatives can play a useful supportive role, a firm and widely supported multilateral agreement remains the ultimate goal of services negotiations within the WTO. Therefore, services and other services-related issues (such as investment and electronic commerce) should be combined in a new comprehensive round which should be concluded by a single undertaking. The new round should be of a limited duration, lasting no more than three years.

6. <u>Horizontal issues to be addressed in GATS 2000 negotiations</u>

a) <u>Adoption of horizontal commitments</u>

- UNICE underlines the importance of adoption, as far as possible, of "horizontal" commitments that would set a high benchmark standard and apply on a cross-sectoral basis. This should obviously not prevent sector-specific negotiations and sector-specific approaches.

- Exceptions and transitional periods in the implementation of these general rules would be allowed, but setting up the general rules will improve and speed up the negotiations process. In this context, UNICE urges all WTO members to allow foreign companies to establish business operations, without discrimination vis-à-vis domestic companies and to permit them to be progressively wholly owned (right of establishment).

b) <u>Development of pro-competitive regulatory principles</u>

- UNICE calls on the WTO members to develop pro-competitive regulatory principles, while preserving or strengthening appropriate domestic regulation framework. Regulatory reform that is "pro-competitive" should be a major focus on the new GATS negotiations, as a new concept in the WTO approach. Regulation must not be used for the sole purpose of unduly restricting or nullifying market access and national treatment commitments.

- An agreement on pro-competitive regulatory principles would commit governments to do their best to avoid discrimination against foreign services suppliers in their current and future regulation of services. Thus, such a commitment would even benefit types of services that do not yet exist.

c) <u>Improvement of the method of scheduling</u>

- Efforts should also be made to improve the method of scheduling to achieve greater liberalisation in all four modes: cross-border supply, consumption abroad, commercial presence and presence of natural persons.

- UNICE invites all WTO members to agree on a more transparent and better understood scheduling system. To be truly effective commitments need to be easily understood by businesses that stand to benefit from the new commercial opportunities they offer.

d) <u>E-commerce services</u>

- UNICE urges for early harmonisation of e-commerce services and definition of what constitutes a good or service, in particular for taxation purposes in the electronic marketplace (as detailed in UNICE 22 April 1998 position paper on Industrial services and 9 July 1999 statement on WTO e-commerce programme).

- Specific attention has to be paid to new and improved scheduling approaches for e-commerce services. Such approaches, combined with general services liberalisation across the board, should look at the elements of an e-transaction with the aim of liberalising across e-services (distribution, financial, business, communication services, etc.). There need to be commitments to provide market access and national treatment for the e-commerce activities in question.

e) <u>Liberalisation of investment</u>

- Investment has become an essential element of international access to markets and especially of trade in services. To liberalise international trade in services it is necessary to remove progressively all kinds of obstacles which have a detrimental effect on commercial activity. This includes, inter alia, restrictive or discriminatory measures affective investment from abroad.

- As the new world trade round will address further liberalisation of market access, all aspects of trade related investments need to be included and it would be appropriate to take stock of all existing rules and practices affecting foreign investment in WTO countries, irrespective of the country in which these rules exist. Therefore, UNICE believes that appropriate multilateral provisions within WTO on foreign investment, covering both manufacturing and services industries, would be in the interest of all WTO members irrespective of their stage of development, because these provisions could contribute to a stable, predictable and transparent situation in all markets. In parallel, it is important that GATS provisions on investment continue to liberalise. UNICE calls on WTO members to make further market access and national treatment commitments for investment during the next GATS negotiations.

f) <u>Emergency safeguard measures</u>

- UNICE believes that, if WTO members were to intervene, for emergency reasons, in services trade under GATS, it is of paramount importance for industry that such intervention take place in a controlled environment and on a cross-sectoral basis on an agreed temporary basis and supplemented by provisions.

- Depending on the outcome of the debate, this would require a pre-defined framework of ground rules for Emergency Safeguard Measures, to be applied on a cross-sectoral basis and supplemented by provisions for accelerated dispute settlement to ensure that concrete safeguard measures affecting services stay strictly in line with the agreed overall framework. UNICE also urges for equality of treatment between mode 1 and mode 3 types of services as regards safeguard measures.

g) <u>Movement of key business personnel</u>

- UNICE calls on the WTO members to consider addressing government rules and practices which impede or prevent key business personnel from temporary movement between WTO members, and temporary residence in WTO member States. UNICE seeks a harmonised set of rules, which will bring certainty, transparency and speed, in particular to the issue of intra-corporate mobility of key business personnel and contractual services providers.

- GATS 2000 negotiations should also attempt to determine procedures for the quick and efficient movement of key business personnel assigned to short-term projects. This would enable companies better to meet the growing customer need for international expertise, experience and service.

h) Subsidies in services

- UNICE favours a pragmatic approach to the issue of specific rules on subsidies in services. It would be sensible first to examine whether subsidies in services trade are significant enough to cause problems and, if so, whether it is possible to deal with them under the existing GATS rules.

- UNICE is convinced that subsidies having effects in markets outside the subsidising Member may need new rules. Due to difficulties in measurement and enforcement, an equivalent to countervailing duties in services should not be attempted without in depth analysis. Moreover, in renegotiating their schedules, Members should agree to make more national treatment commitments in relevant sectors across all modes of supply.

7. UNICE objectives for GATS 2000 negotiations

- For UNICE, the services 2000 negotiations should therefore create much improved opportunities for profitable international business. In particular, these negotiations should:

  - obtain the widest possible standstill commitments;
  - achieve broad and deep coverage of services sectors in WTO members and acceding countries;
  - ensure development of GATS rules and disciplines regarding government procurement of services, subsidies and emergency safeguard measures;
  - ensure commitment by governments and regulatory authorities to pro-competitive principles, which critically affect trade and foreign investments.

- In the GATS 2000 negotiations, specific attention need also to be paid to improving commitments which facilitate the use of electronic commerce for all services sectors, including those on the leading edge of e-commerce.

8. Conclusion

- For UNICE GATS negotiations are essential as they are a rule-making exercise with wide-ranging implications for the future of Europe, notably in terms of economic growth and sustainable development.

- UNICE is determined to work closely with the European institutions and their negotiators and to meet with services business representatives and officials from other trading partners with the view to building growing support for liberalisation of world trade in services.
