

GENERAL AGREEMENT ON TARIFFS AND TRADE

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TRADE IN SERVICES

The following information, requested by a number of countries, is communicated on behalf of the United States.

Since its beginning the General Agreement on Tariffs and Trade (GATT) has fostered trade in goods in two fundamental ways: (1) by establishing a set of rules for trading nations to follow, and (2) arriving at a framework for the exchange of mutually beneficial concessions aimed at liberalizing the conditions of trade. This has led to a considerable expansion of world trade.

When the GATT was conceived, trade in services was relatively insignificant in total world trade, and most trade in services was attached to the movement of goods across borders. Services generally were not exported as single entities. The global economy has changed considerably since that time. Dramatic improvements in communications and information have spawned the technology revolution, and it has enabled the service sectors to export more easily abroad.

This critical area of the world economy operates in the absence of any effective disciplines that can serve as the norm for these sectors. Nor is there an established procedure for negotiations that could lead to the liberalization of barriers limiting trade in services. The United States believes that a legal framework of rules and procedures should be established dealing with internationally traded services.

Negotiations arriving at such a contractual understanding would be carried out under GATT auspices using the GATT Secretariat and its administrative apparatus for appropriate support. We believe this is particularly appropriate in view of the close relationship between traded goods and services in today's economy.

Since January of this year, there have been a number of meetings in GATT that have considered issues raised by national examinations of the services sectors. These and future discussions should assist countries in having a better understanding of the conceptual problems, statistics, obstacles, definition, and approaches, that confront the services sectors. This process should give clarity to the issues for negotiation and assist countries in developing a more comprehensive understanding of this important area of trade.

One aspect of these discussions deserves brief mention here, which is the basic question of those activities that should be covered by trade in services. Specificity is not appropriate at this stage since coverage will be one of many elements subject to negotiation. However, the United States sees a services framework covering those commercial activities that are readily traded internationally. Sectors such as banking, insurance, telecommunications, and data processing, shipping, aviation and construction and engineering are among the most important examples of services that are traded commercially on a large scale, and these are the types of services sectors we would expect to see covered by a framework of trade principles. Some have questioned whether trade in services covers any category labelled as such under balance of payments categories. Categories under the "services" heading of the balance of payments accounts that cover financial flows such as capital and labor remittances would not be included in a framework since these represent the disposition of earnings of the factors of production in both goods and services. As in the case of goods, a services trade agreement would pertain to the final output of a sector. Finally, the framework should pertain only to the trade aspects of services.

OBJECTIVES

Our objective in services negotiations would be the establishment of a legal framework of rules and procedures that would (1) make trade in services as open as possible through a commitment to transparency of practices and the resolution of problems through consultation, and (2) negotiate commitments of a sectoral or functional character dealing with problems unique to individual services industries. The legal framework should consist of at least the following elements:

A. Transparency. Laws and regulations whose purpose is to protect domestic services industries would be notified by the parties to the agreement. It should allow for cross-notification by other parties who view certain services regulations as discriminatory.

B. National Treatment. All laws and regulations designed to achieve domestic regulatory objectives would be subject to the obligation of national treatment. In addition, national treatment would apply to all future such regulations governing the services sectors. Consideration should be given to legitimate prudential and other factors that must be taken into account in the application of this principle. Where regulations limit the total number of enterprises, national treatment by itself might not assure reasonable market access for foreign enterprises, and additional commitments might therefore be necessary.

C. Open Regulatory Procedures. Service sectors are among the most heavily regulated of all industries; thus the system of making regulations and rules available to the public prior to their implementation is of special importance to the industries who must deal with the consequences of

regulation. The framework normally should require the publication of all such rules and regulations with the opportunity for comments by interested parties prior to their implementation.

D. Public Monopolies. Several service sectors of consequence are carried out by public monopolies in many countries. Where monopolies go beyond the sphere of monopoly activity and enter into competition with other enterprises, they should adopt certain principles governing their behaviour with foreign competitors. A public monopoly would be required to adopt an armslength relationship between its own monopoly activities and its activities as an international competitor, a competitor domestically in other services, and as a supplier of services.

E. Dispute Settlement. Any legally binding commitment should contain meaningful procedures that allow for parties to consult over specific problems arising under the framework. In addition, provisions should be made for the establishment of independent panels to assist in resolving the dispute, including provision for compensation by a party whose trade opportunities have been impaired because of a foreign practice inconsistent with the framework.

F. Market Access. The agreement should include provisions designed to assure an appropriate degree of initial market access as well as procedures for reducing barriers to trade in services. With respect to initial market access, the agreement should cover: (1) existing measures designed to protect domestic service industries; (2) restrictive licensing régimes that limit access to foreigners, and (3) the introduction of new measures that seek to restrict foreigners. As to the reduction of barriers, the agreement would establish procedures for the negotiation of barriers along sectoral and functional lines. These market access commitments would be supported by provisions which lay out the nature of the commitments undertaken and the rights and obligations of the parties to the agreement.

Negotiations of a Sectoral Character. In parallel with the provisions of the legal framework for services, we would envisage a series of understandings that deal with the unique problems affecting trade in individual services sectors. While some sectoral agreements would address entirely different issues, it is critical that their provisions be consistent with the framework and that they work toward as open a system as possible for the sector. It is too early at this stage to determine the order in which sectoral agreements are reached, and this will depend, of course, on an emerging consensus among countries as to those sectors that should be addressed.

The United States believes that priority should be given to an understanding on international information flows. It is critical that we address this particular area as soon as possible because of its critical role in most service sectors and its role in the technological change of all our economies.

Negotiations of a Functional Character. Consideration should be given to the application of the basic concepts and principles in some of the GATT codes dealing with non-tariff barriers to trade, such as standards and procurement. And we should examine how the concepts of a future understanding dealing with intellectual property issues could apply to services. Service sectors experience many problems abroad in the area of copyright protection, patent infringement, and counterfeit.

Investment. Many service industries experience serious problems in doing business abroad because they cannot own the facilities necessary for the production of services locally. Foreign enterprise will not be able to take advantage of the full range of commercial opportunities so long as the problems of investment are not addressed in a framework similar to what we have suggested to cover trade in services. We would urge countries to begin examining how the investment issues affecting services could be managed in the context of an investment framework for services. A services trade understanding should, in any event, cover those activities providing for the right of commercial presence of foreign services firms for the purpose of marketing and facilitating a service imported into that country.

To conclude, our view of a services understanding is to provide some basic guidance as to the rights and obligations those countries who sign the understanding should assume with respect to each other in this critical area of trade. It is not designed to confront the basic sovereignty of domestic regulations that govern these sectors, particularly those whose purpose is not overtly protectionist. As in all understandings addressing a particular area of trade for the first time, we are suggesting a series of undertakings that can lead to a true liberalization to trade in services. The framework would significantly inhibit the adoption of new restrictive measures, as well as establish a process for addressing protectionist regulations. The sectoral and functional negotiations would more directly bring about the reduction and elimination of measures whose effect is to reduce or prohibit foreign competition.

The specific proposals that we have set forth in this presentation reflect the benefit of national analysis as well as discussion in international fora, particularly here in the GATT. We encourage those countries who believe that the problem has not been sufficiently described to study and analyze the concerns many of us have laid out through national studies and other exchanges of views here in the GATT. We would hope for the broadest possible participation among countries that see it in their interests so as to make a services understanding as universally applicable as can be achieved.

The services sectors face real problems in doing business abroad. Until we have dealt with these problems in some appropriate way, a major area of international economic activity will have been untouched.